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Draft Policy Brief

Talent Exchanges for State Governments[1]

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Key Takeaways

- State governments face an impending workforce crisis, particularly in science and technology, that undermines efforts to address climate change, cybersecurity, and tech governance.
- The federal Intergovernmental Personnel Act (IPA) provides a highly effective model for a "talent exchange" between universities, nonprofits, and the federal government (in addition to one between state and federal governments).
- Federal IPA appointments have included a wide range of assignments, including the Chief Economist of the Antitrust Division of the Department of Justice and a program manager for artificial intelligence development at the Defense Advanced Research Projects Agency (DARPA).
- By contrast, a survey of the 50 states reveals a general lack of similar talent exchanges with the IPA's scope, flexibility, and impact to address human capital needs.
- States should enact enabling legislation to create a talent exchange mechanism comparable to the IPA for easy assignment of personnel from universities and nonprofits to state and local governments.

I. Introduction

Government's human capital challenge is coming to a head. Long hiring cycles, uncompetitive salary scales, an aging workforce, and rigid hiring requirements have made it challenging to fill critical positions with top talent at the federal, state, and local levels.

In the federal government, the standard hiring process takes almost three times longer than that of private industry, and over half of all searches for positions where a competitive exam is

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administered end without a hire (NCMNPS 2020, 64). The Center for State and Local Government Excellence found that over 90% of human resource managers identified recruiting and retaining qualified personnel as an important issue (SLGE 2016, 2).

As a result, agencies remain understaffed and unequipped to face complex and evolving problems such as climate change (Kay et al. 2018, 17–18), pandemic response (MissionSquare 2008), crumbling infrastructure (Monks 2021), cybersecurity (Marks and Schaffer 2021), and technology governance (Khattar, Zhavoronkova, and Neal 2022). The human capital challenge is particularly pronounced with high-skilled, technical, and scientific jobs (Young 2021, 10). As one research group reported, "We're teetering on the brink of a public sector workforce crisis" (HRTech 2022).

The federal government recognized some of these challenges in 1970 when it enacted the Intergovernmental Personnel Act (IPA), providing a mechanism for the temporary assignment of personnel between the federal government, on one hand, and states and eligible nonfederal organizations, including universities and nonprofits, on the other (U.S. Office of Personnel Management 2023). Its primary initial aim was to assist state and local governments through federal agency expertise on the ground. But it also permitted exchanges in other directions.

The IPA has provided critical assistance to federal agencies. Particularly notable uses of the IPA to staff prominent positions include the Chief Economist of the Department of Justice Antitrust Division and the Directorship of the White House National Artificial Intelligence Initiative Office. Such assignments offer "a 'triple win' for the destination organization, the exchangee, and the home organization" by providing talent to the government, public service opportunities for the person on assignment, and human resource development for the home organization (Howieson et al. 2013, vi). Even five years after its enactment, one public administration dean noted, "the IPA record . . . causes one to wonder if any programs of similar size . . . ever had a greater impact" (Conaway 1975, 397).

Despite the IPA's success in federal capacity building and its initial conception to transfer federal expertise to the states, states lack similar talent exchanges to bring university and nonprofit talent in. Replicating the IPA at the state level offers a simple and proven model for state governments to build capacity in critical areas and flexibly incorporate expertise from a wide range of other institutions.

This Policy brief proceeds as follows. Section II provides background on the powerful talent sharing provisions of the federal IPA. Section III articulates the case for a comparable state IPA or talent exchange. Section IV discusses implementation details to address objections of the IPA model. Section V concludes.

II. The Federal IPA

The federal IPA provides a simple mechanism for personnel to be transferred temporarily between (a) the federal government, and (b) state and local governments,[5] colleges and universities, Indian tribal governments, federally funded research and development centers, and other nonprofit organizations (U.S. Office of Personnel Management 2023).

The program's most appealing attributes are simplicity and flexibility. While nominally administered by the Office of Personnel Management (OPM), the details of any employee transfer are negotiated between the federal agency, the employee, and the nonfederal organization. Participants may choose (a) duration up to two years but extendable under certain conditions, (b) any cost-sharing arrangement (e.g., the nonfederal organization may continue to pay the employee assigned to a federal agency, the federal agency may cover salary, or anything in between), (c) a flexible scope of work, so long as the engagement serves a sound public purpose, and (d) the extent of commitment from part to full-time. The employee retains their employment status with their home organization, ensuring continuity in benefits, and can return after their temporary federal work is complete.

While governments can of course *hire* or *contract* for talent, the IPA model is particularly effective for four reasons. First, the IPA provides access to distinct talent pools, including experts who would not consider full-time employment at a government agency. The IPA enables agencies to access talent across universities, research organizations, eligible nonprofits, and all levels of government with minimal red tape. The assignment, for instance, involves completion of a simple (four-page) Assignment Agreement, with a single paragraph description detailing the reason and scope of work.[6]

Second, employees can easily be fully integrated into the federal system. Participating employees can be granted access, rights, and privileges necessary to the performance of their duties just as any other federal employee. This includes physical access (e.g., badges, keys, office), digital access (e.g., email, information systems), data access, and equipment and technology.

Third, the IPA presents low career risk to participants. Participating employees can return to their home organizations after their IPA project ends. Costs to the federal government are minimized because salary and benefits can remain covered by the exchangee's home organization throughout the engagement.

[5] While the IPA enables exchanges between federal agencies and state agencies, it does not enable exchanges between state agencies and other organizations, such as universities or nonprofit organizations. This is why a state-level IPA is needed.
[6] This form is available at https://www.opm.gov/forms/pdf_fill/of69.pdf.

Fourth, the IPA has minimal hiring requirements, empowering agencies, employees, and participating organizations to use it as they see fit. Notably, IPA hires do not count against caps on employment levels or salaries (Mervis 1997).

IPA assignments have successfully addressed a wide variety of government needs. The IPA has been especially valuable for addressing "agency skills gaps in highly technical or complex missions areas" (GAO 2022, 13) by providing a flexible mechanism for attracting top talent that agencies otherwise could not obtain (Howieson et al. 2013, 17). But the IPA also has broader use, including strengthening management capabilities, assisting with the transfer and use of new technologies, and developing and implementing federal policies and programs.

In practice, agencies have leveraged the flexibility of the IPA to employ managers, scientists, engineers, technical experts, healthcare professionals, and other skilled professionals across a wide variety of domains and use cases. Here are some key examples:

- The Defense Advanced Research Projects Agency (DARPA), for instance, hosted a university faculty member to manage voice recognition technology research, increasing the agency's national security and public communications capabilities (GAO 2022, 14).
- The Department of Housing and Urban Development employed an executive from a charitable foundation to support an interagency initiative to launch the Office of Sustainable Housing and Communities (Partnership for Public Service 2022).
- The Treasury Department and Internal Revenue Service (IRS) worked with academic researchers to pilot artificial intelligence as a way to detect tax evasion and balance other equity and statutory objectives (Black et al. 2022; Henderson et al. 2023; Waikar 2020).
- The Department of Justice employed a law professor as Principal Deputy Assistant Attorney General for the Civil Rights Division and an economics faculty member to serve as Chief Economist for its Antitrust Division.

IPA assignments from government into nonprofit or academic roles can also be valuable. Federal agencies have noted that sending their employees into temporary academic or nonprofit positions can help attract new hires, develop skills, and build organizational partnerships (GAO 2001, 12). In short, the IPA has provided a powerful, yet simple, mechanism for exchanging, building, and developing talent.

III. The Case for a State IPA

Despite the increasingly widespread use of the federal IPA, no states have implemented an enabling act of similar scope, flexibility, and effectiveness. A 2003 study determined that at least 43 states had no talent exchange in place (Zatz 2003, 5). We conducted an update of this survey and found that the majority of states continue to have no such talent exchange and a minority

have programs that are significantly more constrained in scope and applicability. Most notably, such talent exchanges are styled as exchanges between state agencies, and unlike the federal IPA, categorically exclude universities and nonprofits. In areas of cutting edge science and technology, that omission is critical.

The need for a talent exchange is acute at the state level. State and local officials lament the difficulty in attracting skilled talent, with 60 – 75%, 57%, and 52% reporting difficulties filling positions for healthcare, skilled trades, and engineering jobs, respectively (Young 2021, 10). New Jersey Governor Phil Murphy and Chief Innovation Officer Beth Simone Noveck describe the difficulties of "[tackling] 21st century problems with 20th century government" and argue that it will be critical to "train[] public servants in innovative ways of working" (Murphy 2019). Like the federal government, state employees are significantly older than private sector workers (Lewis and Cho 2011), and 69% of state and local government survey respondents expressed concern about a "silver tsunami" of retirements (Young 2021, 14).

The problem of an aging workforce is particularly worrisome for technical positions. A 2022 survey of state chief information officers (CIOs) described workforce concerns as a "major worry and pain point" for CIOs. As one framed it, "Workforce is the single largest challenge any leader faces and getting the workforce component right is the make / break success of the CIO" (NASCIO 2022, 10).[7] One research institute noted, "Clearly, this isn't sustainable, and public services and safety are increasingly at risk" (HRTech 2022).

Some jurisdictions have recognized this problem and taken steps to address it. New Jersey created an Intergovernmental Transfer Program (ITP) to enable personnel transfers[8] between state and local jurisdictions. In the first three years after its creation in 2000, the ITP was used by 78 jurisdictions to transfer 421 employees, including managers, police officers, public works directors, and systems analysts (Zatz 2003). To build data science capacity quickly for COVID-19 pandemic response, California's Santa Clara County onboarded university researchers in a makeshift IPA as county volunteers or part-time employees. In reflecting upon the experience and associated logistical barriers to such talent exchange (e.g., data sharing, IT access, coordination), Santa Clara County's Health Officer, along with one of us, concluded, "we need an IPA for local government" (Cody and Ho 2022, 5).

IV. Implementing a State IPA

[7] COVID-19 also appears to have accelerated resignations and retirements. A recent study found that 52% of state and local employees were considering leaving their jobs voluntarily due to COVID-19, and 80% said the increase in the number of people leaving has put a strain on their workload (MissionSquare Research Institute n.d.).
[8] Importantly, the New Jersey ITP's scope excludes university and nonprofit transfers.

The federal IPA experience not only demonstrates its benefits, but also reveals implementation considerations for states. First, a state talent exchange should be designed to complement existing merit and union hiring systems through the transfer of knowledge, enhancement of existing capacity, and training and development of the existing workforce.[9] Talent exchanges are best conceived of as building — not hollowing out — government capacity. In contrast to many instances of outsourcing and contracting, the federal IPA usage has repeatedly demonstrated that IPA assignments can enhance internal expertise and capacity by facilitating upskilling, easing technological transitions, and leveraging novel sources of expertise.

Second, assignments should be subject to tailored ethics rules (Mervis 1997). Because an employee on assignment may maintain an active relationship with both home and hosting organizations, conflicts of interest can arise, especially with grant-making bodies, requiring robust management. IPA assignments at the National Science Foundation (NSF), for instance, are subject to clear rules and oversight that limit employees' ability to engage (1) in activities that carry a high conflict of interest risk while at NSF and (2) with the NSF upon returning to their home institution (NSF OIG 2017). Regulation on postemployment collaboration between a former IPA and the governmental organization may be helpful for preventing self-dealing, but an overly broad rule risks hurting knowledge transfer and deterring people from taking an IPA assignment (Selinger 2020, 465–66, 471–73).

Third, administrative requirements should trade off the ease of adoption with the need for tracking and oversight. Federal IPA changes in 1997 reduced administrative requirements, decentralized implementation, and encouraged uptake, but also led to some instances of poorer documentation and performance tracking (EPA OIG 2020). Overall, however, enabling individual agencies to gauge need and suitability appears to have worked well.

V. Conclusion

The federal IPA provides a potentially impactful and simple mechanism for building capacity. States should seize it as a paragon for addressing human capital constraints — particularly high-skilled labor shortages or a lack of scientific and technical expertise — by adopting enabling legislation for a state talent exchange. We provide a model in Appendix 2. Such a provision would be a simple, effective, and powerful mechanism to expand the talent pool, enhance agency capacity, and enable states to navigate the oncoming technological and scientific transitions.

[9] To avoid the appearance or reality of agencies using temporary hires to circumvent the merit system, the federal IPA requires agencies to follow merit rules for IPA hires when a program's funds are conditional on a merit-based system. See 5 C.F.R. §§ 900.602–604.

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Appendix 1: Existing State Talent Exchanges

This Appendix presents the results of our survey of state laws allowing temporary assignment of university and nonprofit employees into state government. For each state, we used Westlaw to search through its statutes for terms that would be related to a talent exchange program. Only two states' laws clearly allow for temporary details from universities (public and private) and nonprofits into government; eleven clearly allow for such assignments from employees of public universities in the state; and thirty-five states seem not to allow such assignments from any of the three organization types. Details on our methodology and assessment of state laws are provided in the "Notes" section below the table.

State	Public University	Private University	Nonprofit
Alabama	No	No	No
Alaska	No	No	No
Arizona	No	No	No
Arkansas	No	No	No
California	Yes	No	No
Colorado	No	No	No
Connecticut	No	No	No
Delaware	No	No	No
Florida	Yes	Yes	Yes
Georgia	No	No	No
Hawaii	Yes	No	No
Idaho	No	No	No
Illinois	No	No	No
Indiana	Yes	No	No
Iowa	Yes	No	No
Kansas	Yes	No	No
Kentucky	No	No	No
Louisiana	No	No	No
Maine	No	No	No
Maryland	No	No	No
Massachusetts	No	No	No

Michigan	Yes	Yes	No
Minnesota	Unclear	Unclear	Unclear
Mississippi	No	No	No
Missouri	No	No	No
Montana	No	No	No
Nebraska	No	No	No
Nevada	No	No	No
New Hampshire	Unclear	No	No
New Jersey	Yes	Yes	Yes
New Mexico	No	No	No
New York	No	No	No
North Carolina	Yes	No	No
North Dakota	No	No	No
Ohio	External assignment only	External assignment only	External assignment only
Oklahoma	No	No	No
Oregon	No	No	No
Pennsylvania	No	No	No
Rhode Island	Yes	No	No
South Carolina	No	No	No
South Dakota	No	No	No
Tennessee	No	No	No
Texas	No	No	No
Utah	No	No	No
Vermont	No	No	No
Virginia	No	No	No
Washington	No	No	No
West Virginia	Unclear	Unclear	Unclear
Wisconsin	Yes	Yes	No

Wyoming	No	No	No

Notes

Westlaw search terms: We searched the following terms connected by the boolean "or" for each state's "Statutes & Court Rules": "talent exchange"; "talent transfer"; "talent mobility"; "talent interchange"; "employee exchange"; "employee transfer"; "employee mobility"; "employee interchange"; "personnel exchange"; "personnel transfer"; "personnel mobility"; "personnel interchange"; "temporary assignment"; "intergovernmental transfer"; "intergovernmental personnel".

California: Employee interchange programs are authorized, *see* Cal. Gov't Code § 19050.8 (2023); Cal. Code Regs. tit. 2, § 442 (2023). The statute seems to anticipate that employees of private universities could be temporarily assigned to state agencies. It provides the State Personnel Board authority to prescribe rules concerning temporary assignment "of employees within an agency or between agencies . . . or between jurisdictions . . . ." Cal. Gov't Code § 19050.8. It further specifies that "[p]ublic and private colleges and universities shall considered educational agencies or jurisdictions within the meaning of this section." *Id.* However, the implementing regulation allows appointments from only public universities. *See* Cal. Code Regs. tit. 2, § 442 ("An appointing power may . . . receive an employee from a different jurisdiction, provided that . . . [t]he other jurisdiction, regardless of whether it is in or outside of California, is a public entity at the federal, state, local, or international level, including public colleges and universities, and public entities in other countries.").

Connecticut: Connecticut law allows state agencies to create agreements with "educational institutions" to provide "special training courses for state employees" but only allows for "exchange of employees" with the federal government and other state governments. Conn. Gen. Stat. § 5-265 (2021).

Florida: State agencies are authorized to create "employee interchange agreements with private institutions of higher education and other nonprofit organizations," but a wider array of actors — "[s]tate agencies, municipalities, and political subdivisions" — are allowed to enter into such agreements with "a public institution of higher education." Fla. Stat. § 112.24 (2022).

Hawaii: Any "governmental unit of this State" may participate as a "sending agency," which presumably includes public universities in Hawaii. Haw. Rev. Stat. § 78-27(a) (2022). Legislative history confirms that proposition. The former provision passed in 1965 — which was repealed by S.B. 2859, 20th Legis., § 74 (2000), leading to the current statute — provided that "[a]ny unit of government of this State, whether a state or county department, agency, or instrumentality or the judiciary, may participate in any program of temporary intergovernmental assignment of employees as a sending or receiving agency." Haw. Rev. Stat. § 83–2(a) (1999). That statute had a provision specifically addressing the University of Hawai'i, which provided that intergovernmental assignments for the University could lead to longer assignments. *See id.* § 83–2(b). The fact that public universities are covered by the statute is also evidenced by current Department of Human Resources Development policy, which anticipates that the "president of the UH [University of Hawai'i]" is a "[d]epartment head" whose approval is necessary to send an assignee via the intergovernmental exchange program. *See* State of Hawaii Dep't of Hum. Res. Dev. Policies & Procedures, Temporary Inter- and Intra-Governmental Assignments and Exchanges, Pol'y No. 702.001 ERD/PTO (2011), https://dhrd.hawaii.gov/wp-content/uploads/2012/10/0702001.pdf. There is some ambiguity regarding private universities and nonprofits: the statute allows for a "governmental unit" to act as a "receiving agency" of an "exchange of employees" with a "sending agency" that can be a "private agency with government sponsored programs or projects." Haw. Rev. Stat. § 78-27(a). It is not obvious, however,

that a "private agency with government sponsored programs or projects" would include a private university or generic nonprofit organization.

Indiana: Indiana law provides that, among other organizations, any "land-grant college, or college or university operated by the state or any local government" may participate in employee interchange programs, but it neither includes nonprofit organizations nor private universities. *See* Ind. Code § 5-10-7-3(a) (2022).

Iowa: The Iowa statute allows any "land-grant college, or college or university operated by the state or any local government" to participate in an employee interchange program. *See* Iowa Code § 28D.3(1) (2023). That operative provision therefore includes public universities, even though its definition of a "sending" and "receiving" agency — "any department or agency" that sends or receives an employee — would not obviously seem to include such universities. *See id.* §§ 28D.2 & 3.(1).

Kansas: Kansas law allows any "college or university operated by the state or any local government" to engage in an employee interchange program. *See* Kan. Stat. § 75-4403(a) (2022).

Michigan: Michigan law allows an "institution of higher education of this state" to participate in an employee interchange program. *See* Mich. Comp. Laws § 15.503 (2022).

Minnesota: The relevant statute states that interchanges between a "department, agency, political subdivision or instrumentality of the state" and the "departments, agencies, or instrumentalities of the federal government, the state, or another state" are not allowed for a "sending or receiving agency" except by the terms of Sections 15.51–57. Minn. Stat. § 15.53 (2022). Because the statute mentions an "instrumentality of the state," it is at least plausible that a public university would be included. Although no affirmative authorization is provided in Sections 15.51–57, the statute clearly anticipates such interchanges. But the statute also defines a "receiving" and "sending" agency as "any department, political subdivision or agency of the federal government or a state government which sends any employee thereof to another government agency," *id.* § 15.52(2)–(3), which presumably excludes public universities (unless they can be construed as government "agenc[ies]"). Minnesota law also allows an interchange between state government and "private industry" subject to the same guidelines as with government employees. *See id.* § 15.59. Arguably, both private universities and nonprofit organizations could be swept in by that definition.

New Hampshire: New Hampshire law provides authority for any "department, agency, or instrumentality of the state" to participate in an employee interchange program "as a sending or receiving agency," but it defines a "sending or receiving agency" as "any department or agency of the federal government or a state or local government." *See* N.H. Rev. Stat. §§ 98-B:2–3 (2021).

New Jersey: New Jersey law authorizes any "New Jersey Governmental unit" — defined to include state agencies and also "any authority or instrumentality created or chartered" by the state — to participate in an employee interchange program with other state entities. N.J. Stat. §§ 52:14-6.12(c) & 6.13 (2021). A separate provision of law allows New Jersey's Civil Service Commission to "provide for an employee interchange program between public and private sector employees," apparently without statutory restrictions, although the programs seem to be implemented according to the same rules as the intergovernmental interchange program. *See id.* § 11A:2-11(j) (stating that the commissioner "[s]hall provide for a public employee interchange program pursuant to the "Government Employee Interchange Act of 1967," [§ 52:14-6.10 et seq.] and may provide for an employee interchange program between public and private sector employees"); N.J. Admin. Code § 4A:6-4.8 (2023) (providing authority for any "appointing authority . . . to participate, either as a sending or receiving agency, in an interchange program with any federal, State or local governmental or private sector entity," and enumerating rules).

North Carolina: North Carolina law allows for any "division, department, agency, instrumentality, authority, or political subdivision" of the state to participate in an employee interchange program, which presumably extends to North Carolina public institutions of higher education. N.C. Gen. Stat. § 126-53 (2021).

Ohio: Ohio law allows employees to be assigned to "another state agency, counter office, political subdivision, or an outside governmental or non-governmental organization." *See* Ohio Admin. Code § 123:1-46-06 (2022); Ohio Rev. Code § 124.389 (2021) (providing statutory authority).

Rhode Island: Although the statutory definitions of a "receiving" and "sending" agency do not seem to anticipate a university, *see* R.I. Gen. Laws § 42-40-2(a) (2022) (defining a "[s]ending agency" as a "department or agency of the federal government or a state or local government" that sends an employee), (b) (analogously for a "[r]eceiving agency"), the operative provision explicitly allows universities to act as "sending" or "receiving" agencies. *See id.* § 42-40-3(a) ("[A]ny school, college, or university operated by the state is authorized to participate in a program of interchange of employees . . . as a sending and/or receiving agency.").

South Carolina: South Carolina law allows only a "department or agency of this State or any political subdivision" to participate in an employee interchange program. *See* S.C. Code Ann. § 8-12-20(a) (2021).

West Virginia: The relevant provision of law provides only that the Director of Personnel shall "[e]stablish and provide for a public employee interchange program and may provide for a voluntary employee interchange program between public and private sector employees[.]" W. Va. Code § 29-6-7(b)(8) (2021. But there does not appear to be any regulatory provision implementing an interchange program, and the statute does not specify the requirements of such a program.

Wisconsin: Wisconsin law allows any "department, agency or instrumentality of the state, or institution of higher education or any local government or other municipal corporate agency" to participate in an employee interchange program. *See* Wis. Stat. § 230.047(3) (2022).

Appendix 2: Model State IPA

The following model state IPA statute is based primarily on Florida's relevant statutory provisions, along with aspects of the federal IPA and its implementing regulations and analogous laws in New Jersey, Hawaii, North Carolina, and California.

Sec. 1. *Purpose*. To encourage the economical and effective utilization of public employees in this State, to allow state agencies to address temporary personnel gaps, and to develop the managerial and workforce capabilities of government agencies, the temporary assignment of personnel to agencies of government is authorized under terms set forth in this Act.[10] All terms of this Act shall be liberally construed to effectuate the purposes and intent of the Act.[11]

Sec. 2. *Definitions*.

1. "Agency" means any department, office, instrumentality, or authority of a government.[12]
2. "Employee interchange agreement" means any agreement allowing for the temporary assignment or detail of employees of any agency of the State or its political subdivisions, any agency of the Federal Government, any agency of another State or its political subdivisions, any agency of an Indian tribal government, any institution of higher education, and any nonprofit organization as defined in this Section.
3. "Institution of higher education" means a domestic, accredited public or private 4-year and/or graduate level college or university, or a technical, junior, or community college.[13]
4. "Nonprofit organization" means an entity organized for purposes other than generating profit, in which no part of the organization's income is distributed to its members, directors, or officers,[14] and which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services,

[10] This introductory statement is paraphrased from the preambulatory language of the Florida statute, but it specifies additional goals of the statute (temporary personnel gaps and capacity building). *See* Fla. Stat. § 112.24 ("To encourage economical and effective utilization of public employees in this state, the temporary assignment of employees among agencies of government, both state and local, and including school districts and public institutions of higher education is authorized under terms and conditions set forth in this section.").

[11] This language is a modified version of the New Jersey statute. *See* N.J. Stat. § 52:14-6.11 ("This act . . . shall be liberally construed to effectuate the purposes and intent thereof.").

[12] Many state statutes define a similar list of organizations in a definition of "receiving agency" and "sending agency." *See, e.g.*, N.C. Gen. Stat. § 126-52(3) ("'Receiving agency' means any division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government which, under this Article, receives an employee of another governmental division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government."); *id.* § 126-52(4) (same for "sending agency"); Ind. Code § 5-10-7-3 (applying to "[a]ny department, agency, or instrumentality of the state, county, city, municipality, land-grant college, or college or university").

[13] This definition is based on the federal regulation implementing the IPA. *See* 5 C.F.R. § 334.102.

[14] These first two prongs come from the definition of a "non-profit organization" provided by Cornell Law School's Legal Information Institute. *Non-profit Organizations*, Legal Info. Inst., https://www.law.cornell.edu/wex/non-profit_organizations (last visited Jan. 22, 2023) ("A non-profit organization is a group organized for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers.").

to governments or universities concerned with public management.[15] An organization shall be designated as an eligible nonprofit organization for the purposes of this Act by the head of an agency seeking to enter into an employee interchange agreement or by a designee thereof.[16]

5. "Receiving party" means any organization that receives an employee of another organization under this Act.
6. "Sending party" means any organization that sends an employee to another organization under this Act.

Sec. 3. *Authorization*.

1. Any agency of the State or its political subdivisions is authorized to enter into employee interchange agreements as a sending and/or receiving party with any other agency of the State or its political subdivisions; any agency of the Federal Government; any agency of another state or its political subdivisions; any agency of an Indian tribal government; any institution of higher education; and any nonprofit organization as defined by this Act. Duties and responsibilities of interchange employees shall be limited to the mission and goals of the participating government agencies.[17]
2. The [head of the State personnel agency] shall have authority to make any rule or regulation necessary to implement and effectuate this Act to enable agencies of the State or its political subdivisions to easily make employee interchange agreements.

Sec. 4. *Limitations on employee interchange agreements*.

1. Specifications of an employee interchange assignment shall be the subject of an employee interchange agreement, which may be extended or modified except as limited below, between a sending party and a receiving party. Agencies of the State or its political subdivisions shall report such agreements and any extensions or modifications thereto to the [State personnel agency].[18]
2. The period of an individual's assignment or detail under an employee interchange agreement shall not exceed 2 years. Upon agreement of the sending party and the receiving party and under the same or modified terms, an assignment or detail of 2 years may be extended by 3 months for special temporary circumstances. If either the sending

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[15] The last prong is the definition offered by the IPA. *See* 5 U.S.C. § 3371(4)(C).

[16] The federal IPA regulations allow each agency to certify the eligibility of "other organizations" for IPA purposes. *See* 5 C.F.R. § 334.103(a).

[17] State laws often have an analogous operative provision written in this format. *See, e.g.*, Iowa Code § 28D.3(1) ("Any department, agency, or instrumentality of the state, county, city, municipality, land-grant college, or college or university operated by the state or any local government is authorized to participate in a program of interchange of employees with departments, agencies, or instrumentalities of the federal government, another state or locality, or other agencies, municipalities, or instrumentalities of this state as a sending or receiving agency.").

[18] This is drawn from the Florida statute. *See* Fla. Stat. § 112.24(1) ("Details of an employee interchange program shall be the subject of an agreement, which may be extended or modified, between a sending party and a receiving party. State agencies shall report such agreements and any extensions or modifications thereto to the Department of Management Services.").

or receiving party is an institution of higher education, then an assignment or detail based on an employee interchange agreement may be renewed with the consent of both parties for an additional two years an unlimited number of times.[19]

3. Any exchanged employee's salary, leave, benefits, compensation for travel, and supervision of duties may be provided for in any manner agreed upon based on the employee interchange agreement, but the agreement shall not diminish any rights or benefits to which an employee of an agency of this State or its political subdivisions is entitled.[20] The employee interchange agreement shall specify, at a minimum, the objectives of the assignment, a description indicating how the objectives are to be achieved, and an explanation of the major duties and responsibilities to be performed. If the receiving party is an agency of any government, the employee interchange agreement shall also specify how the assignment will further or contribute to the agency's mission.[21]
4. The temporary assignment of the employee may be terminated at any time by mutual agreement between the sending party and the receiving party.[22]
5. Elected officials may not be assigned or detailed based on an employee interchange agreement under Section 3 of this Act.[23]

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[19] This provision is borrowed from the Florida statute with a change for employees of an institution of higher education: (1) the Florida law applies this extension only to "faculty members of the State University System," and (2) the Florida law requires extension by a central agency. The proposed provision also does not have a special provision for assignments to the Governor's office. *See* Fla. Stat. § 112.24(2) ("The period of an individual's assignment or detail under an employee interchange program shall not exceed 2 years. Upon agreement of the sending party and the receiving party and under the same or modified terms, an assignment or detail of 2 years may be extended by 3 months. However, agreements relating to faculty members of the State University System may be extended biennially upon approval by the Department of Management Services. If the appointing agency is the Governor or the Governor and Cabinet, the period of an individual's assignment or detail under an employee interchange program shall not exceed 2 years plus an extension of 3 months or the number of years left in the term of office of the Governor, whichever is less.").

[20] State IPAs often classify external assignees as being "on detail" versus "on a leave of absence," where the former guarantees the same salary and benefits whereas the latter does not allow for pay and provides benefits based on other state laws. *See, e.g.*, Iowa Code § 28D.4(2)–(3); Ind. Code § 5-10-7-4(b)–(c). They provide separate schemes for how to compensate assignees to state government positions.

Instead, this proposal allows such decisions to be made in the exchange agreement, like the Hawaii statute does. *See* Haw. Rev. Stat. § 78-27(d) ("An agreement consistent with this section and policies of the employer shall be made between the sending and receiving agencies on matters relating to the assignment or exchange, including but not limited to supervision of duties, costs of salary and benefits, and travel and transportation expenses; provided that the agreement shall not diminish any rights or benefits to which an employee of a governmental unit of this State is entitled under this section.").

[21] This last provision is based on a requirement from the Florida statute. *See* Fla. Stat. § 112.24 ("Duties and responsibilities of interchange employees shall be limited to the mission and goals of the agencies of government.").

[22] This language is based on the North Carolina law. *See* N.C. Gen. Stat. § 126-53(c) ("The temporary assignment of the employee may be terminated by mutual agreement between the sending agency and the receiving agency.").

[23] State IPAs often ban elected officials from taking part in this scheme. *See, e.g.*, Iowa Code § 28D.3(2); Kan. Stat. § 75-4403(b); Mich. Comp. Laws § 15.511; Minn. Stat. § 15.53(2).

6. Employees of a sending party that is not an agency of the State or its political subdivisions who work for an agency of the State or its political subdivisions in an employee exchange shall gain no status in the state civil service.[24]
7. Any exchanged employee who suffers disability or death as a result of personal injury arising out of and in the course of an exchange or sustained in performance of duties in connection therewith shall be treated for the purposes of the sending party's employee compensation program as an employee, as defined in such statute, who has sustained such injury in the performance of such duty, but shall not receive benefits under that statute for any period for which they are entitled to and elect to receive similar benefits under the receiving party's employee compensation program.[25]

Sec. 5. *Ethics and disclosure requirements.*

1. Exchanged employees shall be subject to all ethics and conflict-of-interest rules that would normally apply to them as employees of the sending party, in addition to any such rules that would apply to employees of the receiving party with similar responsibilities to those of the exchanged employees.
2. A list of organizations designated as "nonprofit organizations" within the meaning of this chapter shall be maintained by each agency after it has entered into an employee interchange agreement, either as a sending or receiving party. The list of so-designated organizations shall be published on the [State personnel] agency's website, and it shall be updated at a minimum every six months.

Sec. 6. *Savings clause.* If any section, subsection, paragraph, sentence or other part of this Act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this Act directly involved in the controversy in which said judgment shall have been rendered.[26]

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[24] This language stems from the California regulations. Cal. Code Regs. tit. 2, § 442(b) ("Employees from other jurisdictions who work for the state in an interjurisdictional employee exchange gain no status in state civil service.").

[25] This language is lifted out of the Florida statute. *See* Fla. Stat. § 112.24(d) ("Any employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the sending party's employee compensation program, as an employee who sustained injury in the performance of duty, but shall not receive benefits under such program for any period for which the employee is entitled to, and elects to receive, similar benefits under the receiving party's employee compensation program.").

[26] This clause comes from the New Jersey law. *See* N.J. Stat. § 52:14-6.18 ("If any section, subsection, paragraph, sentence or other part of this act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this act directly involved in the controversy in which said judgment shall have been rendered.").