

## LEGAL

- 1. REASON FOR ISSUE:** To issue Department of Veterans Affairs (VA) procedures regarding various legal topics pertaining to Federal employment. Statutes and regulations establish the policies concerning the matters contained in this handbook. These policies are summarized in the handbook for the reader's convenience and ease of reference. Users should consult the specific references noted for more definitive information on a topic.
- 2. SUMMARY OF CONTENT/MAJOR CHANGES:** This handbook sets forth mandatory procedures previously contained in law, Federal regulation, and numerous other issuances. This handbook deletes Parts I and II, FOIA and Privacy Act, covered in VA Directive 6300; revises Part IV, formerly Financial Disclosure, which now covers Annual Ethics Training and Required Ethics Notices. Financial Disclosure is covered in VA [Directive](#) and [Handbook](#) 8002. These changes will be incorporated into the electronic version of VA Handbook 5025, Legal, that is maintained on the [Office of the Chief Human Capital Officer website](#) and the [VA Publications website](#).
- 3. RESPONSIBLE OFFICE:** Office of the Chief Human Capital Officer (05).
- 4. RELATED DIRECTIVES:** VA Directive 5025, Legal; VA Directive 8002, Financial Disclosure Management.
- 5. RESCISSIONS:** VA Handbook 5025, Legal, dated August 31, 2009.

**CERTIFIED BY:**

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

/s/  
Guy T. Kiyokawa  
Assistant Secretary for  
Enterprise Integration

/s/  
Gina M. Grosso  
Assistant Secretary for  
Human Resources and Administration/  
Operations, Security and Preparedness

**DISTRIBUTION:** Electronic Only

**LEGAL  
CONTENTS**

**PART I. EMPLOYEE RESPONSIBILITIES AND CONDUCT**

**PART II. ETHICAL CONDUCT**

**PART III. POLITICAL ACTIVITY**

**PART IV. ANNUAL ETHICS TRAINING AND REQUIRED ETHICS NOTICES**

**PART V. EMPLOYMENT OF RELATIVES**

**PART VI. CLAIMS AGAINST THE GOVERNMENT**

**PART VII. EMPLOYEE LIABILITY**

**PART VIII. EMPLOYEE ORGANIZATIONS AND ACTIVITIES**

**PART IX. LIMITATIONS ON REMUNERATED OUTSIDE PROFESSIONAL  
ACTIVITIES OF INCUMBENTS OF CERTAIN VETERANS HEALTH  
ADMINISTRATION POSITIONS**

**LEGAL**

**PART I. EMPLOYEE RESPONSIBILITIES AND CONDUCT**

**CONTENTS**

<b>PARAGRAPH</b>	<b>PAGE</b>
1. <u>SCOPE</u> .....	I-1
2. <u>GENERAL PROVISIONS</u> .....	I-1
3. <u>RELATIONSHIP WITH BENEFICIARIES AND CLAIMANTS</u> .....	I-1
4. <u>STANDARDS OF CONDUCT IN SPECIAL AREAS</u> .....	I-2
5. <u>ADDITIONAL APPLICABLE GOVERNMENTWIDE RULES ON EMPLOYEE CONDUCT</u> .....	I-2
6. <u>FEDERAL CRIMINAL CODE PROVISIONS FOCUSED ON EMPLOYEES</u> .....	I-2
7. <u>INTERPRETATION, EXEMPTIONS, AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208</u> .....	I-2
8. <u>SECURITY AND LAW ENFORCEMENT AT FEDERAL AND VA FACILITIES</u> .....	I-3

## **PART I. EMPLOYEE RESPONSIBILITIES AND CONDUCT**

1. **SCOPE.** This part applies to all VA employees, including special Government employees defined in 5 C.F.R. § 2635.102(l). Additional conduct rules (limited to particular employees) and other ethical guidance appear elsewhere in this handbook. Also, (especially where noted) refer to the proper legal reference (United States Code and/or Code of Federal Regulations) when addressing these issues in detail.
2. **GENERAL PROVISIONS.** This part is designed to assist in accomplishing Department objectives through the exercise of informed judgment by each employee. Employees are expected to abide by the criminal conflict of interest laws, Standards of Ethical Conduct, regulations, and policies to maintain the highest possible standards of honesty, integrity, impartiality, and ethical behavior in the Department.
3. **RELATIONSHIP WITH BENEFICIARIES AND CLAIMANTS (38 C.F.R. § 0.735-11).** Employees are expected to be helpful to beneficiaries, patients, and claimants, but:
  - a. An employee shall not procure intoxicants or drugs for, or attempt to sell intoxicants or drugs to, patients or members, or give or attempt to give intoxicants or drugs to them unless officially prescribed for medical use.
  - b. An employee shall not abuse patients, members, or other beneficiaries, whether or not provoked.
4. **STANDARDS OF CONDUCT IN SPECIAL AREAS (38 C.F.R. § 0.735-12).**
  - a. **Safety**
    - (1) Employees will observe safety instructions, signs, and normal safety practices and precautions, including the use of protective clothing and equipment.
    - (2) Employees shall report each work-connected injury, accident, or disease.
  - b. **Furnishing Testimony.** Employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters. Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be grounds for disciplinary action. Employees, however, will not be required to give testimony against themselves in any matter in which there is an indication that they may be or are involved in a violation of law wherein there is a possibility of self-incrimination.

**5. ADDITIONAL APPLICABLE GOVERNMENTWIDE RULES ON EMPLOYEE CONDUCT (5 C.F.R. Part 735).**

- a. **Gambling (5 C.F.R. § 735.201).** While on Government-owned or leased property or on duty for the Government, all forms of gambling are prohibited, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a number slip or ticket.
- b. **Safeguarding the Examination Process (5 C.F.R. ( 735.202).** An employee shall not engage (for any reason) in teaching, lecturing, or writing for t the preparation of a person or class of persons for an examination of the Office of Personnel Management (OPM) or Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment. Exceptions to this are:
  - (1) If the information upon which the preparation is based has been made available to the general public or will be made available on request, or
  - (2) Such preparation is authorized in writing by the Director of OPM or the Director General of the Foreign Service (or their designees).
- c. **Conduct Prejudicial to the Government (5 C.F.R. § 735.203).** An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government. Employee conduct, on or off the job, which reflects adversely on the Federal Government as the employer, may be grounds for disciplinary action in addition to whatever penalty is prescribed by law.

**6. FEDERAL CRIMINAL CODE PROVISIONS FOCUSED ON EMPLOYEES**

**(18 U.S.C. §§ 201-209).** For information concerning Federal criminal code provisions which focus on employees (bribery, acts affecting personal financial interests, activities of employees in matters against the Government, etc.), see 18 U.S.C. §§ 201-209.

**7. INTERPRETATION, EXEMPTIONS, AND WAIVER GUIDANCE CONCERNING 18 U.S.C. § 208 (Acts affecting a Personal Financial Interest) (5 C.F.R Part 2640).**

18 U.S.C. § 208(a) prohibits employees of the Executive branch from participating in an official capacity in particular matters in which they have a personal financial interest, or in which their spouse or minor child, or certain persons or organizations with which they are affiliated, have a financial interest. However, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics (OGE) may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. 5 C.F.R. §§ 2640.201-206 contain the exemptions for these financial interests which are too remote or inconsequential to affect the integrity of the

services of the employees to which the prohibition applies. 5 C.F.R. §§ 2640.301-304 provide guidance to agencies as to the process for issuing individual waivers by the employee's appointing official.

- 8. SECURITY AND LAW ENFORCEMENT AT FEDERAL AND VA FACILITIES ([38 C.F.R. § 1.218](#))**. For information concerning rules and regulations applied at all property under the charge and control of VA and to all persons entering in or on such property (see 38 C.F.R. § 1.218). This section codifies the rules and regulations promulgated by the Secretary to maintain law and order and protect people and property on Department property. Conduct in violation of the rules and regulations set forth in 38 C.F.R. §§ 1.218(a)(1)-(16) subjects an offender to arrest and removal from the premises. If an offender is found guilty of violating these rules and regulations, an offender is subject to a fine, as stated in 38 C.F.R. §§ 1.218(b)(1)-(45) and may also subject an offender to a term of imprisonment, not exceeding six-months, as may be determined appropriate by a magistrate or judge of the United States District Court. While not located specifically within Human Resources (HR) policy, such issues may be useful in certain circumstances relating to employee responsibilities and conduct. For additional rules relating to conduct while on any Federal property, refer to 41 C.F.R., Chapter 101.

**LEGAL**  
**PART II. ETHICAL CONDUCT**  
**CONTENTS**

<b>PARAGRAPH</b>	<b>PAGE</b>
1. <u>ETHICS FRAMEWORK AND ADVICE</u> .....	II-1
2. <u>OUTSIDE ACTIVITIES AND TITLE 38 EMPLOYEES</u> .....	II-1
3. <u>SPECIAL GOVERNMENT EMPLOYEES AND PROCUREMENT OFFICIALS</u> ...	II-3
4. <u>INITIAL ETHICS ORIENTATION (IEO)</u> .....	II-3
5. <u>POST GOVERNMENT EMPLOYMENT RESTRICTIONS</u> .....	II-3
6. <u>REFERENCES</u> .....	II-4
 <b>APPENDIX</b>	
<u>PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES</u> .....	II-A-1

## PART II. ETHICAL CONDUCT

### 1. ETHICS FRAMEWORK AND ADVICE.

- a. All VA employees are subject to the criminal conflict of interest statutes at Chapter 11 of Title 18, United States Code, and the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635.
- b. The VA Designated Agency Ethics Official (DAEO) and the Office of General Counsel Ethics Specialty Team (EST) maintain ethics expertise and provide ethics counseling to employees, provide ethics training, and manage the agency's financial disclosure program. See VA Directive and Handbook 8002, Financial Disclosure Program. By regulation, employees receive "safe harbor" from administrative discipline if they consult the EST before acting, fully disclose all relevant facts and then follow the advice received from the EST. Employees may contact the EST at any time. Contact information for the EST is found [here](#). The EST also maintains a [website](#) where employees may find summaries of Government ethics law, but to receive "safe harbor" employees must obtain an opinion from the EST, as explained above.
- c. The Office of Government Ethics (OGE) maintains a [website](#) that provides information on, and the text of, the ethics laws, and includes a list of other agencies to contact regarding other applicable laws which do not fall under OGE's jurisdiction, e.g., the Hatch Act (see part III of this handbook). In addition to seeking counseling from an Agency Ethics Official, employees with questions about ethics law may access the OGE website. However, to receive "safe harbor" employees must consult with the EST as previously described in paragraph 1.c. above. The Principles of Ethical Conduct for Government Officers and Employees are listed in Appendix A of this part.

### 2. OUTSIDE ACTIVITIES AND TITLE 38 EMPLOYEES.

- a. The following references are used to implement changes in Veterans Health Administration (VHA) policy regarding outside activities and title 38 employees.
  - (1) [Public Law 104-262](#), the Veterans Health Care Eligibility Reform Act of 1996
  - (2) Title 38 U.S.C. chapters [73](#) & [74](#)
  - (3) Title [18 U.S.C. section 208\(a\)](#)
  - (4) [5 C.F.R. Part 2635](#)
- b. Callback provisions for emergency, disaster, or other patient care needs, require full-time employees appointed under title 38 U.S.C. Chapters 73 and 74 to meet those needs beyond the minimum tour of duty and meet other institutional requirements as prescribed by the Under Secretary for Health. Full-

time physicians, dentists, podiatrists, chiropractors, and optometrists will be continuously subject to call, 24 hours per day, seven days per week. Nurses, nurse anesthetists, physician assistants, and Expanded-Function Dental Auxiliary are subject to callback but entitled to premium pay. Employees will continue to be expected to report for work on time, capable of performing assigned duties without interference or interruption from non-VA employment sources. See [VA Handbook 5007](#), Part V, Chapter 5.

- c. Full-time title 38 employees may provide care for non-VA patients outside their tours of duty. No advance approval to perform outside professional activities will be required. However, due to the call back provisions, employees are to provide management with information on how they can be reached outside their VA tour of duty.
- d. Medical Center Directors are responsible for ensuring that all VHA mission requirements and patient care needs are met. In support of these needs and requirements, title 38 employees are subject to call back and are responsible for ensuring that any outside employment they accept will not conflict with their VA responsibilities. Employees who are unable to meet these responsibilities due to outside commitments, may be subject to disciplinary action.
- e. A Federal criminal statute prohibits 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\(a\)](#); [5 C.F.R. § 2635.402](#)). 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 Governmentwide Standards of Ethical Conduct for Employees of the Executive Branch, distributed to all employees, contains additional restrictions on outside activities. These are found in [5 C.F.R. Part 2635](#).
- f. The DAEO, the EST and facility Directors are responsible for bringing to the attention of all title 38 employees' conflict of interest and employee Standard of Conduct requirements. Although approval of outside professional activities is not required, when facilities are involved in scarce medical specialist contracts, sharing agreements, or affiliation agreements, 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 Service Chiefs, Product Line Managers, and Chiefs of Staff. Each employee involved in an outside contractual relationship, such as an affiliation with a medical school, ensures that no violations of these statutes and standards occur. When contractual

relationships exist, medical center staff may wish to consult with the EST regarding possible conflicts of interest.

- g. Employees should consult their supervisors and facility HR Officers on matters such as patient care responsibilities, call back, call schedules, and tours of duty.

### 3. SPECIAL GOVERNMENT EMPLOYEES AND PROCUREMENT OFFICIALS.

- a. **Special Government Employees.** This term, as defined in [18 U.S.C. § 202\(a\)](#), applies to employees who are retained, designated, appointed, or employed to perform temporary duties, either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days calendar during any consecutive 365-day period. Special Government employees are subject to many of the ethics statutes and to most of the Standards of Ethical Conduct. However, part of some of the statutes and certain Standards do not apply at all to these employees and some impose reduced standards.
- b. **Employees Involved in Procurements, Handling Procurements and/or Administering Contracts.** While subject to the ethics statutes and the Standards, these employees are also subject to [41 U.S.C. § 2103](#). This statute is implemented at [Part 3.104](#) of the Federal Acquisition Regulation and imposes more rigorous standards relating to employment discussions, post-employment activities, and disclosure of procurement-sensitive information. For details, contact the EST.

4. **INITIAL ETHICS ORIENTATION (IEO).** Within 3 months of appointment, all new employees must complete interactive ethics training, online in VA's Talent Management System (TMS) or presented live by facility HR staff as part of new employee orientation. [5 C.F.R. § 2638.304](#). An initial ethics orientation training presentation must address financial conflicts of interest, impartiality, misuse of position, and gifts (5 C.F.R. § 2638.304(e)(1)). Employees must also receive the following written materials (or written instructions for accessing them): a summary of the Standards of Conduct, instructions for contacting the EST, and any other information required by the DAEO. Ethics training assigned to all employees through TMS fulfills this requirement. If live ethics orientation training is provided, it must be reported in TMS.

### 5. POST-GOVERNMENT EMPLOYMENT RESTRICTIONS.

- a. All VA employees are subject to the criminal post-Government employment restrictions at [18 U.S.C. § 207](#), and the post-employment conflict of interest restrictions at [5 C.F.R. Part 2641](#). Employees should seek additional guidance from the EST.
- b. Former employees are permanently banned from representing anyone before the Executive branch or a Federal court in a "particular matter involving specific

parties” in which they “participated personally and substantially” during their Federal employment (18 U.S.C. § 207(a)(1); 5 C.F.R. § 2641.201).

- c. Former employees are banned for two years from representing anyone before the Executive branch or a Federal court in a “particular matter involving specific parties” which they reasonably should have known was pending under their official responsibility within one year prior to their termination of Government employment (18 U.S.C. § 207(a)(2); 5 C.F.R. § 2641.202).
- d. For one year from the date an employee leaves a senior position, the former senior employee may not make any communication or appearance before any officer or employee of VA in connection with any matter on which official action is sought (18 U.S.C. § 207(c); 5 C.F.R. § 2641.204). Senior employees include personnel whose basic pay exceeds 86.5 percent of the rate for level II of the Executive Schedule (EX- II).

## 6. REFERENCES.

- a. [5 C.F.R. Part 2635](#)
- b. [5 C.F.R. Part 2638](#)
- c. [5 C.F.R. Part 2641](#)
- d. [18 U.S.C. § 207](#)
- e. [18 U.S.C. § 208](#)
- f. Executive Order (EO) [12674](#), as amended by EO [12731](#)

**APPENDIX A.**  
**PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT**  
**OFFICERS AND EMPLOYEES**

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities that conflict with official Government duties and responsibilities, including seeking or negotiating for employment.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy their obligations as citizens in good faith, including all financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or disability.

14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law, or the ethical standards set forth in the Standards of Ethical Conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

**LEGAL**  
**PART III. POLITICAL ACTIVITY**  
**CONTENTS**

<b>PARAGRAPH</b>	<b>PAGE</b>
1. <u>BACKGROUND</u> .....	III-1
2. <u>ADVICE</u> .....	III-1
3. <u>POLITICAL ACTIVITY UNDER THE HATCH ACT REFORM AMENDMENTS</u> .....	III-1
4. <u>PENALTIES FOR VIOLATIONS</u> .....	III-2
5. <u>OTHER PROHIBITIONS</u> .....	III-2
6. <u>REFERENCES</u> .....	III-2

**PART III. POLITICAL ACTIVITY**

1. **BACKGROUND.** The Hatch Act ([5 U.S.C. §§ 7321-7326](#)) permits employees outside of the career Senior Executive Service (SES) freedom to engage in partisan political activities. (Permitted and restricted activities for all SES employees are contained in Directive and Handbook 5027, Senior Executive Service.)
2. **ADVICE.** Contact your local HR Office, your local District Counsel’s Office or the EST.
3. **POLITICAL ACTIVITY UNDER THE HATCH ACT REFORM AMENDMENTS.** The following permitted and prohibited activities generally apply to VA employees, except career SES:

<b>May</b> generally be involved in partisan political activities when off-duty.	<b>May not</b> use their official authority or influence to interfere with an election.
<b>May</b> be candidates for public office in nonpartisan elections.	<b>May not</b> solicit, accept, or receive political contributions unless both individuals are members of the same Federal labor or employee organization, the individual solicited is not a subordinate employee, and the solicitation is for a contribution to the organization’s multicandidate political committee.
<b>May</b> contribute money to political organizations.	<b>May not</b> knowingly solicit or discourage the political activity of any person who has business before the agency.
<b>May</b> attend political fundraising functions.	<b>May not</b> engage in political activity while on duty, on Federal premises, in uniform, or using a vehicle owned or leased by the Government.
<b>May</b> attend and be active at political rallies and meetings.	<b>May not</b> display partisan political buttons or posters while on duty or in any Government office.
<b>May</b> join and be an active member of a political party or club.	<b>May not</b> solicit, accept, or receive political contributions from the general public.

<b>May</b> campaign for or against candidates in partisan elections.	<b>May not</b> run for the nomination or as a candidate for public office in a partisan election.
<b>May</b> make campaign speeches for candidates in partisan elections.	<b>May not</b> complete allotment forms for voluntary contributions to Political Action Committees (PAC) at work or on-duty, or personally deliver the completed forms to his or her agency payroll office.
<b>May</b> distribute campaign literature in partisan elections.	<b>May not</b> solicit, accept, or receive individual uncompensated volunteer services from subordinates.
<b>May</b> participate in a political convention as a delegate, alternate, or proxy.	<b>May not</b> participate in partisan political activities, or display partisan political posters or banners, in the office of Federal employee labor organizations, which are located on Federal premises.
<b>May</b> hold office in political parties or clubs.	<b>May not</b> encourage or discourage the political activity of a subordinate.
<b>May</b> voluntarily contribute to a PAC through a voluntary salary allotment in agencies where the agency head permits employees to make such allotments.	

**4. PENALTIES FOR VIOLATIONS (5 U.S.C. § 7326).** Removal, reduction in grade, debarment from Federal employment for a period not to exceed five years, suspension or reprimand, and a civil penalty not to exceed \$1,000.

**5. OTHER PROHIBITIONS.** In addition to amending the Hatch Act, the Reform Amendments:

- a. Make it a crime to intimidate, threaten, command, or coerce a Federal employee to engage in, or not to engage in, any political activity.
- b. Forbid specified individuals from making, transmitting, soliciting, requesting, considering, or accepting political recommendations.

**6. REFERENCES.**

- a. 5 C.F.R. Parts [733](#), [734](#)
- b. [Office of Special Counsel](#)

**LEGAL**  
**PART IV. ANNUAL ETHICS TRAINING**  
**AND REQUIRED ETHICS NOTICES**  
**CONTENTS**

<b>PARAGRAPH</b>	<b>PAGE</b>
1. ANNUAL ETHICS TRAINING.....	IV-1
2. NOTICE TO PROSPECTIVE EMPLOYEES .....	IV-1
3. <u>NOTICE</u> TO NEW SUPERVISORS .....	IV-1
4. OFFICE OF THE <u>CHIEF</u> HUMAN CAPITAL OFFICER REPORTING REQUIREMENT .....	IV-2
5. <u>CONTACT INFORMATION</u> .....	IV-2
 <b>APPENDIX</b>	
A. GOVERNMENT ETHICS NOTICE FOR PROSPECTIVE NEW EMPLOYEES .....	IV-A-1
B. GOVERNMENT ETHICS NOTICE FOR NEW SUPERVISORS .....	IV-B-1

## **PART IV. ANNUAL ETHICS TRAINING AND REQUIRED ETHICS NOTICES**

### **1. ANNUAL ETHICS TRAINING.**

- a. Public financial disclosure report filers. Presidentially appointed, Senate confirmed employees will receive one hour of live training annually. All other SES, Schedule C, non-career SES appointees, and certain title 38 executives are required to receive one hour of live training once every two years from a qualified instructor and interactive training in alternate years. See 5 C.F.R. § 2638.308.
- b. All other employees. All employees who do not file a public financial disclosure report are required to receive one hour of interactive ethics training annually.

**2. NOTICE TO PROSPECTIVE EMPLOYEES.** HR Officers are required to ensure that all tentative offers of employment to prospective VA employees contain a statement of VA's commitment to Government ethics, notice that the employee is subject to the Standards of Conduct and the criminal conflict of interest statutes, information about how to contact agency ethics officials, and notice of the time to complete initial ethics orientation (5 C.F.R. § 2638.303). If the employee is entering a position that requires the employee to file a financial disclosure report, the letter must notify the employee that the report must be filed within 30 calendar days of entering the position. See Appendix A to Part IV of this handbook for suggested language. HR Officers must also ensure that all job opportunity announcements state whether the position requires the filing of a financial disclosure report. For more information on which employees must file a financial disclosure report, see VA Handbook 8002.

**3. NOTICE TO NEW SUPERVISORS.** In accordance with 5 C.F.R. § 2638.306, within one (1) year of an employee's initial appointment to a supervisory position, HR will provide the new supervisor with the following materials (see Appendix B to Part IV of this handbook for suggested language):

- a. Contact information for the Agency Ethics Officials (OGC [EST](#)).
- b. The text of [5 C.F.R. § 2638.103](#) (Government ethics responsibilities of supervisors).
- c. A copy of, or hyperlink to, the Principles of Ethical Conduct, [5 C.F.R. § 2635.101\(b\)](#).

- 4. OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER (OCHCO) REPORTING REQUIREMENT.** By January 15 of each year, the office of the OCHCO shall notify the DAEO that the Department has complied with the notice requirements discussed in paragraphs 2 and 3 above of this part.
  - a. By January 15 annually, OCHCO will submit to the DAEO a written summary of the procedures OCHCO has established to ensure compliance with the notice requirements for new supervisors and prospective employees discussed in paragraphs 2 and 3 above. OCHCO will also provide written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.
  - b. By January 15 annually, OCHCO will submit to the DAEO examples of written offers of employment that comply with the requirements of paragraph 2 above.
  
- 5. CONTACT INFORMATION.** For more information, please contact the Ethics Specialty Team.

## Appendix A

### GOVERNMENT ETHICS NOTICE FOR PROSPECTIVE VA EMPLOYEES

1. VA is committed to an ethical culture. All employees are expected to abide by all Government ethics laws and avoid any actions that raise even the appearance of impropriety.
2. As a VA employee, you will be subject to criminal statutes and Government ethics regulations that ensure that every citizen can have complete confidence in the integrity of VA's operations. If you believe that you will be unable to abide by these laws, you should not accept the offer of VA employment.
3. You will be subject to the bribery and criminal conflict of interest statutes ([18 U.S.C. § 201-209](#)).
4. In general, these statutes prohibit employees from:
  - a. Accepting or soliciting bribes.
  - b. Representing outside entities before the Federal Government.
  - c. Participating in Federal matters that affect their financial interest.
  - d. Communicating with or appearing before the Federal Government, in some situations, after leaving Federal employment.

5. You will also be subject to the Standards of Ethical Conduct for Employees of the Executive Branch ([5 C.F.R. Part 2635](#)). These regulations cover acceptance of gifts from outside sources, misuse of your VA position, impartiality, and outside activities. The impartiality regulations, in particular, may limit your ability to work on VA matters that affect persons such as relatives and entities that you continue to be associated with or were associated within the year prior to your joining VA.
6. All new VA employees must complete initial ethics orientation within three months following their appointment. Your supervisor (or HR office) will provide further orientation instructions after your appointment.
7. If you are required to submit a financial disclosure report, as noted in the announcement for your position, you must do so within 30 calendar days after you begin employment. Your HR office will notify an Office of General Counsel EST paralegal upon your arrival, and the paralegal will provide you with instructions on how to file your report. To ensure timely and accurate processing of your report, please review the guidance provided by the EST paralegal.
8. If you have questions about Government ethics issues, even before you accept your offer of employment, please contact the EST:
  - a. [GovernmentEthics@va.gov](mailto:GovernmentEthics@va.gov) – VA Central Office (Washington, D.C.)
  - b. [OGCNorthAtlanticEthics@va.gov](mailto:OGCNorthAtlanticEthics@va.gov) - CT, DC, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, WV
  - c. [OGCSouthEastEthics@va.gov](mailto:OGCSouthEastEthics@va.gov) - AL, FL, GA, KY, Puerto Rico, SC, TN
  - d. [OGCMidwestEthics@va.gov](mailto:OGCMidwestEthics@va.gov) - IA, IL, IN, KS, MI, MN, MO, NE, ND, OH, SD, WI
  - e. [OGCContinentalEthics@va.gov](mailto:OGCContinentalEthics@va.gov) - AR, CO, LA, MS, MT, OK, TX, UT, WY
  - f. [OGCPacificEthics@va.gov](mailto:OGCPacificEthics@va.gov) - AK, AZ, CA, Guam, HI, ID, NM, NV, OR, Philippines, WA

## APPENDIX B

### GOVERNMENT ETHICS NOTICE FOR NEW SUPERVISORS

1. VA is committed to an ethical culture. All employees are expected to abide by all Government ethics laws and avoid any actions that raise even the appearance of impropriety.
2. Every supervisor in the executive branch has a heightened personal responsibility for advancing Government ethics. Supervisors must serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce Government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.
3. Please review the Principles of Ethical Conduct. 5 C.F.R. § 2635.101.
4. If you or your subordinates have questions about Government ethics issues, please contact the Office of General Counsel's EST:
  - a. [GovernmentEthics@va.gov](mailto:GovernmentEthics@va.gov) – VA Central Office (Washington, D.C.)
  - c. [OGCNorthAtlanticEthics@va.gov](mailto:OGCNorthAtlanticEthics@va.gov) - CT, DC, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, WV
  - d. [OGCSouthEastEthics@va.gov](mailto:OGCSouthEastEthics@va.gov) - AL, FL, GA, KY, Puerto Rico, SC, TN
  - e. [OGCMidwestEthics@va.gov](mailto:OGCMidwestEthics@va.gov) - IA, IL, IN, KS, MI, MN, MO, NE, ND, OH, SD, WI
  - f. [OGCContinentalEthics@va.gov](mailto:OGCContinentalEthics@va.gov) - AR, CO, LA, MS, MT, OK, TX, UT, WY
  - g. [OGCPacificEthics@va.gov](mailto:OGCPacificEthics@va.gov) - AK, AZ, CA, Guam, HI, ID, NM, NV, OR, Philippines, WA

**LEGAL**  
**PART V. EMPLOYMENT OF RELATIVES**  
**CONTENTS**

<b>PARAGRAPH</b>	<b>PAGE</b>
1. <u>COVER</u> A <u>GE</u> .....	V-1
2. <u>DEFINITIONS</u> .....	V-1
3. <u>RESTRICTIONS</u> .....	V-1
4. <u>EXCEPTIONS (TITLE 5)</u> .....	V-2

## PART V. EMPLOYMENT OF RELATIVES

### 1. COVERAGE.

- a. **Statutory.** The restrictions on the employment of relatives applies to all VA employees.
  - (1) [5 U.S.C. §§ 2302](#)(b)(7), [3110](#) for title 5 positions.
  - (2) [5 U.S.C. §§ 2105](#)(f) and [2302](#)(b)(7) for title 38 positions.
- b. **Regulatory.** 5 C.F.R. Part 310 applies to appointment, employment, promotion or advancement in the competitive service and the excepted service in the Executive Branch. VA Handbook 5005, Part II, Chapter 3, Section A, paragraph 3d. extends restrictions in those regulations to title 38 employees.

### 2. DEFINITIONS (5 U.S.C. § 3110).

- a. **Public Official.** An officer, including the President and a Member of Congress, a member of the uniformed services, an employee, or any other individual in whom is vested the authority by law, rule or regulation or to whom the authority has been delegated to appoint, employ, promote or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency.
- b. **Relative.** With respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

### 3. RESTRICTIONS (5 U.S.C. § 3110).

- a. Public officials shall not appoint, employ, promote, advance, advocate or recommend for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which they are serving or over which they exercise jurisdiction or control, any individual who is a relative of the public official. Public officials may not recommend or refer a relative for consideration by a public official standing lower in the chain of command (title 5 and title 38).
- b. Money shall not be paid from the Treasury to an individual appointed, employed, promoted, or advanced in violation of this section (title 5).
- c. Extreme care must be taken to avoid any possibility or likelihood that the nepotism law may be violated in an employment action. Appointing and selecting officials will be guided by the regulations and policy requirements in 5 C.F.R. Part 310. Management officials will take appropriate actions to avoid situations that have the potential for, or appearance of, violating nepotism

requirements. As a minimum, management officials and HR Officers will identify and document those instances in which relatives are employed, or are being considered for employment, in the same organizational element or positions within the same chain of command. These officials will review all proposed personnel actions affecting relatives of employees to assure that there is no violation of merit principles and that the requirements in 5 U.S.C. § 2302 and 5 U.S.C. § 3110 have been met (title 5).

- d. Where relatives are employed, or are being considered for employment, in the same organizational element, or positions within the same chain of command, and are spouses or members of the same household, HR Officers will contact the OGC EST. These situations potentially violate criminal conflict of interest law, 18 U.S.C. § 208.

#### **4. EXCEPTIONS (TITLE 5).**

- a. In the competitive service, preference eligibles may be appointed if their names are within reach for selection from an appropriate certificate of eligibles and no alternative selection can be made from the certificate without passing over the preference eligible for a non-preference eligible.
- b. In an emergency resulting from a natural disaster or similar unforeseen event, OPM may prescribe regulations authorizing the temporary employment of individuals whose employment would otherwise be prohibited.

**LEGAL**

**PART VI. CLAIMS AGAINST THE GOVERNMENT**

**CONTENTS**

<b>PARAGRAPH</b>	<b>PAGE</b>
1. <u>SCOPE</u> .....	VI-1
2. <u>REIMBURSEMENT FOR DAMAGE OR DESTRUCTION OF PERSONAL PROPERTY CAUSED BY A PATIENT</u> .....	VI-1
3. <u>REIMBURSEMENT FOR DAMAGE OR DESTRUCTION OF PERSONAL PROPERTY NOT CAUSED BY A PATIENT</u> .....	VI-2

## PART VI. CLAIMS AGAINST THE GOVERNMENT

1. **SCOPE.** This part applies to monetary claims made against the Federal Government due to damage or loss of personal property.
2. **REIMBURSEMENT FOR DAMAGE OR DESTRUCTION OF PERSONAL PROPERTY CAUSED BY A PATIENT.**
  - a. Employees may claim reimbursement under [38 U.S.C. § 703\(e\)](#), [38 C.F.R. 17.113 - 17.115](#), for their personal property damaged or destroyed by a patient or patient member while the employee was engaged in the performance of official duties. Personal property is normally used in day-to-day employment (e.g., eyeglasses, hearing aids, clothing, etc.), which does not violate VA or field facility policies or regulations.
  - b. The supervisor or appropriate official will inspect the damage or destroyed property, preferably when the incident occurs. All damaged property should be repaired whenever possible, but replacement is allowed when repair is not economically feasible. Reimbursement for repair or replacement will be made only to the employee.
  - c. Claims will be filed on VA Form 4629, *Claim for Reimbursement for Damaged or Destroyed Personal Property*, as soon as practicable after the damage or destruction occurs.
    - (1) The employee who sustains the loss will complete Section I of VA Form 4629, obtain the signatures of witnesses, if any, and submit the claim to the supervisor or other appropriate official.
    - (2) An appropriate official, normally the chief of a service at a medical center or equivalent at other field facilities, will review the claim, obtain any additional information needed and, if possible, determine the feasibility of repair. The official will complete section II of the form and forward the claim to the field facility Director or designee. The field facility Director or designee will approve the claim and forward it for payment or give the reasons for disapproval.
    - (3) A receipt, or a merchant's estimate, for the cost of repair or replacement will accompany the claim. The facility Director may waive this requirement when it is impractical to get a receipt or estimate. The Director will certify that the amount claimed has been verified as fair and reasonable.
  - d. The facility Director where the incident occurs will adjudicate an employee claim. The claimant may be an employee of another VA organizational element, such as a regional office Veterans Benefits Counselor on duty at a medical center.

- 3. REIMBURSEMENT FOR DAMAGE OR DESTRUCTION OF PERSONAL PROPERTY NOT CAUSED BY A PATIENT.** An employee may file a claim under the Military Personnel and Civilian Employee's Claim Act, [31 U.S.C. § 3721](#) ([38 C.F.R. 14.664 - 14.669](#)) to recover not more than \$40,000 due to damage or loss of personal property incident to service. However, a claim of this type generally may not be considered unless it was first filed under 38 U.S.C. § 703(e), 38 C.F.R. 17.115 (see paragraph 2 of this part) and was denied.

**LEGAL**  
**PART VII. EMPLOYEE LIABILITY**  
**CONTENTS**

**PARAGRAPH PAGE**

1. <u>SCOPE</u> .....	VII-1
2. <u>EMPLOYEE LIABILITY</u> .....	VII-1
3. <u>EXCLUSIONS</u> .....	VII 1

## PART VII. EMPLOYEE LIABILITY

1. **SCOPE.** This part applies to claims made against Government employees for injury or death resulting from negligent or wrongful acts or omission.
2. **EMPLOYEE LIABILITY.**
  - a. Title [28 U.S.C. §§ 2671 – 2680](#) provides that a suit against the United States will be the exclusive remedy available to a claimant for injury or death resulting from a negligent or wrongful act or omission of any Government employee while acting within the scope of employment.
  - b. The claimant must file an administrative claim with the Federal agency, which has six months to consider it prior to its approval or denial. The District Counsel should be consulted for further information on this subject.
3. **EXCLUSIONS.**
  - a. Employees who operate motor vehicles or privately-owned vehicles on Government property would not be covered for an accident while driving a Government vehicle, not in the scope of employment, such as deviating from a generally traveled route to perform personal errands. Those employees should consider carrying private liability insurance to cover the situation in which the employee may not be afforded the protection of 28 U.S.C. § 2679, as discussed above.
  - b. If an employee operator of a motor vehicle is injured or killed in the scope of employment, the sole resource against the Government would be limited to the provisions of 5 U.S.C., Chapter 81, *Compensation for Work Injuries*, since that chapter of title 5 is the exclusive remedy against the Government for work-related injuries. See VA Directive 5810, *Managing Workers' Compensation Cases and Costs*.

**LEGAL**

**PART VIII. EMPLOYEE ORGANIZATIONS AND ACTIVITIES**

**CONTENTS**

**PARAGRAPH PAGE**

1. <u>SCOPE</u> .....	VIII-1
2. <u>REFERENCES</u> .....	VIII-1
3. <u>POLICY</u> .....	VIII-1
4. <u>TYPICAL ACTIVITIES</u> .....	VIII-1
5. <u>EMPLOYEE ASSOCIATIONS AND SIMILAR GROUPS</u> .....	VIII-1
6. <u>PROFESSIONAL ASSOCIATIONS AND SIMILAR GROUPS</u> .....	VIII-2
7. <u>MANAGEMENT-EMPLOYEE ASSOCIATION RELATIONSHIPS</u> .....	VIII-2
8. <u>GENERAL LIMITATIONS</u> .....	VIII-2
9. <u>PRIVILEGES AND STANDARDS</u> .....	VIII-3
10. <u>CREDIT UNIONS</u> .....	VIII-4

## PART VIII. EMPLOYEE ORGANIZATIONS AND ACTIVITIES

1. **SCOPE.** This part prescribes policies and instructions concerning employee associations and other employee groups of similar purpose or nature in VA, regardless of the name given the organization. While credit unions come within this category, they are subject to the special provisions of paragraph 10, rather than the other provisions of this part.
2. **REFERENCES.** [12 U.S.C. §§ 1751-1775](#)
3. **POLICY.**
  - a. VA recognizes that voluntary, cooperative activities by employees to meet their mutual needs or interests, serve their common welfare, or make their relationships and employment more pleasant can contribute substantially to a favorable work environment. VA, therefore, looks with favor on such activities and on democratically constituted associations and similar groups voluntarily formed for those purposes. Subject to the provisions of this chapter, an employee association or similar group may engage in any activity in the interest of employees, of the general type of those described in paragraph 4 of this part but not limited to those specifically mentioned therein, that its membership wishes to take up.
  - b. VA officials and employees, in their official capacities, will not represent VA in any activity or function held in a facility that segregates the races or excludes minority group participation.
4. **TYPICAL ACTIVITIES.** Typical of the activities appropriate for an employee association or similar group are athletic, recreational, entertainment, social or cultural activities; employee newspapers; welfare or emergency assistance funds; group insurance other than Government-provided plans; and concessions (such as for vending machines) which they may properly be authorized to operate. These services are treated in more detail elsewhere in this manual.
5. **EMPLOYEE ASSOCIATIONS AND SIMILAR GROUPS.** The typical organization of this nature is composed of or open to all VA employees in a facility. The payment of nominal dues may be a requirement of membership. Normally, this organization is referred to as an employee association, and engages in several activities or is formed for specific or general purposes. Its individual activities may be carried on directly by the association itself or by subordinate groups therein. Groups may be formed for a limited purpose, either in the absence of a typical association or separate from an existing one. This chapter applies to all such groups as well as the typical associations, even though references hereinafter are only to associations.
6. **PROFESSIONAL ASSOCIATIONS AND SIMILAR GROUPS.** Activities appropriate for a professional association or similar group are social, fraternal, or professional activities that may include, but are not limited to, such things as continuing

education, training, and professional development. Activities may *not* include dealings *that assume the character of negotiations* with management over personnel policies, practices, or matters involving conditions of employment where an exclusive bargaining unit exists.

## **7. MANAGEMENT-EMPLOYEE ASSOCIATION RELATIONSHIPS.**

- a. Employee associations and their interests are essentially private matters, and their activities are private. Yet employee associations are composed entirely of VA employees and are closely identified with VA. The relationship between an employee association and local management is therefore a cooperative one, based on mutual recognition of each other's interests, responsibilities, rights, and limitations.
- b. Local management consults with employee associations or employees wishing to start one on their request and makes available advisory assistance on such questions as organization, constitution, bylaws, finance, recreation, and publications. If there is sufficient evidence of employee interest, it is appropriate for management to help start an employee association or activity to meet a clear need. The HR office will usually represent management in dealing with employee associations.
- c. VA gives encouragement, assistance, recognition, and privileges to employee associations because of their services to employees and their benefits to employee welfare and morale. At the same time, certain safeguards are to be observed because VA is affected by the acts of its employees and is concerned with their welfare and morale.

## **8. GENERAL LIMITATIONS.**

- a. The activities of an employee association shall be compatible with applicable laws, regulations, VA and facility policies, and good community relations.
- b. No use may be made of the name, sponsorship, facilities, or activity of VA by or for any employee association or recreational organization practicing discrimination based on race, creed, color, or national origin.
- c. The activities will be not represented, directly or implied, as official activities of VA. The association's name, membership cards, and publicity will be such as to make this clear.
- d. No funds appropriated to VA will be used for any employee association activities.
- e. Restrictions on the use by employees of VA recreational facilities and equipment, given elsewhere in this manual, shall include the use by associations.

- f. Employee associations will not be recognized for the purpose of presenting or considering individual personnel matters, grievances, or appeals (see VA Directive and Handbook 5023, Labor-Management Relations).
- g. Employee associations will not use VA indicia, e.g., VA seal or logo.

## **9. PRIVILEGES AND STANDARDS.**

- a. As long as an association is constituted and operated in accordance with the standards listed below, it will not only be given encouragement and cooperation but will be authorized to:
  - (1) Conduct meetings or activities outside working hours on VA premises in accordance with arrangements with the HR Officer or other appropriate administrative official.
  - (2) Publicize its activities using bulletin boards and by circularizing employees.
  - (3) Exercise such other privileges that will not add any expense to the Government or interfere with the regularly assigned duties of employees or VA's services to Veterans.
  - (4) All employee associations and similar groups (as defined in paragraph 5) shall be afforded access to VA facilities to post notices and conduct appropriate activities on equal bases. Such access shall not be unreasonably withheld.
- b. The standards for an association to be given such privileges are that:
  - (1) It is democratically organized and operated and all employees in the area for which it is established are eligible for membership at their option.
  - (2) It provides full opportunity for all members to elect those who conduct its affairs and that elections are held at sufficiently frequent intervals to permit membership control. In addition, the typical association usually will have a constitution and bylaws.
  - (3) It has a financial audit of its funds made annually by a qualified person or persons not a part of the association management, and furnishes the facility head a copy of the audit report.
  - (4) Full information about it is supplied to its members.
    - (a) If there is a constitution and bylaws, each member will be furnished copies of these documents including all changes. This may be done by periodic publication.
    - (b) Members will be currently informed on its activities.

- (c) An annual and adequate financial report will be prepared and posted on all bulletin boards or otherwise effectively brought to the attention of all members.
  - (5) If there is a constitution and bylaws, copies thereof and changes therein shall be supplied to the installation's HR Officer. Copies of activity and financial reports will also be supplied the HR Officer.
  - (6) The association must recognize that VA has a legitimate concern with its operations and provide local VA management with a reasonable opportunity to discharge its responsibility.
- c. All professional or qualifying employee associations (and similar groups) must be given equal access for use of VA facilities to the extent the access is granted to other professional or qualifying employee associations (and similar groups) at a particular facility.

#### **10. CREDIT UNIONS.**

- a. The credit union is one of the employee organizations looked upon with favor, particularly whenever employees are interested in organizing and operating one. Credit unions are to be chartered either under State law or under the Federal Credit Union Act, 12 U.S.C. §§ 1751-1775. This act is administered by the National Credit Union Administration (NCUA). Advice and assistance with respect to the organization or operation of credit unions may be secured either from the appropriate State agency or from the NCUA.
- b. In accordance with the provisions of 12 U.S.C. § 1770, VA facilities may allot space for the transaction of credit union business. In addition, credit unions may be permitted to:
  - (1) Transact business during working hours, provided there is no interference with the performance of the employees' official duties.
  - (2) Publicize their activities through bulletin boards and by circularizing individual employees.
  - (3) Make incidental use of office equipment.
  - (4) Exercise such other privileges as will not entail any expense to the Government or disruption of the official activities of the office or facility. The HR Officer will usually represent management in dealing with credit unions.

**LEGAL**

**PART IX. LIMITATIONS ON REMUNERATED OUTSIDE PROFESSIONAL  
ACTIVITIES OF INCUMBENTS OF CERTAIN VETERANS HEALTH  
ADMINISTRATION POSITIONS**

**CONTENTS**

PARAGRAPH PAGE

1. <u>SCOPE</u> .....	IX-1
2. <u>BACKGROUND</u> .....	IX-1
3. <u>POLICY</u> .....	IX-2
4. <u>SUSPENSIONS AND WAIVERS</u> .....	IX-4
5. <u>ENROLLMENT IN FEDERAL HEALTH BENEFITS PROGRAM</u> .....	IX-4
6. <u>CERTIFICATION REQUIREMENTS</u> .....	IX-5
7. <u>REFERENCES</u> .....	IX-5

**APPENDICES**

A. <u>SAMPLE CERTIFICATION DESCRIBING A CHIEF OF STAFF'S* (OR OTHER EMPLOYEE IN THE COVERED POSITION'S) RELATIONSHIP WITH AN AFFILIATED INSTITUTION TO RULE OUT CONFLICTS OF INTEREST UNDER THE FEDERAL CRIMINAL CODE</u> .....	IX-A-1
B. <u>CERTIFICATION OF COMPLIANCE</u> .....	IX-B-1

**PART IX. 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 Governmentwide 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 C.F.R. Part 2635 and applied in VHA Handbook 1660.3.
- b. When VHA facilities are involved in scarce medical specialist contracts, sharing agreements, sole source contracting arrangements, Cooperative Research and Development Agreements, affiliation agreements and other particular matters, 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, 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 1660.03](#)).

- c. The policies presented below will enable facility Chiefs of Staff and individuals in other covered positions (listed in 3.a. below) 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 executing all contracting relationships with affiliated institutions.

### **3. POLICY.**

- a. Covered positions. In order to ensure that conflicts of interest do not restrict the senior clinician managers 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, 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 employees in covered positions 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. Employees in covered positions 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 employees in covered positions may have a legitimate need or desire to plan for future employment with affiliated institutions. Therefore, employees in covered positions must notify their supervisors when they seek employment opportunities with an affiliated institution. After proper notification and approval of the supervisor, employees in covered positions 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 consult with the EST before resuming the full performance of their duties.
- e. Employees in covered positions are prohibited from being employees of affiliated institutions (except as provided for in paragraph 3.g. below) 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 employee in the covered position receives no remuneration for holding such a position or having such an arrangement (except pursuant to a recusal as provided in paragraph 3.d. above).
- f. These prohibitions are effective for employees newly appointed to covered positions as of 120 calendar days from the date of their appointment to the covered position.
- g. Employees in covered positions 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 employee in the covered positions and the affiliated institution.

- h. The conflict of interest law (18 U.S.C. § 208) and VHA Handbook 1660.03 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 employees in the covered positions have 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 1400.01](#), which requires that credentialed physicians supervise residents, or [VHA Directive 1400.09\(1\)](#), 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 employee in the covered position 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 employee in the covered positions, 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 employee in the covered position 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 employees in covered positions 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. OPM regulations allow any Federal employee 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 apply to any employee in a covered position who must relinquish health benefits coverage from an affiliated institution due to the requirements in this handbook to enroll in FEHB.

- b. Employees in covered positions can enroll in FEHB coverage from 31 calendar days prior to leaving employment with the affiliate to 60 calendar 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. Employees in covered positions who become subject to the provisions of this part will submit a certification to their supervisor (facility Director, VISN Director, Chief Officer or the Deputy Under Secretary, as appropriate) that they are in full compliance with the provisions of this part within 30 calendar days of becoming subject to these provisions. Employees newly appointed to covered positions will submit this certification to their supervisors within 30 calendar 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 of this part.

## **7. REFERENCES.**

- a. VA Handbook 5025, Legal, Part IV
- b. [VHA Directive 1400.1](#)
- c. [VHA Directive 1660.03](#)
- d. 5 C.F.R. 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 EMPLOYEE IN  
THE COVERED POSITION'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

**APPENDIX B.  
CERTIFICATION OF COMPLIANCE**

I [Click or tap here to enter text.](#) understand as an incumbent of  
the position of [Click or tap here to enter text.](#)

in [Click or tap here to enter text.](#)

I am subject to all of the prohibitions and requirements of VA Handbook 5025, Part IX.

I hereby certify that I have read the provisions of this Part and am fully compliant with its  
provisions as of [Click or tap here to enter text.](#)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date