

MEMORANDUM FOR THE RECORD

Application of Confidential Financial Disclosure Requirement to Statutory VA Directors of VA Nonprofit Corporations

Section 2634.905 of Title 5 of the Code of Federal Regulations provides that when the duties and responsibilities of a Federal employee's position require that employee to participate personally and substantially, through decision or the exercise of significant judgment, in Government actions that involve contracting and procurement or will have a direct and substantial economic effect on the interests of any non-Federal entity, employees holding that position are required to file confidential financial disclosure reports. 5 C.F.R. § 2634.904(a)(1). Additionally, an agency can conclude that the duties and responsibilities of the employee's position require the employee to file a confidential financial disclosure report in order to avoid involvement in a real or apparent conflict of interest and to carry out the purposes behind a statute applicable to that employee. 5 C.F.R. § 2634.904(a)(1)(ii).

VA has authority to establish nonprofit corporations at individual VA medical centers to serve as flexible funding mechanisms to facilitate the medical centers' research and education missions. These nonprofit corporations come in three forms: (1) VA Nonprofit Research Corporations, (2) VA Nonprofit Education Corporations, and (3) VA Nonprofit Research and Education Corporations. 38 U.S.C. § 7361(a). The sole legal purpose of these corporations is to provide a flexible funding mechanism for research and education at the specific VA medical center where they are established. 38 U.S.C. § 7361.

When a VA medical center has established a nonprofit corporation, certain VA employees are, as part of their official VA duties, required to serve on the nonprofit corporation's board of directors. These "Statutory VA Directors" are the medical center's: (1) director, (2) chief of staff, (3) assistant chief of staff for research (not required for VA Nonprofit Education Corporations), and (4) assistant chief of staff for education (not required for VA Nonprofit Research Corporations). If one of these positions does not exist at a particular medical center, the employee who performs the functions of that position serves on the board of directors. 38 U.S.C. § 7363(a).

Although the precise functions of Statutory VA Directors depend on the laws of the state where the medical center is located, they are in a position to exert influence over the decisions and operations of the nonprofit corporation. 38 U.S.C. § 7365. This necessarily involves influence over the management of the nonprofit corporation, including the hiring and compensation of the corporation's employees. See 38 U.S.C. § 7364(a)(2). In addition, it involves decisions about whether to accept gifts from, or enter into contracts with, public and private

entities including private corporations, public and private universities, and other Federal agencies. 38 U.S.C. § 7364(a)(1).

VA nonprofit corporation directors and employees are subject to the same conflicts of interest statutes and regulations as Federal employees. 38 U.S.C. § 7366(c)(1). Based on the Statutory VA Directors' duties, I conclude that their authority over contracting and procurement decisions, as well as the potential of their decisions to have a substantial economic impact on non-Federal entities such as private corporations and universities, require them to file confidential financial disclosure reports. Additionally, I conclude that the filing of such reports is required to avoid real or apparent conflicts of interest and to carry out the purposes of Section 7366 of Title 38, United States Code. 5 C.F.R. § 2634.904(a)(1).

Pursuant to the authority delegated to me by the Secretary to make additions and deletions, as necessary or required by law, to the list of VA positions which require filing of confidential financial disclosure reports, I am adding the positions of "Statutory VA Director, VA Nonprofit Research Corporation," "Statutory VA Director, VA Nonprofit Education Corporation," and "Statutory VA Director, VA Nonprofit Research and Education Corporation," to the list. Individuals who serve in these roles and are not already required to file public financial disclosure reports must file confidential financial disclosure reports.



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