

## LEGAL

**1. REASON FOR ISSUE:** It is recognized that VA and its employees have long standing and close relationships with their academic partners, especially medical schools and affiliated institutions. However, to prevent conflicts of interest or the appearance thereof, prohibitions are established for the incumbents of certain Veterans Health Administration (VHA) positions from receiving remuneration from, negotiating for, or entering into arrangements for future remuneration with any institution or entity that is affiliated with a VA facility to which they are assigned or which falls under their official responsibility, except as delineated below.

**2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook sets forth mandatory policies and procedures regarding various legal topics pertaining to Federal employment. These changes will be incorporated into the electronic version of VA Handbook 5025 that is maintained on the [Office of Human Resources Management Website](#). Significant changes include:

a. Establishes a new Part XI that places limitations on remunerated outside professional activities of incumbents of certain VHA positions in order to prevent conflicts of interest or the appearance thereof.

b. Provides that VHA employees who occupy full-time title 38 physician and dentist positions and who also serve as facility Director, Chief of Staff, Veterans Integrated Service Network (VISN) Director, VISN Service/Product Line Manager, VISN Chief Medical Officer and VA Central Office Clinical Executive (including Chief Officers, Deputy Chief Officers, Chief Consultants and national program managers) are prohibited from accepting remuneration of any kind from, or negotiating or entering into arrangements for future remuneration with, institutions affiliated with a VHA organization to which they are assigned, or which falls under their official responsibility. It also prohibits covered individuals from being employees of such institutions (except as specified in this part of the Handbook) and from holding positions as officers or trustees of such institutions. This policy does not apply to facility positions below the level of Chief of Staff.

c. Specifies that these prohibitions do not apply to remunerated outside professional activity arrangements with affiliates that covered employees currently have in place as of the date of this issuance. The authority to continue existing arrangements expires 120 days from the date of issuance.

d. Provides that the prohibitions are effective as of 120 days from the date an individual is newly appointed to a covered position.

e. Prohibits covered employees from holding positions as officers, directors or trustees of affiliated institutions, even in cases where the covered employee receives no remuneration for holding such position.

f. States that the Under Secretary for Health may approve a suspension or waiver of these prohibitions for an individual employee when such a suspension or waiver would be in the best interest of the Department.

**3. RESPONSIBLE OFFICE:** The Office of the Deputy Assistant Secretary for Human Resources Management (05).

**4. RELATED DIRECTIVE:** VA Directive 5025, "Legal."

**5. RESCISSIONS:** None.

**CERTIFIED BY:**

**BY DIRECTION OF THE SECRETARY  
OF VETERANS AFFAIRS**

/s/Robert T. Howard  
Assistant Secretary for  
Information and Technology

/s/Paul J. Hutter  
Executive in Charge of the  
Office of Human Resources and Administration

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[LEGAL

**PART XI. LIMITATIONS ON REMUNERATED OUTSIDE PROFESSIONAL ACTIVITIES OF  
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**[PART XI. LIMITATIONS ON REMUNERATED OUTSIDE PROFESSIONAL ACTIVITIES  
OF INCUMBENTS OF CERTAIN VETERANS HEALTH ADMINISTRATION POSITIONS****1. SCOPE**

a. The policies and procedures in this part apply to individuals who occupy full time title 38 physician and dentist positions of facility Director, Chief of Staff, Veterans Integrated Service Network (VISN) Director, VISN Service/Product Line Manager, VISN Chief Medical Officer and VA Central Office Clinical Executive (including Chief Officers, Deputy Chief Officers, Chief Consultant and national program managers). This policy does not pertain to facility positions below the level of Chief of Staff, or to relationships with the Department of Defense. The term Chief of Staff includes equivalent assignments in health care systems such as Deputy Chief of Staff, Associate Chief of Staff or other titles when incumbents of such positions function as the chief medical officer for a facility within the health care system.

b. This part preserves the discretion of affiliated institutions to approve physicians to supervise residents and does not override any such approval or limit the supervision itself. This part affects the relationships between individual physicians and affiliated institutions only insofar as is necessary, in accordance with law, to avoid conflicts of interest and the appearance thereof.

c. This part does not waive or limit conflict of interest laws, regulations or policies.

**2. BACKGROUND**

a. Federal criminal statute and regulation prohibit a Government employee, whether full-time, part-time, or a special Government employee, from participating personally and substantially in a particular matter in which the employee, to the employee's knowledge, has a financial interest, if the matter would directly and predictably affect that financial interest (18 U.S.C. 208(a)). The statute imputes to the employee, as a personal financial interest for purposes of this restriction, the financial interests of the employee's spouse, minor children, general partners, and any organization in which the employee serves as an officer, director, trustee, general partner, or employee. The law further imputes to the employee the financial interests of a person or organization with which the employee is negotiating for employment or has an arrangement for prospective employment. The Government-wide Standards of Ethical Conduct for Employees of the Executive Branch, applicable to all employees, contains additional restrictions on outside activities. These are found in 5 CFR, part 2635, and applied in VHA Handbook 1660.3.

b. When VHA facilities are involved in scarce medical specialist contracts, sharing agreements, or sole source contracting arrangements, particular care must be given to ensure that employees do not violate the conflict of interest and other applicable statutes. Of paramount concern is the impact on facility Directors, Chiefs of Staff, Veterans Integrated Service Network (VISN) Directors, VISN Service/Product Line Managers, VISN Chief Medical Officers and VA Central Office Clinical Executives (including Chief Officers, Deputy Chief Officers, Chief Consultants and national program managers) who are employees or officers of an affiliated institution, or who may have, or be negotiating for, future employment with such institutions. (See VHA Handbook 1660.3)

c. The policies presented below will enable facility Chiefs of Staff and individuals in other covered positions to fully exercise their authority and meet their responsibilities in representing the interest of VA in negotiations and other dealings with affiliated institutions. Facility Chiefs of Staff and individuals in other covered positions are required to exercise oversight and due diligence in the execution of all contracting relationships with affiliated institutions.

### **3. POLICY**

a. In order to ensure that the senior clinician managers are not restricted by conflicts of interest from carrying out the full responsibilities of their positions with regard to contracts and other matters with affiliated institutions, individuals occupying full-time title 38 physician and dentist positions and serving as facility Director, Chief of Staff, Veterans Integrated Service Network (VISN) Director, VISN Service/Product Line Manager, VISN Chief Medical Officer and VA Central Office Clinical Executive (including Chief Officers, Deputy Chief Officers, Chief Consultants and national program managers) are prohibited from accepting remuneration from institutions affiliated with a VHA organization to which they are assigned, or which fall under their official responsibility.

b. This prohibition also applies to remuneration received by covered employees from or through practice groups or any other entities associated with the affiliated institution or from entities under contract with the affiliated institution.

c. For purposes of this prohibition, remuneration includes current and ongoing benefits of significant monetary value, including but not limited to wages, salary and other taxable benefits such as affiliate contributions to life insurance, disability insurance and retirement plans. General faculty benefits applicable to all faculty members that are not part of an employment arrangement and are of minimal value, such as parking permits, library access, admissions to artistic and athletic events, access to online university resources, etc. are excluded from this prohibition. Also excluded from this prohibition are royalties and other remuneration earned from patents or copyrights, as well as the use of titles and honorifics associated with faculty membership. Also excluded from this prohibition are benefits to which an employee has already accrued entitlement by prior employment with the affiliated institution, such as funds within retirement accounts and subsidized tuition benefits for employee or family members, as well as malpractice coverage for uncompensated clinical care duties. A benefit is accrued if its receipt is not contingent upon continued employment beyond the effective date of this prohibition.

d. Covered employees are also prohibited from negotiating or entering into arrangements for future remuneration with institutions affiliated with a VHA organization to which they are assigned, or which fall under their official responsibility during a period of time that they are carrying out the full range of their duties and responsibilities. However, it is recognized that covered employees may have legitimate need or desire to plan for future employment with affiliated institutions. Therefore, covered employees must notify their supervisors when they decide to seek employment opportunities with an affiliated institution. After proper notification and approval of the supervisor, covered employees may negotiate or enter into arrangements for employment with affiliated institutions, provided they fully recuse themselves from all negotiations with those institutions on behalf of VA, and from participating in any other matter affecting the financial interests of the affiliate during the period that such negotiations are pending. The employee must immediately disclose to the supervisor when an employment agreement is reached with the affiliate. The employee must leave VA employment, or leave the covered position,

within a six month period from the time supervisory approval to negotiate is granted. If the negotiations do not result in an employment arrangement, the employee must immediately inform the supervisor of this outcome and resume the full performance of their duties.

e. Covered employees are prohibited from being employees of affiliated institutions (except as provided for in paragraph 3g) and from holding positions with affiliated institutions that involve a fiduciary responsibility to the institution, such as officers, directors or trustees; and from negotiating for, or having arrangements for future employment even in cases where the covered employee receives no remuneration for holding such a position or having such an arrangement (except pursuant to a recusal as provided in paragraph 3d above).

f. These prohibitions are effective 120 days from the date of this issuance for individuals who are incumbents of covered positions on the date of issue. They are effective for employees newly appointed to covered positions as of 120 days from the date of their appointment to the covered position.

g. Covered employees may hold honorary titles with affiliated institutions, such as Dean or Professor, and accept a faculty membership title (Instructor, Assistant Professor, Associate Professor, Professor) provided the affiliated institution provides no remuneration with the title and the institution certifies in accordance with Appendix A of this part that none of the relationships contemplated by the conflict of interest law exists between the covered employee and the affiliated institution.

h. The conflict of interest law (18 U.S.C. 208) and VHA Handbook 1660.3 prohibit all covered Government employees who have outside employment, or are officers, directors or trustees, from participating in a sharing procurement or agreement between VA and entities with which the covered Government employees have the outside employment or with which they are officers, directors, or trustees, with whom they are negotiating for outside employment, or with whom they have an arrangement for future outside employment.

i. This part of the handbook does not override either VHA Directive 2004-066, which requires that residents be supervised by credentialed physicians; or paragraph 4h of VHA Handbook 1400.1, which requires that physicians supervising residents be approved for that purpose by the affiliated institution.

#### **4. SUSPENSIONS AND WAIVERS**

a. The Under Secretary for Health may suspend or waive these prohibitions, in exceptional cases, if the services of an individual are needed to assist communities to meet clinical needs that would otherwise not be met, or when it is determined that a suspension or waiver would be in the best interest of the Department. Grounds for waiver approval may include (but are not limited to) the following: unique skills or expertise required by the affiliated school or institution requiring the covered employee to assume employee status, requirements for administration or conduct of active research grants and protocols at the affiliated institution requiring substantial presence requirements and grant effort, and/or financial or personal hardship for the individual or family.

b. Waiver requests should be submitted in writing and delineate the duties required of the covered employee, the approximate time commitment of the additional duties (if necessary) to the affiliated institution, and should contain discussion of other solutions or options as appropriate to avoid conflict of

interest, and how responsibilities which the covered employee will not be able to carry out because of conflicts as a result of the employment or appointment will be accomplished. Such a suspension or waiver, if granted, will not suspend or waive conflict of interest laws or regulations. Fully documented and justified suspension or waiver requests are to be submitted by VISN Directors, through the Office of the Deputy Under Secretary for Health for Operations and Management (10N). Remuneration arrangements that covered employees have in place at the time a waiver or suspension request is submitted may continue while the request is considered by the Under Secretary for Health.

## **5. ENROLLMENT IN FEDERAL HEALTH BENEFITS PROGRAM**

a. Office of Personnel Management regulations allow any federal employee who is eligible for Federal Employees Health Benefits (FEHB) coverage to enroll or change enrollment when they lose coverage under any private group health benefits program. These regulations will permit a covered employee who must relinquish health benefits coverage from an affiliated institution due to the requirements in this Handbook to enroll in FEHB.

b. Covered employees can enroll in FEHB coverage from 31 days prior to leaving employment with the affiliate to 60 days after the loss of coverage. The FEHB coverage will be effective the beginning of the first full pay period after the election is made.

## **6. CERTIFICATION REQUIREMENTS**

a. Covered employees who become subject to the provisions of this part 120 days from the issue date will submit a certification to their supervisor (facility Director, VISN Director, Chief Officer or the Principal Deputy Under Secretary for Health, as appropriate) that they are in full compliance with the provisions of this part within 30 days of becoming subject to these provisions. Employees newly appointed to covered positions will submit this certification to their supervisors within 30 days of becoming subject to these prohibitions.

b. Completed certifications will be filed on the left side of employee's Merged Records Folder.

c. A sample certification is provided in Appendix B.

## **7. REFERENCES**

a. VA Handbook 5025, Legal, Part IV

b. VHA Handbook 1400.1

c. VHA Handbook 1660.3

d. 5 CFR, parts 2635 and 2640

e. 18 U.S.C. 208 and 209

f. 38 U.S.C. 7421]

[APPENDIX A.  
CERTIFICATION DESCRIBING A CHIEF OF STAFF'S\* (OR OTHER COVERED  
EMPLOYEE'S) RELATIONSHIP WITH AN AFFILIATED INSTITUTION TO RULE OUT  
CONFLICTS OF INTEREST UNDER THE FEDERAL CRIMINAL CODE  
{Affiliate letterhead}

{Date}

{The Affiliate} has appointed {\_\_\_\_\_}, M.D. {or DDS} as {Dean of Veterans Affairs or similar title} and/or {faculty rank} (use same nomenclature as is used in the attached appointment papers). This appointment does not make Dr. {\_\_\_\_\_} an employee of {the Affiliate}, and {he or she} has no other relationship that constitutes an employment between {himself or herself} and {the Affiliate}. Specifically {he or she} is not compensated or, except as necessary in order to administer the affiliation, supervised by {the Affiliate}.

Moreover, Dr. {\_\_\_\_\_} is not negotiating for employment with {the Affiliate} and has no arrangement for future employment with {the Affiliate}.

Finally, Dr. {\_\_\_\_\_} is not an officer or trustee of {the Affiliate}. Specifically, {he or she} has no fiduciary obligation to {the Affiliate}.

My position with {the Affiliate} includes the authority to describe the conditions of Dr. {\_\_\_\_\_}'s relationship with {the Affiliate} on its behalf.

{signature}

{Title}

\* Letter may be modified as appropriate for other covered positions]



