

**VA NONPROFIT RESEARCH AND EDUCATION CORPORATIONS AUTHORIZED
BY TITLE 38 U.S.C. SECTIONS 7361 THROUGH 7366**

- 1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) Handbook provides procedures and instructions governing Nonprofit Research and Education Corporations (NPC) created pursuant to Title 38 United States Code (U.S.C.) 7361 through 7366.
- 2. SUMMARY OF MAJOR CHANGES:** This VHA Handbook includes a new requirement for each NPC to adopt a policy that requires each NPC employee to sign a Non-Disclosure NPC Employee Agreement; provisions authorizing VA employees to serve on NPC Boards while on official VA duty; processes for ensuring compliance; and additional clarification addressing Multi-Medical Center Research Corporation (Multi-NPC) and other policies adopted by the Nonprofit Program Oversight Board (NPOB) since the previous version of this Handbook.
- 3. RELATED ISSUES:** VHA Directive 1200 and VHA Handbooks 1200.01, 1200.05, and 1058.03.
- 4. RESPONSIBLE OFFICE:** The Office of Research and Development (ORD) (10P9) is responsible for the content of this VHA Handbook. Questions may be referred to 202-443-5600.
- 5. RESCISSION:** VHA Handbook 1200.17 dated December 8, 2010, is rescinded.
- 6. RECERTIFICATION:** This Handbook is scheduled for recertification on or before the last working day of April 2021.

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**VA NONPROFIT RESEARCH AND EDUCATION CORPORATIONS AUTHORIZED
BY TITLE 38 U.S.C. SECTIONS 7361 THROUGH 7366**

1. PURPOSE

This Veterans Health Administration (VHA) Handbook provides Department of Veterans Affairs (VA) procedures and instructions applicable to Nonprofit Research and Education Corporations (NPC) established at VA medical facilities and managed in accordance with Title 38 United States Code (U.S.C.) 7361 through 7366.

AUTHORITY: 38 U.S.C. 7361 through 7366.

2. BACKGROUND

a. **Flexible Funding Mechanisms.** NPCs exist to provide VA medical facilities with flexible funding mechanisms for the conduct of, and to facilitate functions, related to the conduct of approved research related activities or education and training at one or more VA medical facilities. NPCs are not owned or controlled by the Federal Government, nor are they an agency or instrumentality of the Federal Government.

b. **Facilitating Conduct of VA Research or Education and Training.** NPCs may facilitate the conduct of VA-approved research as described in 38 U.S.C. 7303 and education and training as described in 38 U.S.C. sections 7302, 7471, and 8154. Each research project approved by a facility Research and Development (R&D) Committee and each education activity approved by the facility Education Committee, or designee, is considered to be a VA research project or a VA education activity respectively, regardless of the source of funding, the entity administering the funds, or the research or education site.

c. **Funds Management.** The facilitation of the conduct of research or education and training referred to in the preceding paragraph includes managing funds for VA-approved research projects and education activities as well as more generally supporting facility research and education programs in conjunction with the applicable VA medical facility.

d. **Expenditure of Funds.** NPCs may expend funds on the following VA activities:

(1) **Research Projects.** Research projects that have been approved in accordance with the VA research procedures established by the Under Secretary for Health, and reasonable and usual preliminary costs for project planning prior to approval.

(2) **Educational Activities.** Educational activities that have been approved by the VA medical facility Education Committee, or designee, in accordance with criteria established in 38 U.S.C. 7362(b) and reasonable and usual preliminary costs for activity planning prior to approval. Types of education and training activities that may be approved are patient-related activities and employee-related activities, including activities for employees of VHA taking part in residency and other training programs designed to prepare an individual for an occupation or profession in health care. NPCs may collaborate with VA's Employee Education System (EES) to support approved

education and training activities for the VA medical facility(ies) or other educational activities permitted by Federal law.

(a) Patient-Related Activities. Patient-related activities include education activities for Veterans, their families and guardians that provide instruction or other learning experiences related to improving or maintaining the health of Veterans.

(b) Employee-Related Activities. Employee-related activities include:

1. Work-related experiences for employees designed to:
 - a. Improve performance of current duties;
 - b. Assist employees in maintaining or gaining specialized competencies and proficiencies; or
 - c. Expand understanding of advances or changes in patient care, technology, or health care administration.
2. Training-related activities that support accredited and non-accredited training programs designed to prepare an individual for an occupation or profession in health care such as activities that:
 - a. Improve educational environment, infrastructure and resources for trainees; or
 - b. Facilitate trainee integration into facility care processes and workforce.

3. SCOPE

This Handbook pertains to VA-affiliated NPCs established under 38 U.S.C. 7361 through 7366. These corporations are established to facilitate either the conduct of research or education or both research and education, at one or more VA medical facilities. The term "VA medical facility" includes VA Medical Center and VA Healthcare System.

4. VA OVERSIGHT

- a. VA Responsibility. VA is responsible for ongoing oversight of NPCs.
- b. Oversight Mechanism. NPC oversight is performed by:

(1) **Nonprofit Program Oversight Board (NPOB)**. The NPOB is VA's senior management oversight body for NPCs, as outlined in the NPOB charter. The NPOB is responsible for reviewing NPC activities for consistency with VA policy and interests, and for making recommendations through the Under Secretary for Health to the Secretary of Veterans Affairs regarding VA policy pertaining to NPCs.

(2) **Nonprofit Program Office (NPPO)**. The NPPO is a VHA program office that operates as a liaison between VHA and NPCs. The NPPO is responsible for

coordinating policy regarding NPCs and provides oversight, guidance and education to ensure compliance with applicable regulations and VA policies affecting the operation and financial management of NPCs. This includes responsibility for performing on- and off-site reviews, substantive reviews of annual reports submitted by each NPC, and for compiling such annual report data for VA's required annual report to Congress. Additionally, the NPPO institutes measures to ensure that any deficiencies in the operation and management of an NPC are corrected in an appropriate and timely manner.

(3) **Chief Financial Officer (CFO).** The VHA CFO exercises financial oversight of NPCs by review of NPPO activities and review of any audit of an NPC by independent auditors, as necessary. Results of such CFO reviews must be made available to the NPPO and NPOB through the Chief Research and Development Officer.

5. ESTABLISHMENT OF VA RESEARCH AND EDUCATION CORPORATIONS

a. **Establishment of NPC.** The VA Secretary has delegated to the Under Secretary for Health the authority to approve the establishment of a new NPC. A new NPC may be established to facilitate the conduct of research and education at either one VA medical facility (Single NPC) or at more than one VA medical facility [Multi-Medical Center Research Corporation (Multi-NPC)]. Establishment of a Single NPC requires compliance with paragraphs 5.a.(1) and (2) of this Handbook, including all subparagraphs. Establishment of a Multi-NPC requires compliance with paragraphs 5.a.(1) and (2), including all subparagraphs, and paragraph 6 of this Handbook.

(1) **Request to Under Secretary for Health.** The VA medical facility Director of a facility interested in establishing a new NPC must contact the NPPO before beginning the process of incorporation and must submit a request to the Under Secretary for Health through the NPPO that includes a:

(a) **Business Plan.** The VA medical facility Director must submit to the NPPO a business plan that demonstrates how the NPC will be assured of generating a revenue stream sufficient to cover its administrative expenses. The business plan must address:

1. Whether the facility has an established:
 - a. Research and/or education program;
 - b. Research & Development Committee and/or Education Committee;
 - c. Federalwide Assurance (FWA);
 - d. Institutional Review Board (IRB) of record registered with the Office of Human Research Program and listed on the VA medical facility's Federal Wide Assurance
 - e. Public Health Service Assurance (PHS Assurance or Animal Welfare Assurance) issued by the Office of Laboratory Animal Welfare, Health and Human Services; and

- f. Affiliation with a university.
- 2. The viability of the NPC as evidenced by:
 - a. The potential number of research projects or educational activities the NPC is likely to administer;
 - b. The number of potential principal investigators (PI); and
 - c. Other factors the facility deems relevant.

(b) **Certification of Responsibilities.** The VA medical facility Director must provide a statement signed by the prospective statutory VA Directors certifying their understanding of the responsibilities they will assume as members of the NPC Board of Directors (Board) upon incorporation. **NOTE:** *A sample of the certification is found in Appendix A.*

(2) **Approval.** The Office of Research and Development (ORD), the Office of Academic Affiliations (OAA) (if the NPC supports education activities), and the Office of the Deputy Under Secretary for Health for Operations and Management (10N) must evaluate the business plan and certification of responsibilities, and must make a recommendation to the Under Secretary for Health whether to approve establishment of the new NPC. The Under Secretary for Health may seek input from the NPOB before reaching a decision. After approval by the Under Secretary for Health, the VA medical facility Director may initiate incorporation of the NPC.

b. **State Law.** To the extent consistent with Federal law, each NPC must conform to the applicable nonprofit corporation law(s) of the state in which it is incorporated.

c. **Official Resources.** Reasonable and necessary VA resources, including start-up funds and VA employee time, may be used to establish an NPC until it is incorporated.

d. **Permanent Authority to Establish Corporations.** VA has permanent authority to establish new NPCs at VA medical facilities.

6. MULTI-MEDICAL CENTER RESEARCH CORPORATION (MULTI-NPC)

a. **Approval of a Conversion of an Established NPC to a Multi-NPC.** The authority to approve the conversion of an established NPC to a Multi-NPC that will facilitate VA research and education at more than one VA medical facility rests with the VA Secretary. The VA Secretary has delegated this authority to the Under Secretary for Health, who may not further delegate this authority. The Board of an NPC that desires to convert to a Multi-NPC must agree to facilitate research and education at more than its own VA medical facility, and the Board of Directors of an affected VA medical facility must agree to consolidate with the Multi-NPC. If a single NPC agrees to consolidate with a Multi-NPC, the single NPC consolidates with the Multi-NPC through dissolution, merger or acquisition. Upon approval, the Multi-NPC will add the VA medical facility

Director of that single VA medical facility to the Multi-NPC Board. Other Board composition requirements are detailed under paragraph 8.a.(2) of this Handbook.

(1) **Request to VA Secretary or Delegee.** The VA medical facility Director of the VA medical facility where the Multi-NPC will be established must submit a request to the Under Secretary for Health through the NPPO that includes a:

(a) Business Plan. This plan must demonstrate how the Multi-NPC will facilitate research at any other VA medical facilities identified in the proposal and must address the viability of the Multi-NPC as affected by the proposed additional responsibilities as evidenced by:

1. The potential number of total research projects or educational activities the Multi-NPC is likely to administer;
2. The number of total potential principal investigators (PIs); and
3. Proposed amended Articles of Incorporation and By-Laws; and
4. Other factors the VA medical facility Director deems relevant.

(b) Resolution. The Board of the Single NPC desiring to become a Multi-NPC must pass a written resolution permitting facilitation by the corporation of the conduct of research, education, or both at the other Department VA medical facility or VA medical facilities concerned.

(c) Certification by all Prospective Statutory VA Directors. The VA medical facility Director, where the Multi-NPC is to be established, must provide a statement signed by the prospective Multi-NPC Statutory VA Directors, including the other VA medical facility Directors of all the VA medical facilities to be served by the Multi-NPC, certifying their:

1. Agreement to serve on the Board of the Multi-NPC;
2. Understanding of the responsibilities they will assume as members of the Multi-NPC Board; and
3. Affirmation that they have read and approved the business plan. **NOTE:** A sample of the certification is found at Appendix B.

(d) Additional Certifications by Each Affected VA medical facility Director. Each affected VA medical facility Director (other than the VA medical facility Director at the VA medical facility establishing the Multi-NPC) must submit a statement agreeing that the Multi-NPC may facilitate the conduct of research and/or education at the Director's VA medical facility. **NOTE:** A sample of the certification is found at Appendix C.

(2) **Approval.** ORD, the Office of Academic Affiliations (OAA) (if NPC supports educational activities), and the Office of the Deputy Under Secretary for Health for Operations and Management (10N) must evaluate the business plan and certifications, and make a recommendation to the VA Secretary, or designee, whether to approve the

conversion to a Multi-NPC. The VA Secretary, or designee, may seek input from the NPOB before reaching a decision.

b. **Approval of an NPC to Consolidate with an Established Multi-NPC.** If a single NPC agrees to consolidate with an established Multi-NPC, the NPOB must approve the consolidation. The Multi-NPC and the Director of the VA medical facility where the single NPC is located must together submit a request through the NPPO to the NPOB for the Multi-NPC to facilitate the conduct of research and education for that VA medical facility. Upon approval, the single NPC consolidates with the Multi-NPC through dissolution, merger or acquisition, and the Multi-NPC will add the Director of the VA medical facility to its Board. Other Board composition requirements are detailed under paragraph 8.a.(2).

c. **Approval of Multi-NPC to Facilitate the Conduct of Research and Education at VA medical facility(s) with no NPC.** An established Multi-NPC resolving to facilitate the conduct of research and education at a VA medical facility that does not have an established NPC must seek the approval of the NPOB. The Multi-NPC and the Director of the VA medical facility must together submit a request through the NPPO to the NPOB for the Multi-NPC to facilitate the conduct of research and education for that medical center. Upon approval, the Multi-NPC will add the Director of the VA medical facility to its Board. Other Board composition requirements are detailed under paragraph 8.a.(2).

d. **Approval of the Separation of a Single NPC from Multi-NPC.** Because the Single NPC dissolved at the time it joined the Multi-NPC, the Single NPC must go through the process for Establishment of an NPC again. See paragraph 5.a. If as a result of the separation the Multi-NPC now serves only one VA medical facility or Healthcare System, the Multi-NPC is no longer considered a Multi-NPC and is once again a Single NPC.

e. **Approval of Reversion of a Multi-NPC to a Single NPC.** An established Multi-NPC Board resolving to return to the status of a Single NPC must submit a request through the NPPO to the NPOB. Once approved by the NPOB the reversion to a Single NPC may commence. The reversion shall include ensuring compliance with all applicable state and Federal requirements.

f. **State Law.** To the extent not inconsistent with Federal law, each Multi-NPC must conform to the applicable nonprofit corporation law(s) of the state in which it is incorporated.

7. DISASSOCIATION BY VA

a. **VA Secretary Determination.** Upon determination by the VA Secretary that an NPC is not acting in the best interests of VA, the VA Secretary may authorize the Under Secretary for Health to require remedial measures up to and including VA's disassociation from the NPC.

b. **Tax-Exempt Status.** If an NPC has not been recognized as a tax-exempt organization under 26 U.S.C. 501(c)(3) by the end of the 4-year period beginning on the date of incorporation of the NPC, the VA Secretary must order its dissolution.

8. NPC DIRECTORS, OFFICERS AND EMPLOYEES

a. **Board of Directors.** An NPC's board members (Directors), known as the Board, are responsible for governance of the NPC in accordance with applicable Federal and state laws and regulations, the NPC bylaws, and VA policies.

(1) **Board Composition for a Single NPC.** The Board of an NPC facilitating the conduct of VA research and education at a single VA medical facility needs to include the following:

(a) **Statutory VA Directors.** Statutory VA Directors serve on an NPC Board in their official VA capacities and need to ensure that the NPC furthers the best interests of VA. Statutory VA Directors must be those VA employees at the VA medical facility who hold the following positions, either by title or by exercise of equivalent responsibilities:

1. VA medical facility Director;
2. Chief of Staff (COS);
3. Associate Chief of Staff for Research and Development, if the NPC is a flexible funding mechanism for research activities, and
4. Associate Chief of Staff for Education, if the NPC is a flexible funding mechanism for education activities.

(b) **Statutory Non-Federal Directors.** There must be no less than two Directors who are not officers or employees of the Federal Government and who have backgrounds, or business, legal, financial, medical, or scientific expertise, of benefit to NPC operations.

1. NPC employees and persons with Federal appointments (with or without compensation) are not eligible to hold these statutory non-Federal positions.

2. Statutory Non-Federal Directors may not be affiliated with, or employed by, any entity that is a source of funding for VA research or education, unless that source of funding is a governmental entity or an entity the income of which is exempt from taxation under the Internal Revenue Code (IRC) of 1986 as amended.

(c) **Other Directors.** The Board may appoint such other Directors as permitted by its by-laws and charter documents.

1. The Board may appoint a VA employee to serve in his/her official VA capacity. The Board must request approval from the first Senior Executive Service/Senior Executive Service Equivalent (SES/SES EQUIV) in the employee's chain of command. The SES/SES EQUIV decides whether to assign the employee to serve in official

capacity on the NPC Board of Directors. The SES/SES EQUIV may not assign a VA employee to serve in official capacity on the Board of an NPC if the employee, in a personal capacity, serves the NPC as Executive Director or in any other NPC employee position that is supervised by the NPC Board or Executive Director. [NPC researchers assigned to VA to conduct VA-approved research are not considered, for this purpose to be supervised by the NPC Board or Executive Director because they are supervised by VA in their research duties.] **NOTE:** *A sample of the approval memorandum is found at Appendix D.*

2. The Board may appoint non-VA employees to serve on the NPC Board. No VA employee, currently serving in a personal capacity, may continue to serve on the Board in such capacity after December 30, 2015.

(2) **Board Composition of Multi-NPC.** The Board of a Multi-NPC that will facilitate the conduct of VA research and education at more than one VA medical facility must include the following:

(a) All of the Directors described in preceding paragraph 8.a.(1) for a Single NPC. In the case of a start-up Multi-NPC not involving an established Single NPC, the Board must include all of the Statutory VA Directors of the VA medical facility that establishes the Multi-NPC.

(b) At a minimum, the medical center Director, (by title or by exercise of equivalent responsibilities) of each additional VA medical facility where the Multi-NPC will facilitate research and education activities.

(3) **Authority to Act.** The Board of each NPC has authority to govern the NPC as provided in its articles of incorporation and bylaws.

(4) **Compensation.** Statutory VA Directors may not receive compensation for their services as Directors of the NPC because their service as Directors is part of their official VA duties and responsibilities. The NPC may compensate other Directors who do not serve on the Board as part of any government employment. Such compensation must be consistent with applicable state and Federal laws, and the NPC's bylaws or policies.

(5) **Expense Reimbursement.** NPCs may reimburse Directors for out-of-pocket expenses associated with their service on the Board in accordance with the NPC's reimbursement policies. Statutory VA Directors may accept reimbursement only in accordance with Federal statutes, regulations and VA policy regarding acceptance of non-Federal travel support under 31 U.S.C. 1353 or 5 U.S.C. 4111.

b. **Officers of the NPC.** NPC officers are appointed by the Board in accordance with state law and the NPC's bylaws. Statutory VA Directors and other VA employees serving as directors in official capacity may serve as officers of the NPC, but may not be compensated for such services because they serve as part of their official VA duties. The NPC may compensate other Directors who serve as officers. Such compensation must be consistent with applicable state and Federal laws, and the NPC's bylaws or policies.

c. **Employees.** An NPC may employ individuals to carry out its purposes and may determine their compensation. NPC employees who are given a VA Without

Compensation (WOC) appointment in accordance with paragraph 8.c.(2)(a) to provide research or education services for VA must be supervised by VA employees while providing such services to VA.

(1) **Executive Director.**

(a) Appointment. The Board must appoint an Executive Director of the NPC. Pursuant to 38 U.S.C. 7363, the Under Secretary for Health must concur with the appointment of the Executive Director. This responsibility has been delegated to the Director of VA medical facility where the Single or Multi-NPC is established.

(b) Compensation. The Executive Director may receive salary from the NPC for services provided to the NPC.

(c) VA Employees cannot serve as an NPC Executive Director. Application of the criminal conflict of interest laws at 18 U.S.C. 203, 205, and 208 to VA employees result in the employees' inability to serve in a personal capacity as an NPC Executive Director whether compensated or not.

(2) **VA WOC Appointments for NPC Employees.**

(a) WOC Appointments. NPC employees who are directly or indirectly involved or engaged in approved VA research or education and training activities, and who perform such duties under the supervision of VA personnel, must have a VA WOC appointment. If performing such duties, the NPC employee must sign a VA Intellectual Property Agreement prior to performing such work.

(b) VA Employees. VA employees who work for the NPC for compensation during their non-VA duty hours, and who are assigned to VA to work on research projects or education and training activities during those NPC hours, must have a WOC appointment. Such work must be different from the VA employee's official VA duties.

9. CONFLICTS OF INTEREST

a. **General.** NPC Directors, officers, and employees are subject to the conflict of interest policy adopted by that NPC. VA employees serving as NPC Directors as part of official VA duty are also subject to the Federal conflict of interest laws and regulations. If these laws and regulations are in conflict with NPC policy, Federal law controls.

b. **Conflict of Interest Policy.** Each NPC must establish a written policy on conflicts of interest applicable to NPC Directors, officers, and employees. The NPC Board retains responsibility for oversight of the conflict of interest policies at the NPC. At a minimum, such policy must:

(1) Describe when a conflict of interest may exist;

(2) Require training for Directors, officers, and employees about the policy upon hire or affiliation and annually thereafter for Directors, officers, and employees with decision-making authority (key employees);

(3) Require disclosure of potential conflicts of interest by NPC Directors, officers and key employees to the ED or if the ED to the Board Chair;

(4) Require a statement of acknowledgment of understanding and agreement to comply with the policy by each Director, officer and employee; and

(5) Include a process for identifying and managing conflicts of interest. **NOTE:** A sample policy is found at Appendix E.

c. **Training Requirements.** The NPC conflict of interest policy must include training requirements and a mechanism for tracking fulfillment of training requirements. All Directors, officers (including the Executive Director), and employees of the NPC must receive training in the NPC conflict of interest policy within 90 days of employment or affiliation with the NPC. Additionally, all Directors, officers (including the Executive Director) and other key employees, who file an annual disclosure form with the NPC, must receive training in the NPC's conflict of interest policy annually thereafter. **NOTE:** *The NPC conflict of interest training does not fulfill the requirement for all new VA employees to take Government ethics training, nor does VA Government ethics training fulfill the NPC conflict of interest training requirement.*

d. **Disclosure Form.** NPC Directors, officers and key employees have a fiduciary responsibility to the NPC that includes making decisions that affect the interests of the NPC in a manner that is free from conflict of interest. In order to ensure that potential conflicts of interest can be identified and managed, these individuals must file disclosure forms, approved by the NPC board, with the NPC annually. The NPC conflict of interest policy will set forth the process for filing, reviewing, and tracking disclosure forms. **NOTE:** *NPCs are strongly encouraged to reference applicable Internal Revenue Service (IRS) instructions to protect their exemption under section 501(c)(3) of the Internal Revenue Code. The NPC conflict of interest disclosure form does not fulfill the VA financial disclosure requirement for VA employees. However, the NPC may choose to accept a copy of the Public Financial Disclosure report (OGE Form 278) or Confidential Financial Disclosure report (OGE Form 450) in lieu of the NPC-approved disclosure form.* **NOTE:** *A sample COI Disclosure Form is found at Appendix F.*

e. **Policy Statement.** Every NPC Director, officer, and employee must, upon hire or affiliation, sign a statement acknowledging their understanding of the NPC conflict of interest policy and their agreement to comply with the policy. Such statement must be maintained by the NPC.

f. **Certification.** Annually, the Executive Director must include in the report to the VA Secretary certification that each NPC Director, officer, and employee has:

- (1) Been trained about the conflict of interest policy;
- (2) Acknowledged understanding of and agrees to comply with the policy; and
- (3) Submitted a conflict of interest disclosure form.

10. LIABILITY AND INSURANCE

a. **Liability Protections.** An employee of an NPC who has a VA appointment, either with or without compensation, and is directly or indirectly involved or engaged in approved research or education, and performs such duties under the supervision of VA personnel is considered an employee of the Federal Government in cases where the United States is a defendant (28 U.S.C. 1346(b)) or for tort claims procedures under the Federal Tort Claims Act (FTCA) (28 U.S.C. 2671-2680), or if appropriate, must be considered a medical care employee of VA for purposes of malpractice or negligence claims defended by the United States (38 U.S.C. 7316).

b. **Insurance.** Because Federal coverage, FTCA or other, may apply only to NPC activities and personnel directly or indirectly related to approved VA research or education, NPCs are advised to purchase insurance to protect Directors, officers and employees against liability for actions of the Board and for employment practices, as well as coverage for NPC property and other activities.

c. **Worker's Compensation.** NPCs with employees must comply with state laws requiring purchase of worker's compensation insurance for work-related injuries.

11. PROVIDING AND FUNDING ADMINISTRATIVE AND RESEARCH SERVICES

a. **Use of VA Resources or Time to Support Management or Other Operations of an NPC.**

(1) **VA Resources.** As provided in paragraph 5.c., VA resources may be used to establish a new NPC until such NPC is incorporated.

(2) **Official VA Time.** VA employees may not use official VA time to carry out NPC administrative functions except for: (1) statutory VA Directors carrying out responsibilities as NPC Directors; (2) VA employees authorized to serve in official capacity carrying out responsibilities as NPC Directors; and (3) VA employees working to establish a new NPC.

(3) **Statutory VA Directors.** Statutory VA Directors may use VA-time and other VA resources as necessary to fulfill their responsibilities as Directors.

(4) **VA Employees Authorized To Serve in Official Duty Capacity as NPC Directors.** VA employees authorized to serve in official duty capacity as NPC Directors may use VA time and other VA resources as necessary to fulfill their responsibilities as Directors.

(5) **VA Resources that Incidentally Further NPC Purposes.** The NPC may receive any incidental benefits that result from VA employees using VA resources to carry out their official duties to promote VA research and education missions. The VA medical facility also may provide the NPC with space for its activities and with services, such as maintenance, repair, and utilities, without reimbursement.

b. **Reimbursement and Compensation Related to Approved Research Projects or Education Activities.**

(1) **VA Employees.** VA employees may be assigned as part of their VA duties to work on VA-approved research projects or education activities for which an NPC is the flexible funding mechanism.

(2) **Reimbursement.** NPCs may reimburse VA for salaries and other costs incurred by VA in the conduct of VA-approved research projects or education activities. A VA medical facility may retain and use funds provided to it by a NPC. Such funds must be credited to the applicable VA appropriation account and available for account purposes without fiscal year limitations as provided for in 38 U.S.C. 7364(b)(3).

(3) **NPC Hiring VA Employees.** NPCs may hire and directly pay VA employees to perform work that is different from their official VA duties and performed outside their VA duty hours. **NOTE:** *Federal law prohibits illegal supplementation of Federal salaries.* NPC payment to VA employees for work that is the same as their official VA duties, even if the work is performed outside VA duty hours, may violate criminal statutes. Therefore, NPCs are encouraged to reimburse VA for such work rather than pay VA employees directly.

c. **Federalwide Assurance.** NPCs facilitating human subject research must comply with Department of Health and Human Services and VA policy with regard to obtaining and maintaining a FWA.

12. AUTHORITIES AND LIMITATIONS AFFECTING RESEARCH AND EDUCATION NPCS

a. **Revenue.** NPCs may, solely for the purpose of facilitating functions related to the conduct of approved VA research and education activities:

(1) Accept, administer, retain and spend funds derived from gifts, contributions, grants, contracts, agreements, fees, reimbursements, and bequests from individuals and public and private entities.

(2) Set fees for education and training facilitated by the NPC and receive, retain, administer, and spend funds in furtherance of such education and training. Such fees charged for individuals who are VA employees may not be paid for by funds appropriated to VA.

(3) Reimburse applicable VA appropriation accounts for expenses of the Office of General Counsel in providing legal services attributable to research and education agreements administered by that NPC. Such reimbursed amounts may be used by the Office of General Counsel only for staff and training and related travel for the provision of such legal services and must remain available without fiscal year limitations.

(4) In accordance with its own governing documents (IRS application for exemption from federal taxation, articles of incorporation and bylaws), NPC Directors, officers and employees may engage in fundraising activities under the following conditions:

(a) Statutory VA Directors may engage in fundraising in their official VA capacities as board members. Other VA employees, including those VA employees serving on the Board in official capacity other than the Statutory VA Directors, may participate in NPC fundraising activities in their personal capacities to the extent permitted by applicable Federal and state law, regulations, and VA policy. All are encouraged to seek advice from a VA Government Ethics official before engaging in such activities.

(b) No solicitation of VA employees is permitted outside of approved Combined Federal Campaign activities.

(c) No solicitation of research subjects whose identity or contact information is learned as part of administering a VA research study is permitted.

(d) An NPC may hire a professional fundraiser to assist with fundraising activities.

b. **VA Reimbursement to NPC.** A VA medical facility may reimburse an NPC, and the NPC may accept such reimbursement, for all or a portion of the pay, benefits or both, of an NPC employee who is assigned to such VA medical facility under an Intergovernmental Personnel Act (IPA) Agreement.

c. **Assurances.** NPCs must not give assurances or other commitments concerning VA decision-making, including assurances that VA will fulfill any particular purpose for which a donor intends a gift to be used.

d. **NPC Contracts and Agreements.** NPCs may enter into contracts and other forms of agreements with individuals and public and private entities for research and education purposes as well as for their own operational purposes. NPCs should consult with VA Office of General Counsel (OGC) on agreements pertaining to research projects and education activities.

(1) **State and Federal Law.** NPCs may not enter into agreements that purport to supersede, or are contrary to, state or Federal law.

(2) **Agreements.** NPCs may not enter into agreements on behalf of VA or that purport to bind VA.

(3) **Contracts.** VA and NPCs may not enter into contracts with each other. This prohibition also applies to sharing agreements under 38 U.S.C. 8153.

(4) **Cooperative Research and Development Agreements.** NPCs may be parties to Cooperative Research and Development Agreements (CRADA) even when VA is also a party. However, each CRADA must contain a statement that the NPC and VA are independent from one another and that the CRADA does not establish a contract between VA and the NPC. CRADAs are subject to review and approval of VA's OGC.

(5) **Documentation.** Business transactions between VA and an NPC must be supported by documentation. Such documentation may include a bill for collection, an IPA mobility assignment, or a Memorandum of Understanding (MOU), as well as other records.

e. **Non-Disclosure Policy.** Each NPC shall have a non-disclosure policy requiring every NPC employee, regardless of whether they hold a VA appointment, to sign a non-disclosure agreement prohibiting disclosure to anyone of non-public VA, NPC or third-party information learned from administering VA research and educational activities. This information includes personal health information, other Privacy Act (5 U.S.C. 552a) protected information, trade secrets, and confidential business information. The policy and non-disclosure agreement must be substantially equivalent to the sample policy found at Appendix G and sample non-disclosure agreement found at Appendix H.

f. **Federal Law.** If state law conflicts with Federal law governing the NPCs, Federal law preempts the conflicting state law.

g. **Interpretation of Law.** Only VA General Counsel speaks authoritatively on the numerous Federal laws governing the VA mission. General Counsel's interpretation of such laws is controlling within VA and the NPCs.

h. **Legal Counsel.** Either VA legal counsel or private legal counsel paid by the NPC may be used in the operation of the NPC. **NOTE:** *If an NPC obtains written private legal advice that is contrary to VA policy, the NPC must provide a copy to the appropriate VA Regional Counsel.*

i. **Training.** NPCs must ensure that Directors, officers, and employees receive all applicable training as required by this Handbook. **NOTE:** *A chart detailing all training requirements can be found at Appendix I.*

j. **Inactive NPCs.** If the Form 990 of an NPC reports no financial activity, other than interest earnings and donations less than \$10,000, for a period of 12 consecutive months, the NPOB will request a status report from that NPC Board of Directors. Within 60 days, the NPC Board shall provide to the NPOB a written action plan indicating whether the NPC intends to maintain operations, merge with another NPC, or dissolve. The NPOB must approve the action plan. The NPC Board shall submit progress updates on the action plan at 6-month intervals.

k. **Deficit Net Asset NPCs.** If the Form 990 of an NPC reports a year-end deficit net asset, NPOB will request a status report from that NPC's board of directors. Within 60 days, the NPC Board shall provide to the NPOB an action plan for the amelioration of the deficit. The NPC Board shall submit progress updates on the action plan at the 6-month intervals from the NPOB status report approval. If at the end of 18 months of plan implementation, the NPOB determines that the NPC is not fiscally sound, then the NPC shall decide whether to merge, dissolve, or seek additional time from the NPOB. The NPOB may grant additional time upon a showing of good cause.

I. **NPC Reportable Events.** NPCs must report the following information within thirty days to the NPPO:

(1) Change of physical address, Email address, and phone numbers.

(2) New Executive Director, name and contact information.

(3) New Board President, name and contact information.

(4) New Principal Accountant (i.e., new CFO, Controller, or Bookkeeper, name and contact information).

(5) New Permanent VA Statutory Board Members.

(6) Disputes with independent auditors other than over fees.

(7) All findings by any other governmental auditors.

(8) Significant adverse events, such as:

(a) Major loss of property from fire or storm.

(b) All thefts and embezzlements, regardless of amount.

(c) All threatened or actual litigation against the NPC.

(d) Board votes for dissolution, merger or significant transfer of assets.

(e) Current or projected inability to meet financial obligations.

13. NPC FINANCIAL MANAGEMENT

a. **Donation Documentation.** NPCs must document acceptance of donations not otherwise documented in a grant, contract or other agreement. The NPC must send an acknowledgement letter to the donor (per IRS requirements) for donations of \$250 or more. The acknowledgement must contain a statement setting out the nature and any conditions of the donation. **NOTE:** *A sample donation acknowledgment letter is found at Appendix J.*

b. **Investment Practices.** Guaranteeing the safety of NPC assets is a primary goal in management of NPC funds. An NPC may deposit funds in interest bearing Federally-insured accounts at either a bank or through a brokerage firm providing Federal Deposit Insurance Corporation (FDIC) (or equivalent credit union) coverage of deposits. NPCs may use idle funds to purchase instruments backed by the full faith and credit of the United States Government such as U.S. Treasury bills, notes, or bonds. Investments in stocks, mutual funds, certain Federal agency financial instruments not backed by the full faith and credit of the United States Government, or similar investment vehicles are not allowed.

c. **Internal Controls.**

(1) **Policies.** Each NPC must have written policies and procedures detailing its internal controls. Such internal controls must provide for sufficient procedures and mechanisms to protect its assets and to meet the requirements of the applicable external audit. The internal controls policies need to include the training requirements set forth in paragraph 13.c.(4) Internal Controls Training.

(2) **Oversight.** The NPPO must evaluate the effectiveness of internal control policies through review of the IRS Form 990, external audits, and annual NPC reports to the VA Secretary submitted through ORD. The NPPO also will conduct other reviews as necessary. The NPPO must track the results of such reviews, and any NPCs found to have deficiencies or material weaknesses will be required to submit to the NPPO a plan for corrective action. The NPPO will continue tracking such deficiencies until corrections as agreed upon in the action plan are complete.

(3) **Official Approval.** An appropriate official of the NPC must approve all expenditures. That official may be the Executive Director or another person designated by the Executive Director or the NPC Board.

(4) **Internal Controls Training.** All new NPC Board members, including Statutory VA Directors, and all new Executive Directors, officers and key employees must take internal controls training within 90 days of assuming the role. Approved training is available on the VA EES web site. Proof of completion of training must be provided by individuals to the NPC. The NPC is responsible for retaining training certification as long as the individual holds the position. The NPC ED must certify compliance in the annual report to the VA Secretary.

d. **Limitations on Expenditures.**

(1) **Publications.** NPC funds may be used to pay for publications and scientific journals that facilitate VA's research and education missions. These publications must be mailed to the VA address, not to a home address.

(2) **Professional Memberships.** NPC funds may be used to pay for corporate memberships in professional organizations that facilitate VA's research and education missions.

(3) **Travel Expenditures.** NPC funds may be used for travel that facilitates VA research, education, or NPC operations. VA employees are responsible for following Federal laws, regulations, and VA policies regarding acceptance of non-Federal travel support paid by or administered through an NPC. Each NPC must have a travel policy that provides reimbursement under an IRS-accountable plan.

(4) **Licensure.** The NPC may not pay for required professional licenses for VA employees. The NPC may pay for licensure for qualified individuals who work exclusively for the NPC if such payment can be related to support of the VA research or education mission.

(5) **Meals or Refreshments.** The NPC should have explicit business meeting policies and enforce them rigorously. The ED or designee should review all requests for reimbursement on the basis of policy and guidance established by the Board.

e. **Funds Administration.**

(1) **Multi-Center Activities.** An NPC may administer funds for multi-site research projects or education activities, provided that, in doing so, the NPC is serving the research and/or education missions at least at one of the VA medical facilities or centers it serves. Such efforts may be done without the need for a Single NPC to become a Multi-NPC.

(2) **Transfer of Funds from VA.** VA may not transfer funds that it received in an appropriations act to an NPC except for reimbursement to an NPC under an IPA agreement (see paragraph 12.b.). VA may transfer to an NPC any other funds received by VA for the conduct of research or education.

(3) **Transfer of Funds from NPCs.**

(a) **Funds and Equipment Associated with Active Research Projects or Education Activities.** An NPC may transfer to another NPC or to a VA entity funds and equipment associated with an active research project or education activity subject to the applicable agreement and approval of the Board, the funder and the recipient institution. The NPC Board of Directors may also approve transfer of funds and equipment when a VA Investigator leaves VA employment to continue his or her career at a different institution and if said funds or equipment are necessary for the conduct of an active sponsored project that is transferred to the same new institution.

(b) **Residual Funds.**

1. Any funds and/or equipment remaining after completion of a research project or education activity that the sponsor does not require to be returned (residual funds) must be used for the general support of VA research or education consistent with the requirements of this Handbook.

2. Upon departure of an investigator from a VA medical facility, residual funds and equipment associated with that investigator may be retained by the NPC in accordance with Board policy.

f. **Records and Record Retention.**

(1) **Records.** The NPC must make and preserve records of the organization, including its functions, policies, decisions, procedures, and transactions, in accordance with commonly accepted nonprofit practices and commonly accepted accounting practices.

(a) These records, maintained for the benefit of the NPC, need to be designed to protect the legal and financial rights of the NPC, VA, and persons directly affected by the NPC's activities.

(b) An NPC must maintain timekeeping, payroll, and other records of compensation paid. In the case of dual VA or NPC employees, where compensation is paid to the employee by the NPC, such documentation must clearly demonstrate that compensation is paid only for work that differs from the employee's official VA duties and is conducted outside the VA tour of duty.

(2) **Fiduciary Obligations.** The NPC's officers and Directors must fulfill their fiduciary obligations to the NPC by creating and maintaining documentation that will:

(a) Demonstrate approval by the NPC Board of Directors of major business decisions through recorded minutes of board meetings held no less than four times per year,

(b) Provide information necessary to respond to an IRS inquiry or audit, and

(c) Provide the chosen performance appraisal policy and procedures uniformly for all NPC employees,

(3) **Tax and Non-Tax Records.** NPC tax and non-tax records must be retained by the NPC in accordance with applicable Federal and state statutes and regulations and funding source requirements.

(4) **Consistent with Accounting Procedures.** Financial records must be created and maintained by the NPC in accordance with accounting procedures established by the NPC and applicable Federal and state statutes and regulations and funding source requirements.

14. ACCOUNTABILITY

a. Record Availability.

(1) **VA Secretary.** The records of an NPC must be available to the VA Secretary.

(2) **Audits and Investigations.** In connection with any audit, inquiry, investigation, or review of NPC activities, the NPC must cooperate with and make its records available to the VA Inspector General, the Comptroller General, the IRS, the VA Secretary, and the state(s) where the NPC is doing business.

(3) **Records Disclosure.** NPC business records are not subject to disclosure under the Freedom of Information Act (FOIA).

b. **Annual Report to the VA Secretary.** By June 1 of each year, each NPC must submit an Annual Report to the NPPO detailing NPC revenues and expenditures. The Annual Report is required even if the NPC did not accept or expend funds during the previous year. ORD is responsible for submitting the Annual Report of education-only NPCs to OAA. The information contained in each NPC report is used to prepare VA's Annual Report to Congress regarding the NPCs, as well as for VA's oversight purposes. The NPC's Annual Report to the VA Secretary must include at a minimum:

(1) **Audit Report.** An independent auditor's report for the NPC's last completed fiscal year. Each NPC with revenues in excess of \$500,000 for any year must obtain an independent audit of the financial statements of the NPC for that year. A NPC with annual revenues between \$100,000 and \$500,000 must obtain an audit of the NPC at least every 3 years.

(2) **IRS Form 990 or 990 EZ.** IRS Form 990 or 990EZ, Return of Organization Exempt from Income Tax, with schedules for the NPC's last completed fiscal year even if total revenues fall below the IRS's mandatory amount. Form 990-N, the e-Postcard filing may not be used for this purpose.

(3) **Certification.** An annual statement signed by the NPC's Executive Director verifying that each Director, officer, and employee has certified awareness of, and compliance with the NPC conflict of interest policy in accordance with paragraph 9.b.(3) and that Directors, officers, and key employees have fulfilled the Internal Controls Training requirement [see paragraph 13.c.(4)].

(4) **Location.** The physical address of the NPC along with the name and physical address of the VA medical facility(s) served by the NPC.

(5) **Revenue.** The amount of revenue received by the NPC as reported on IRS Form 990 during the previous year, including:

(a) The total amount received;

(b) The amount received from governmental entities for research and the amount received from governmental entities for education;

(c) The amount received from all other sources for research and the amount received from all other sources for education; and

(d) The amount received from any source that exceeds \$25,000, as well as information that identifies the source.

(6) **Expenditures.** The amount expended by each NPC during the year including:

(a) The amount expended for salary for research staff, the amount expended for salary for education staff, and the amount expended for salary for administrative staff;

(b) The amount expended for direct support of research and the amount expended for direct support of education; and

(c) The amount and identification of the payee if the amount expended with respect to the payee exceeded \$50,000.

(7) **Travel Expenditures.** The amount expended by the NPC during the year for travel conducted in conjunction with research and the amount expended for travel in conjunction with education.

15. REFERENCES

- a. 15 U.S.C. 3710a(c)(7)(A) and (B).
- b. 18 U.S.C. Sections 202-209.
- c. 26 U.S.C. 501(c) (3).
- d. 31 U.S.C. Section 1353.
- e. 38 U.S.C. 512.
- f. 38 U.S.C. 7302.
- g. 38 U.S.C. 7303(a).
- h. 38 U.S.C. Sections 7361 through 7366.
- i. 38 U.S.C. 7471.
- j. 38 U.S.C. 8154.
- k. 5 CFR 2640.201-202.
- l. 38 CFR 1.218(a)(8).
- m. Executive Branch Personnel Public Financial Disclosure Report (SF 278).
- n. Executive Branch Confidential Financial Disclosure Report (OGE Form 450).
- o. Internal Revenue Code of 1986, as amended.
- p. VHA Handbooks and Directives 1200, 1200.01, 1200.05, and 1058.03.

**PROSPECTIVE NONPROFIT RESEARCH AND EDUCATION CORPORATIONS
(NPC) STATUTORY VA DIRECTORS' CERTIFICATION OF RESPONSIBILITIES**

Single NPC

Each of the undersigned, as a prospective statutory Department of Veterans Affairs (VA) Director of a VA-affiliated nonprofit research and education corporation (NPC), certifies the undersigned understands of statutory responsibilities to the NPC. Each understands that the undersigned will serve as a member of the Board in the undersigned's official VA capacity. Each commits to allocating sufficient time and resources to establish the NPC as well as to fulfilling the undersigned's own responsibilities as a Board member.

Signature, Insert Name, Medical Center Director

Date

Signature, Insert Name, Chief of Staff

Date

Signature, Insert Name, Associate Chief of Staff for Research
if applicable

Date

Signature, Insert Name, Associate Chief of Staff for Education
if applicable

Date

**PROSPECTIVE MULTI-MEDICAL CENTER RESEARCH CORPORATION
STATUTORY VA DIRECTORS' CERTIFICATION OF RESPONSIBILITIES**

As prospective Statutory Department of Veterans Affairs (VA) Directors of a multi-medical center research corporation (Multi-NPC), the undersigned certify understanding of the undersigned's responsibilities to the Nonprofit Research and Education Corporations (NPC). Each understands that the undersigned will serve as a member of the Multi-NPC Board in the undersigned's official VA capacity. Each commits to allocating sufficient time and resources toward fulfilling the undersigned's responsibilities as a board member. Each has read and approved the business plan for the prospective Multi-NPC.

Signature, Insert Name, Lead Facility Medical Center Director

Date

Signature, Insert Name, Lead Facility Chief of Staff
of the Lead Facility

Date

Signature, Insert Name, Lead Facility Associate Chief
of Staff for Research, if applicable

Date

Signature, Insert Name, Lead Facility Associate Chief
of Staff for Education, if applicable

Date

Signature, Insert Name, Other Facility Medical Center Director

Date

If needed, insert additional "other facility" Statutory VA Directors

**PROSPECTIVE MULTI-MEDICAL CENTER RESEARCH CORPORATION
STATUTORY VA DIRECTORS' CERTIFICATION OF RESPONSIBILITIES**

As prospective Statutory Department of Veterans Affairs (VA) Directors of a Single NPC that is seeking to become a multi-medical center research corporation (Multi-NPC), the undersigned certifying agreement that the Multi-NPC may facilitate the conduct of research and/or education at my VA medical facility.

VA Medical Facility Director

Date

VA Medical Facility Director

Date

April 27, 2016

VHA HANDBOOK 1200.17
APPENDIX D

**APPROVAL MEMORANDUM FOR VA EMPLOYEE (NON-STATUTORY) TO SERVE
ON NPC BOARDS**

[DATE]

[NAME OF POTENTIAL BOARD MEMBER]

[ADDRESS]

RE: Exemption for Non-Statutory VA Employees Serving as Members of the VA-affiliated Nonprofit Research and Education Corporation (NPC) Board of Directors

Dear [NAME OF POTENTIAL BOARD MEMBER],

Thank you for your interest in serving on the board of directors of the [NAME] NPC. In accordance with our by-laws, charter documents, and policies, we would like you to serve on our board of directors (board), but understand that the authority to assign you to such service as part of official duty rests with your Department of Veterans Affairs (VA) chain of command. We therefore require that you send to us a written acknowledgement of the assignment by the VA official with such authority (see sample attached). Your service as an officer, director, or trustee on our board is now permissible because of a regulatory exemption promulgated by the United States Office of Government Ethics in conjunction with a December 30, 2014, memorandum from the VA Chief of Staff "Official Service on Board of Directors of VA-Affiliated Nonprofit Research and Education Corporations by a VA Employee (VAIQ 7544595, EST GCL 56902)." Per the memorandum, the first SES/SES EQUIV in your chain of command has the requisite authority to assign you to serve on our board based upon our request for such service. We note that this exemption and resultant VA policy memorandum do not affect the board service of those VHA employees mandated by statute to serve on the NPC board (38 U.S.C. § 7363).

As a VA employee, you may be assigned under this new policy to serve in official capacity only as an officer, director, trustee, or some combination of those three positions, on our board. As a board member serving in official VA capacity, you are subject to the Federal conflict of interest statutes, the Executive Branch Standards of Conduct at 5 C.F.R. Part 2635, and VA policies applicable to such official duty service. If assigned to the board, you may not participate in official capacity fundraising or lobbying on behalf of the NPC, nor otherwise participate in any activity determined by the VA Office of General Counsel to be illegal or improper. In this role on the board, you owe a fiduciary duty to the NPC, but your loyalty to VA remains paramount. You will be subject to the NPC Conflict of Interest policy and other NPC policies, but if any NPC policy is in conflict with the Government ethics rules or VA policy, the Government ethics rules and VA policies take precedence and you would not participate in such matters.

If you have any questions, please contact XXXXX.

Very truly yours,
Chair or ED

Date

Dear Chairman of the Board:

In response to your request, I hereby assign **[NAME OF BOARD MEMBER]**, an employee of the Department of Veterans Affairs (VA), to serve as a non-statutory board member (officer, director or trustee or any combination of three) of the nonprofit research and education corporation named **[NAME OF NONPROFIT CORPORATION]**, in his official VA capacity as **[VA TITLE]** and while on [his/her] tour of duty. I understand that an SES/SES EQV in the chain of command must give final approval to this assignment.

Thank you.

Sincerely,

APPROVED OR DISAPPROVED
SUPERVISOR'S NAME AND TITLE

APPROVED OR DISAPPROVED
SES or SES EQUIVALENT NAME AND TITLE

SAMPLE NPC CONFLICT OF INTEREST POLICY AND PROCEDURES

(Replace “NPC” with Name of NPC or Acronym. Additionally, *NPCs may have different titles for the “chair” and “executive director” positions; modify the policy as needed to reflect the title associated with the responsibility of the position.*)

I. Purpose

This policy is designed to protect the interests of NPC by providing guidance on participation in NPC matters that might permit an officer, director, or employee to choose personal interests over the interests of NPC, or that might call into question the employee’s independence, impartiality, or integrity of service to NPC.

II. Application of Policy

A. Pursuant to 38 U.S.C. § 7366(c), as amended by Public Law 111-163, §§ 801-806, all directors, officers, and employees of NPC are subject to this conflict of interest policy. This policy is intended to supplement, but not replace, applicable Federal and state laws and Department of Veterans Affairs (VA) regulations and policies governing conflicts of interest, including those VA policies pertaining to research conflicts of interest.

B. VA employees statutorily mandated to serve as NPC Directors as part of official VA duty (“Statutory VA Directors”) and NPC employees who hold a VA Without Compensation (WOC) appointment, or who are detailed or assigned to VA under the Intergovernmental Personnel Act, are subject to the Federal conflict of interest laws and regulations, which control if in conflict with this policy.

III. General Policy

A. Unless authorized by the NPC Board of Directors, an NPC Director, officer, or employee is prohibited from participating as part of his NPC duties in any matter in which he has a Conflict of Interest or the appearance of a Conflict of Interest. To participate in a matter means to engage in an aspect of the decision-making process through recommendation, approval, disapproval, investigation, advice-giving, or the like, or through the active supervision of a subordinate who is so engaged.

B. The final determination of the existence of a Conflict of Interest or the appearance of a Conflict of Interest rests with the Board of Directors of NPC.

C. Each Director, officer or employee has an obligation to inform the Executive Director as soon as he believes that he has a real or potential Conflict of Interest or appearance of a Conflict of Interest that could affect his participation in an NPC matter.

IV. Definitions

A. **Business Associate:** A “Business Associate” is any person or entity, other than the NPC, with whom an NPC officer, director, or employee: 1) engages in the exchange of goods or services for remuneration (other than routine consumer transactions); 2) served within the past year as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or 3) or any of their Relatives serves, seeks to serve, or has an arrangement to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.

B. **Close Relationship:** A Director, officer, or employee of NPC has a Close Relationship with Relatives, members of his household, and Business Associates such as general partners.

C. **Conflict of Interest:** A Conflict of Interest exists when the interests of a director, officer, or employee is or appears to be competing with the interests of NPC. A director, officer, or employee may be considered to have a conflict of interest whenever he or someone with whom he has a Close Relationship has an existing financial or other material interest that affects or appears to affect the independence, objectivity, or integrity of the director, officer, or employee in the discharge of his NPC responsibilities. Additionally, personal and business relationships may cause “dual loyalties” that are unrelated to personal financial gain, but nonetheless may raise conflict of interest concerns.

D. **Financial or Other Material Interest:** An NPC director, officer, or employee has a “Financial Interest” if through business, investment, or Relatives he has an ownership or investment interest in, or a compensation arrangement with, any entity or individual with whom NPC has or is contemplating a transaction or arrangement.

E. **Key Employee:** An NPC employee with decision-making authority.

F. **Relatives:** For purposes of this policy, “Relatives” are the spouse, parent, child, and any other relative by blood or marriage with whom an NPC officer, director, or employee has similarly close personal ties, as well as any other member of his household.

V. Disclosure

A. **Duty to Disclose.** All NPC directors, officers, and employees have a duty to disclose actual or potential Conflicts of Interest or appearance of a Conflict of Interest in accordance with this Policy.

B. **Disclosure Documents.** The Board of Directors shall approve the content of the template Disclosure Questionnaire (Attachment A) and the Affirmation of Compliance statement (Attachment B) and any future substantive changes to them.

C. Disclosure Procedures

1. All NPC directors, officers, and employees will complete a Disclosure Questionnaire and an Affirmation of Compliance upon initiating their association with NPC. The completed documents are to be submitted to the NPC Executive Director.

2. All NPC directors, officers, and Key Employees will submit to the Executive Director a new Disclosure Questionnaire and Affirmation of Compliance statement any time a change in circumstances may result in a potential conflict of interest, but at least annually.

3. Employees other than Key Employees will submit to the Executive Director a new Disclosure Questionnaire and Affirmation of Compliance statement any time a change in circumstances may result in a potential conflict of interest.

D. Review

1. The Executive Director shall conduct a preliminary review of all Disclosure Questionnaires.

2. The Executive Director will provide to the Board of Directors any Disclosure Questionnaire of a director, officer or Key Employee that contains a disclosure (i.e. a “yes” response). The Board will determine whether a conflict exists and if so, how to manage the conflict, if possible. Disclosure Questionnaires containing no disclosures and the Affirmation of Compliance statements need not be submitted to the Board of Directors.

3. The Executive Director will provide to the Chair of the Board (or equivalent position) and the employee’s supervisor, the Disclosure Questionnaire of a non-Key Employee that contains a disclosure. The Chair, supervisor, and Executive Director will determine if the disclosure represents a real or potential Conflict of Interest that requires consideration by the Board.

E. Sanctions. Failure to disclose as required by this Policy may result in sanctions, up to and including dismissal from NPC.

F. Tracking. The Executive Director shall ensure that all NPC personnel fulfill their disclosure requirements and shall ensure that written documentation showing fulfillment of such requirement is maintained for three years.

G. Confidentiality. Disclosure Questionnaires may contain confidential information and will be treated as confidential documents.

H. Storage and Retention. The Executive Director will maintain Disclosure Questionnaires and Affirmations of Compliance statements with the official records of NPC in a secured container. The Disclosure Questionnaires and Affirmation of Compliance statements will be retained for at least three years with the most recent version of each retained until the end of the individual’s NPC relationship.

VI. Requirement for Board Review of Potential Conflicts

A. Whenever there is reason to believe that a potential conflict exists between any interest of an NPC board member, officer, or employee, and their duty to the NPC, the Board will promptly convene a meeting to determine whether a Conflict of Interest exists and the appropriate response.

B. Any response by the Board will include, but may not necessarily be limited to, invoking the procedures described below with respect to a specific proposed matter.

C. If there is reason to believe that a potential conflict affects VA interests, the Board will bring the potential conflict to the attention of the appropriate VA authorities which may include the facility Research Conflict of Interest Committee or a VA OGC Deputy Ethics official.

VII. Procedures for Determining and Managing Conflicts of Interest

A. When a potential conflict exists between the interests of NPC and a director, officer, or employee, the Board will consider the matter during a meeting of the Board. The affected individual shall recuse himself from participating in the potential Conflict of Interest and from the Board meeting at which the potential Conflict of Interest is considered.

B. Procedures. Until such time as the Conflict of Interest is resolved, the affected individual shall recuse himself from participating in the matter that invoked the potential Conflict of Interest concern. The following procedures will apply:

1. Board Review. A director, officer, or employee who has a potential conflict of interest with respect to a proposed NPC decision, policy or transaction or arrangement (an "interested party") will not participate in any way in, or be present during, the deliberations and decision-making vote of NPC with respect to such matter. However, that person will have an opportunity to provide factual information about the proposed conflict and/or matter regarding the potential conflict. Also, the Board may request that an interested party be available to answer questions. Board options include, but are not limited to:

a. Allowing the proposed matter to go forward upon finding it in the best interests of NPC;

b. Prohibiting the proposed matter from going forward if it is found to have been irreparably tainted by the Conflict of Interest;

c. Approving mitigating actions (including but not limited to recusal, limitation of duties, transfer or reassignment, additional supervisory review or other action considered appropriate by the Board); or

d. Recommending an alternative arrangement.

2. **Vote.** A decision by the disinterested members of the Board will be made by vote of a majority of members in attendance at a meeting for which a quorum is present. An interested director will not be counted for purposes of determining whether a quorum is present, or for purposes of determining what constitutes a majority vote of directors in attendance. Any person who is the subject of such vote shall not be present.

3. **Minutes.** The minutes of the Board meeting will reflect that the conflict disclosure was made to the Board, the vote taken and, when applicable, the abstention from voting and participation by any interested party. Whenever possible, the minutes should frame the decision in such a way that it provides guidance for consideration of future conflict of interest situations.

VIII. Violations of Conflict of Interest Policy

A. If a director, officer, employee, or the supervisor of an NPC employee, has reason to believe that any other director, officer, or employee has failed to disclose an actual or potential conflict of interest, such person has a responsibility to inform the chair of the Board or the executive director of their belief and its basis. In such event or should the chair of the Board, executive director, or any member of the Board become aware of a possible violation of this Policy, the chair of the Board, executive director, or other Director will refer the matter to the Board. The Board will inform the person of the allegation and will allow the person an opportunity to explain the alleged failure to disclose.

B. If, after affording an NPC director, officer, or employee with a potential or actual conflict an opportunity to disclose all material facts, the Board decides that such an individual has in fact failed to disclose a possible conflict of interest, the Board will determine the corrective steps to be taken and/or disciplinary action.

IX. Training

A. Requirements

1. All Directors, officers, and employees (including those with VA WOC appointments to conduct VA research or education activities) shall receive training on this Policy within ninety (90) days of hire or affiliation with NPC.

2. Directors, officers, and Key Employees shall receive training on this Policy annually thereafter.

B. **Tracking.** The Executive Director shall ensure that all NPC personnel fulfill their training requirements and shall ensure that written documentation of such training is maintained for three years.

C. **Sanctions.** Failure to fulfill the Training requirement may result in sanctions up to and including dismissal.

NPC Conflict of Interest Confidential Disclosure Questionnaire

Please complete the questionnaire below, indicating any potential conflicts of interest. If you answer "yes" to any of the questions, provide a written description of the details in the space allowed. Attach additional sheets as needed. Submit your completed form to the NPC executive director.

A. Financial Interests. A conflict may exist when an NPC director, officer or employee or any of their relatives may directly or indirectly benefit or profit as a result of a decision, policy, transaction or arrangement made by NPC.

During the past 12 months (for each "yes" response, please describe below or on a separate page):

1. Has NPC proposed to contract or contracted to purchase or lease goods, services, or property from you, a relative or a business associate?

Yes No

2. Are you related to any current or prospective NPC director, officer or employee, or to the supervisor of any NPC employee?

Yes No

3. Have you, a relative or a business associate been provided with a gift, gratuity or favor of a substantial nature from a person or entity that does business or seeks to do business with NPC?

Yes No

4. Have you, a relative or business associate been gratuitously provided use of the facilities, property, or services of NPC?

Yes No

5. Are you, a relative or a business associate in a position to benefit financially from decision, policy, transaction or arrangement made or to be made by NPC?

Yes No

B. Other Interests. A conflict may also exist when an NPC officer, director, employee or any of their relatives may obtain a non-financial benefit or advantage that they would not have obtained absent their relationship with NPC, or when their duty or responsibility owed to NPC conflicts with a duty or responsibility owed to some other organization.

During the past twelve months, please circle yes or no (for each "yes" response, please describe below or on a separate page.):

1. Did you obtain for yourself or any other person or organization preferential treatment, promotion, recognition or a non-salaried appointment as a consequence of your association with NPC?

Yes No

2. Did you make use of confidential information obtained from NPC for your own benefit or for the benefit of any person or organization other than VA or your NPC?

Yes No

3. Did you take advantage of an opportunity or enable any person or organization to take advantage of an opportunity that you had reason to believe would be of interest to NPC?

Yes No

4. Were you in a position to benefit in a nonfinancial way from a decision, policy, transaction or arrangement made by NPC?

Yes No

Other - Describe any other circumstances or relationships you or a relative may have that you believe may assist NPC in protecting its interests and preventing conflicts of interest:

Name

Signature

Date

NPC Conflict of Interest Affirmation of Compliance

I have received and carefully read the Conflict of Interest Policy for directors, officers and employees of NPC and have considered the literal expression of the policy as well as its intent. By signing this affirmation of compliance, I hereby affirm that I have read, understand and agree to comply with the NPC Conflict of Interest Policy. I further understand that NPC is a nonprofit organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes without personal inurement, other than by salary.

Except as otherwise indicated in the Disclosure Questionnaire and attachments below, I hereby state that neither I nor any relative or business associate has any conflict of interest, financial or otherwise that may be seen as competing with the interests of NPC. Also, neither I nor any of my relatives or business associates benefit from any action, policy or transaction made by NPC in a manner that has not been previously disclosed.

If any situation should arise in the future that I believe may involve me in a conflict of interest, I will promptly and fully disclose the circumstances as appropriate:

- For members of the Board, officers and the executive director: the chair of the Board
- For key administrative employees: the executive director
- For employees directly or indirectly engaged in VA research or education: supervisor and the executive director

I further certify that the information set forth in the Disclosure Questionnaire and attachments, if any, is true and correct to the best of my knowledge, information and belief.

Name (Please print)

Signature

Date

For directors, officers and key employees: Annual reaffirmation

Signature

Date

Signature

Date

Signature

Date

TITLE OF POLICY: VA NONPROFIT CORPORATION NONDISCLOSURE POLICY**1.0 PURPOSE**

To require all [insert NPC name] employees to maintain the confidentiality of VA, third party, and [insert NPC name] confidential information.

2.0 SCOPE

This policy applies to all [insert NPC name] employees, including those who hold a VA Without Compensation (WOC) appointments.

3.0 DEFINITION

Confidential Information is defined as information of any kind, nature, or description concerning any matters affecting or relating to employees' services for NPCs as further described under part 4.0.

4.0 POLICY

[Insert NPC name] employees are required to maintain the confidentiality of information obtained in the performance of their duties. There are three main categories of confidential information that NPC employees will encounter:

1) *VA Confidential Information.* – VA is subject to various laws regarding confidentiality, including but not limited to the Privacy Act, the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), the Freedom of Information Act, and 38 U.S.C. §§5701, 5705, and 7332. VA may only use or disclose Confidential Information consistent with applicable legal authority. Examples of VA Confidential Information include Individually Identifiable Information contained in VA patient files, VA data, VA research and VA employee records including but not limited to licensure and credentialing.

2) *Third Party Confidential Information.* – Confidential Information obtained from federal or nonfederal sponsors and research collaborators in the context of potential and actual collaborative research and/or education. This information includes, but is not limited to, trade secrets, commercial, financial information, protocols and data.

3) [Insert NPC name] *Confidential Information.* – Confidential information of NPCs, such as budget, personnel, and information pertaining to internal business operations matters.

For New Employees – New employees shall be provided a copy of this policy and shall be required to execute a nondisclosure agreement substantially equivalent to the attached sample template (see attached NDA agreement) as part of their orientation process within 15 days of hiring.

For Existing Employees – Existing employees who have not executed a nondisclosure agreement shall be provided a copy of this policy and will be required to execute a nondisclosure agreement substantially equivalent to the attached sample template (see attached NDA agreement) within 45 days of the effective date of this policy.

For VA WOC Employees - NPC employees who hold a VA Without Compensation appointments are subject to various laws regarding confidentiality, including but not limited to the Privacy Act, Freedom of Information Act, 38 U.S.C. §§5701, 5705, and 7332. VA WOC employees may only use or disclose confidential information consistent with applicable authorities. Requests for disclosure of confidential information will be handled in accordance with 5 U.S.C. §552, E.O. 12600, and 38 C.F.R. 1.554a. VA employees are bound by 18 U.S.C. § 1905, known as the Federal Trade Secrets Act, to not disclose confidential and proprietary information disclosed to them in the conduct of their official duties. Additionally, the Economic Espionage Act of 1996 makes the theft or misappropriation of a trade secret by VA employees a federal crime. 18 U.S.C. §§ 1831-1839.

NDA Record Maintenance – NDAs shall be maintained in the NPC employee's personnel file.

5.0 RELATED DOCUMENTS

- 1) VHA Handbook 1200.17, 12(e).
- 2) Nondisclosure Agreement Template.

[Insert NPC Name] EMPLOYEE NONDISCLOSURE AGREEMENT

FOR GOOD CONSIDERATION, and in consideration of being employed by [Insert NPC Name] (NPC), a nonprofit corporation created under state law of [X] to serve as a flexible funding mechanism for VA approved research and education pursuant to 38 U.S.C. 7361-7366, the undersigned employee hereby agrees and acknowledges the following:

1. During the course of my employment, there may be information disclosed to me that may be considered confidential information. This information includes, but is not limited to:

A. VA patient and employee information, including but not limited to: personnel files, credentialing and licensure files, VA research or other records protected by the Privacy Act (5 U.S.C. 552a), the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), or other federal laws, such as 38 U.S.C. 5701, 5705, and 7332.

B. Trade secrets, commercial, financial and other confidential information from third parties, such as for-profit and nonprofit business entities, academic affiliates, public and private foundations, and government agencies, obtained during discussions or engagements in collaborative research with VA. Other confidential information may consist of but not necessarily be limited to:

1) Technical information: Methods, processes, formulae, compositions, systems, techniques, inventions, machines, computer programs and research projects.

2) Business information: Customer lists, pricing data, sources of supply, financial data and marketing, production, or merchandising systems or plans.

C. NPC internal information of a confidential nature, i.e., budget, personnel, and information related to internal business operations matters, such as:

1) During or at any time after the termination of my employment with the NPC, I shall not use for myself or others, or disclose to others, any confidential information of VA, external third party, or NPC in violation of this agreement.

2) The NPC reserves the right to take disciplinary action, up to and including termination, for my violations of this agreement.

3) I am not under any preexisting obligations inconsistent with the provisions of this Agreement.

4) Upon the termination of my employment from the NPC.

5) I shall return to the NPC all documents and property obtained by me in the performance of my duties. I further agree that I shall not retain copies, notes, or abstracts of the foregoing.

6) The NPC may notify any future or prospective employer or third party of the existence of this agreement, and shall be entitled to all remedies including injunctive relief for any breach.

2. NPC employees who also hold VA Without Compensation appointments are also subject to various laws regarding confidentiality, including but not limited to the Privacy Act, Freedom of Information Act, 38 U.S.C. §§5701, 5705, and 7332. VA employees may only use or disclose confidential information consistent with applicable authorities. Requests for disclosure of confidential information will be handled in accordance with 5 U.S.C. 552, E.O. 12600, and 38 C.F.R. 1.554a. Additionally, VA employees are bound by 18 U.S.C. 1905, known as the Federal Trade Secrets Act, to not disclose confidential and proprietary information disclosed to them in the conduct of their official duties. Additionally, the Economic Espionage Act of 1996 makes the theft or misappropriation of a trade secret by VA employees a federal crime. 18 U.S.C. 1831-1839.

3. This agreement shall be binding upon me, my personal representatives, and any successors in interest, and shall inure to the benefit of the NPC, its successors and assigns.

Signed this _____ day of _____, 20_____.

NPC Employee signature

Print Name:

Training Requirements of VHA Handbook 1200.17

TRAINING	All NPC Staff	Key NPC Staff	Board Members and Officers
<p>Mandatory Internal Controls. This is a one-time training to be taken within the first 90 days of employment at the NPC or appointment to the Board.</p>	No	Yes	Yes
<p>Conflict of Interest Training. Initial training is required within 90 days of employment at the NPC or appointment to the Board.</p>	Yes	Yes	Yes
<p>Conflict of Interest Training. Annual training is required.</p>	No	Yes	Yes
<p>Both of these trainings are available on TMS for VA and non-VA employees. The Executive Director is responsible for ensuring that the facility Education team places these on the VA employees sites.</p>			

**SAMPLE ACKNOWLEDGEMENT OF DONATION LETTER FOR GIFTS VALUED AT
\$250 OR MORE**

Nonprofit Research and Education Corporations (NPC) Letterhead

Date

Addressee

Address

Dear *(insert name)*,

Thank you for your generous donation of ___*(insert exact amount of a cash contribution or identify the in-kind gift)*___ in support of Department of Veterans Affairs (VA) research and/or education. *Add more details as needed including the purpose of the gift, restrictions, terms or conditions if any.*

If goods or services were exchanged for the donation: The estimated monetary value of the services (or goods such as a meal at a fundraising event) provided in exchange for your donation was ___*\$(insert amount)*___. Only the portion of your contribution that exceeds the value of the services (or goods) you received may be tax deductible.

If no goods or services were provided, state: No services or goods were provided in exchange for or in connection with this donation.

If an in-kind gift was provided: Thank you for your in-kind gift of ___*(describe in detail)*___.

If donor advised (that is, donor will be allowed to influence use of the donation): Please be aware that your donation has been characterized as “donor advised” and may not be tax deductible. In accordance with IRS rules, this letter constitutes notification that such funds are the property of ___*(insert NPC name)*___ subject to the exclusive control of ___*(insert NPC name)*___ and may be used only for charitable purposes. They may not be used for the benefit of you, your family members or your advisors, or for any other impermissible private benefit.

Please retain this letter as a written proof of your donation for your tax records. ___*(Name of NPC)*___ is an exempt from Federal taxation under section 501(c)(3) if the Internal Revenue Service code. Our Federal ID number is ___*(XX-XXXXX)*___.

Thank you again for your generous gift.

Sincerely,

Insert your signature

Insert your typed name

Insert your title