

LEGAL

- 1. REASON FOR ISSUE:** To issue Department of Veterans Affairs (VA) policies regarding various legal topics pertaining to Federal employment.
- 2. SUMMARY OF CONTENT/MAJOR CHANGES:** This directive sets forth policies previously contained in law, Federal regulation, and numerous other issuances. No substantive changes have been made.
- 3. RESPONSIBLE OFFICE:** Office of the Deputy Assistant Secretary for Human Resources and Labor Relations.
- 4. RELATED HANDBOOK:** VA Handbook 5025, "Legal."
- 5. RESCISSIONS:** Refer to the Transmittal Sheet for VA Directive 5001, "General Introduction and Administration."

CERTIFIED BY:

John A. Gauss
Assistant Secretary for
Information and Technology

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

Jacob Lozada, Ph.D.
Assistant Secretary for Human
Resources and Administration

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1. PURPOSE. This directive provides Department-wide policies on various legal issues pertaining to Federal employment, such as the Freedom of Information Act, Privacy Act, employee responsibilities and conduct, ethical conduct, political activity under the Hatch Act, claims against the Government, and employment of relatives.

2. POLICY. Statutes and regulations establish the policies concerning the matters contained in this directive. (See references below.) These policies are summarized in the accompanying handbook for the convenience and ease of reference for the reader. Users should consult the specific references listed for more definitive information.

3. RESPONSIBILITIES

a. The Office of Human Resources Management [and Labor Relations] shall advise management and operating officials on the policies and procedures contained herein.

b. HRM Officers are responsible for advising facility directors on the policies and procedures contained herein.

c. Additional responsibilities are specified in individual parts of the accompanying handbook.

4. REFERENCES

a. 5 United States Code (U.S.C.) 522, 552, 3110, 7321-7326

b. 18 U.S.C. 201-209

c. 28 U.S.C. 2671-2680

d. 31 U.S.C. 3721

e. 38 U.S.C. 703, 2201, 3301(f), 4132

f. 41 U.S.C. 423

g. 5 Code of Federal Regulations (CFR) 293, 294, 297, 310, 735, 2634, 2635, 2636, 2638, 2640

h. 38 CFR 0.735, 1.218, 1.500, 1.550-1.559, 1.576, 14.664-14.669, 17.115

i. 41 CFR 101

j. Executive Orders 12674 and 12731

k. VA Directive and Handbook 6300.3, Procedures for Processing Request for Records Subject to the Privacy Act

- l. VA Directive and Handbook 6300.4, Procedures for Implementing the Freedom of Information Act
- m. VHA Handbook 1660.3
- n. Public Law 93-579, Privacy Act of 1974
- o. Public Law 104-262, Veterans Health Care Eligibility Reform Act of 1996
- p. Public Law 95-521, Ethics in Government Act of 1978
- q. W-1, Part 11, Chapter 21
- r. MP-6, Part V, Supplement No. 1.5
- s. Office of Personnel Management (OPM) Operating Manual – The Guide to Personnel Recordkeeping

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- 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 convenience and ease of reference for the reader. 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. No substantive changes have been made.
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PART I. FREEDOM OF INFORMATION ACT (FOIA)

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PART I. FREEDOM OF INFORMATION ACT (FOIA)

1. SCOPE. This part applies to the release of information from personnel records in the custody of VA under the Freedom of Information Act (FOIA).

2. GENERAL PROVISIONS. Within the guidelines set forth in 5 CFR 294, VA will honor requests for information from title 5 personnel records established and maintained under OPM regulations and instructions. These records are outlined in 5 CFR 293 and the OPM Operating Manual - The Guide to Personnel Recordkeeping. Title 38 personnel records will be released in accordance with VA regulations and policies. Field facility heads will, in each instance, assure that the release of information from personnel records meets the criteria above.

3. REFERENCES

- a. 5 U.S.C. 552a Privacy Act
- b. 5 CFR 293 Personnel Records
- c. 5 CFR 294 Availability of Official Information
- d. 38 CFR 1.550-.557 Release of information from VA Records other than Claimant Records
- e. VA Directive and Handbook 6300.3 Procedures for Implementing the Freedom of Information Act
- f. VA Directive and Handbook 6300.4 Procedures for Processing Requests for Records Subject to the Privacy Act
- g. OPM Operating Manual - The Guide to Personnel Recordkeeping

4. RESPONDING TO REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

a. **General.** Requests for information from personnel records will be considered to have been made under the Freedom of Information Act (FOIA) whether or not they are so identified by the requester. Requests from individuals for access to records retrieved by their name or social security number from a "system of records" will also be processed under the Privacy Act (part II of this handbook). Requests from individuals for information pertaining to them which is contained in other than a "system of records" (e.g., merit promotion files) will be processed as a FOIA request. All requests will be processed in accordance with VA Directive 6300.3, Procedures for Implementing the Freedom of Information Act.

b. **Annual Report.** All denials for information from records maintained by VA will be made a matter of record and will be included in the facility's "Annual Report of Compliance with the Freedom of Information Act". Reports Control Number (RCN) 72-0408 is assigned to this report.

c. **Fees.** Charges for information, if any, will be determined based on 5 U.S.C. 552, 5 CFR 294 or 38 CFR 1.555. The office releasing the records is responsible for assessing, collecting and depositing fees. Payment may be made by check or money order made payable to the Department of Veterans Affairs. Payments must be deposited with the Agent Cashier. The office depositing the check must make sure that the payment is identified as a FOIA payment.

5. REQUESTS FOR CERTAIN INFORMATION FROM PERSONNEL RECORDS. 5 CFR 293 permits the release of the following information without written consent: name, present and past position titles and occupational series; present and past grades; present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials); present and past duty stations (includes room numbers, shop designations, or other identifying information regarding buildings or places of employment); and position descriptions, identification of job elements and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

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PART II. PRIVACY ACT
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PART II. PRIVACY ACT

1. SCOPE. This part contains the policy, procedures and instructions applicable to the protection of individual privacy in personnel records maintained or owned by the Department of Veterans Affairs (VA). The procedures contained in this part are applicable only to records maintained in a "systems of records" as defined in 5 U.S.C 552a(a).

2. GENERAL PROVISIONS. Officials who establish or maintain personnel records covered by this part are responsible for meeting the requirements of 5 U.S.C. 552a.

3. REFERENCES

- a. 5 U.S.C. 552a, as amended.
- b. 42 U.S.C. 290dd-2 and 342(a).
- c. 5 CFR, parts 293 and 297.
- d. 36 CFR Chapter XII, Subchapter B
- e. 38 CFR 1.550-1.582.
- f. 42 C.F.R. Part 2
- g. General Records Schedule 1.
- h. Office of Management and Budget Circular A-130, Management of Federal Information Resources.
- i. Office of Personnel Management (OPM) Guide to Personnel Recordkeeping.
- j. Memorandum of Understanding Among the U.S. Office of Personnel Management, National Archives and Records Administration, and the Department of Veterans Affairs, concerning certain personnel records and files.
- k. MP-6, part V, Supplement No. 1.5, chapter 2.
- l. VA Directive and Handbook 6210, AIS Security and Procedures
- m. VA Directive 6300, Records and Information Management.
- n. VA Handbook 6300.4, Procedures for Processing Requests for Records Subject to the Privacy Act.
- o. VA Handbook 6300.5, Procedures for Establishing and Managing Privacy Act Systems of Records.
- p. VA Handbook 6300.7, Procedures for Computer Matching Programs.

- q. VA Handbook 6300.1, Records Management Procedures.
- r. Records Control Schedule 10-1, General and Administrative Records.
- s. Records Control Schedule VB-1, Part I, Section V, Personnel.
- t. VHA Handbook 1100.18, Reporting and Responding to State Licensing Boards.

4. DEFINITIONS

a. **Personnel Record.** Any record concerning an individual that is maintained and used in the personnel management or the personnel policy-setting process.

b. **Other Definitions.** The definitions in 5 U.S.C. 552a(a) shall be used for the purposes of this part, except that an “individual” also includes alien applicants and employees lawfully permitted to temporarily work in the United States.

c. **Responsible Official.** The Federal official or contractor who is responsible for the maintenance of records covered by this part.

NOTE: *Uncirculated personal notes, papers and records which are created, retained, or discarded at a supervisor's discretion, which are seen by no one else, and over which the agency exercises no control or dominion are not considered agency records within the meaning of the Privacy Act. When any of these notes, papers or records are used to justify a personnel action, they are then to be included in an appropriate system of records, subject to the provisions of this par., subject to applicable legal restrictions.*

5. SAFEGUARDING PERSONNEL RECORDS

a. **Responsibility.** The individual responsible for maintaining the record shall be responsible for providing protection and accountability and for ensuring completeness, relevancy, accuracy and timeliness of records, including automated records and reports, maintained by that office. The responsible official will assure that employees who have access to information protected by the Privacy Act and other confidentiality laws receive appropriate training in safeguarding personal privacy. The field facility Director, the HRM officer and operating officials are responsible for ensuring the same degree of protection, accountability, accuracy and timeliness for personnel records maintained in operating offices. Records in operating offices are maintained in accordance with the provisions of MP-6, part V, supplement No. 1.5, chapter 2.

b. Physical Security

(1) **Paper, Microfilm and Microfiche Records.** Personnel records may be maintained or stored only where facilities or conditions are adequate to prevent unauthorized access. Whenever personnel records are not under the personal control of an authorized individual they will be stored in a locked metal filing cabinet or secured in a storage system of equivalent or greater physical security. VA Form

4520, Personnel Folder Charge Card, may be used in place of the record whenever it is removed from the file. The charge out card will reflect the date the record was removed and the individual to whom it was released. Personnel records include any reports, lists and forms that contain information on employees that is protected by the Privacy Act. This policy also applies to personnel records maintained in operating offices.

(2) **Electronic Records.** Access to data by means of on-line (query) or download is restricted to authorized employees by means of unique user identification and passwords. These codes are mailed in a sealed envelope to an employee's business address and may be opened only by the addressed employee. User identifications and passwords are only given to employees who are authorized access. The security requirements, including 36 CFR 1234.28, are applicable to electronic records covered by this part.

6. MAINTENANCE AND USES OF PERSONNEL RECORDS

a. **Maintenance of Personnel Records.** No personnel record shall be maintained in a record system other than those systems for which notices have been published in the Federal Register. Those systems relating to employee personnel records are listed below. For information related to the contents of the system of records see the applicable system of records notice, which is published in the Federal Register.

(1) OPM Government-Wide Systems of Records

- (a) General Personnel Records (OPM/GOVT-1).
- (b) Employee Performance File System Records (OPM/GOVT-2).
- (c) Records of Adverse Actions and Actions Based on Unacceptable Performance (OPM/GOVT-3).
- (d) Recruiting, Examining and Placement Records (OPM/GOVT-5).
- (e) Personnel Research and Test Validation Records (OPM/GOVT-6).
- (f) Applicant Race, Sex, National Origin, and Disability Status Records (OPM/GOVT-7).
- (g) File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals (OPM/GOVT-9).
- (h) Employee Medical File System Records (OPM/GOVT-10).

(2) Office of Government Ethics Government-Wide Systems of Records

- (a) Executive Branch Public Financial Disclosure Reports and Other Ethics Programs Records (OGE/GOVT-1).
- (b) Confidential Statements of Employment and Financial Interests (OGE/GOVT-2).

(3) **Department of Labor Government-Wide Systems of Records.** Office of Workers' Compensation Programs , Federal Employees' Compensation File (DOL/GOVT-1).

(4) **GSA Systems of Records**

(a) Employment Under Commercial Activities Contracts (GSA/GOVT-2)

(b) Travel Charge Card Program (GSA/GOVT-3)

(c) Contracted Travel Services Programs (GSA/GOVT-4)

(5) **EEOC Systems of Records.** Equal Employment Opportunity Complaint Records and Appeal Records (EEOC/GOVT-1)

(6) **FEMA Systems of Records.** Uniform Identification Systems for Federal Employees Performing Essential Duties During Emergencies (FEMA/GOVT-1)

(7) **VA Systems of Records**

(a) Applicants for Employment Under title 38, United States Code (02VA135).

(b) Employee Medical File System Records (title 38)-VA (08VA05).

(c) Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.,-VA (11VA51).

(d) Individuals Serving on a Fee Basis or Without Compensation (Consultant, Attendings, Others) Personnel Records-VA (14VA135).

(e) Personnel and Accounting Pay System-VA (27VA047).

(f) Employee Unfair Labor Practice Charges and Complaints, Negotiated Agreement Grievances and Arbitrations-VA (09VA05).

(g) Grievance Records-VA (63VA05).

(h) VA Employee Counseling Services Program Records-VA (68VA05).

(i) General Personnel Records (title 38)-VA (76VA05).

(j) Health Care Provider Credentialing and Privileging Records-VA (77VA12).

(k) Decentralized Hospital Computer Program (DHCP) Medical Management Records-VA (79VA162).

(l) Workers' Compensation/Occupational Safety and Health Management Information System–VA (86VA058).

(m) Professional Standards Board Action and Proficiency Rating Folder (title 38)–VA (101VA05).

(n) Agency-Initiated Personnel Actions (title 38)–VA (102VA05).

(o) Health Professional Scholarship Program –VA (73VA14)

(p) Disaster Emergency Medical Personnel System (DEMPS)-VA (98VA104)

b. **Uses of Information.** Individuals who are asked to provide information protected by the Privacy Act will be informed of the authority which authorizes the solicitation, the reasons for requesting the information, how it may be used, the possible disclosures that VA will make of this information and what the effects, if any, of not providing the information will be.

c. **Disposal Procedures.** The disposal and destruction of personnel records shall be in accordance with existing Government-wide and VA disposal schedules.

7. RELEASE OF PERSONNEL FOLDERS. Persons authorized access to personnel folders shall be informed that the information contained in the folders is for official use and must be kept confidential. Individuals having custody of the personnel folders will assure that folders are released only to authorized persons. These procedures are outlined in 5 CFR 294 and supplemented by VA Directive and Handbook 6300.4 Procedures for Implementing the Freedom of Information Act.

8. ACCESS TO RECORDS

a. **General.** Access to personnel records is limited to:

(1) **VA Officials.** VA employees who have a need for the record in the performance of their official duties may access the record.

(2) **Record Subject.** The individual to whom the personnel record pertains or the individual's personal representative designated in writing may access the record.

(3) **Other Federal Officials.** OPM and General Accounting Office officials, in the performance of their official duties and presenting appropriate identification, may have access to personnel information and records. The method of transmission and receipt of such information should safeguard its confidential nature and protect its security.

PART II

NOTE: *If another individual accompanies the individual to whom the record pertains, the individual to whom the record pertains must furnish a written statement authorizing discussion of the record in the accompanying individual's presence. The VA Form 5571, Authorization To Disclose a Record in the Presence of a Third Party, may be used for this purpose.*

b. **Employee's Access to Records.** An employee or an employee's representative, designated in writing, may have access to his or her personnel records, as specified in 5 CFR, part 297, 38 CFR, part 1, 29 CFR subtitle A, sections 70a.1-70a.13, or as indicated in the applicable system of records. Access will be granted in the presence of a human resources office employee. The employee may have a copy made of all or any portion of the record. If the employee's representative is granted access, he or she may have a copy made of any or all documents that he or she has been authorized to see by the employee.

c. **Former Employee's Access to Records.** If a personnel record has been retired to the National Personnel Records Center (Civilian), former employee are to be advised to contact the National Personnel Records Center (NPRC), 111 Winnebago Street, St. Louis, Missouri 63118, regarding their records. Individuals must furnish a signed request with the following information so their records can be located and their request responded to: full name(s), current mailing address, date of birth, social security number, last employing agency (including duty facility, when applicable), and approximate dates of employment.

d. **Identification.** Reasonable identification of individuals requesting access, consistent with the nature of the record being disclosed, shall be required.

e. **Denial of Access.** If an individual's request for access is denied, it will be denied in writing and the individual will be advised of his or her opportunity to appeal the determination and of the procedures for appeal. Appeals are to be filed under the applicable regulations governing the system of records.

(1) **Records Under OPM Jurisdiction.** Those records and files required by 5 CFR 293, including personnel folders, are maintained by VA, but are under the control of the Office of Personnel Management. When information contained in these records cannot be released, the requester will be informed of the specific reason, citing the applicable CFR or U.S.C. reference. The requester will also be advised that the information being sought comes under the control of the OPM and that the denial may be appealed within 10 workdays to the Office of the General Counsel, Office of Personnel Management, Washington, DC 20415.

(2) **Other Personnel Records.** Other personnel records, such as VHA professional standards board action folders, etc., are under VA control. If a request for information from such records is denied, the requester will be told the reason for the denial, citing the applicable VA regulation which prohibits the release, and of the right to appeal the denial to the Office of General Counsel (024), Department of Veterans Affairs, 810 Vermont Street, NW., Washington, D.C. 20420.

9. REQUESTS FOR CORRECTION OR AMENDMENT. An employee who believes the contents of a record pertaining to him or her to be inaccurate, irrelevant, untimely or incomplete may request a correction or amendment of the record under the regulations or procedures that apply to the applicable system of records. Requests are submitted as follows:

- a. **VA Records.** For records in VA systems of records, requests are submitted in accordance with 38 CFR 1.579 and 1.580.
- b. **OPM Records.** Requests to amend OPM records are processed under 5 CFR, part 297, subpart C.
- c. **Office of Workers' Compensation Program (OWCP) Records.** Requests to amend records concerning OWCP matters, must be submitted under the Department of Labor's Privacy Act regulations, 29 CFR subtitle A, sections 70a.1-70a.13.
- d. **Office of Government Ethics (OGE) Records.** Information about contesting OGE records is contained in the applicable system of records notice. (OGE/GOVT-1 and OGE/GOVT-2)

10. DISCLOSURE OF PERSONNEL RECORDS

a. **Policy.** No information from personnel records may be released outside VA except where permitted by law and as approved by officials responsible for maintaining the record or their designees.

b. Written Consent

(1) Except as provided in paragraph (2) below, the express written consent of the individual to whom the personnel record pertains will be obtained before any information protected by the Privacy Act may be disclosed. FL 70-21, Request for Individual's Consent To Disclose Records, may be used to request consent.

(2) As authorized by 5 U.S.C. 552a(b), information may be disclosed without the employee's consent provided the disclosure would be:

- (a) To VA officers and employees who have a need for the record in the performance of their duties;
- (b) Required under the Freedom of Information Act (5 U.S.C. 552);
- (c) For a routine use listed in the applicable Federal Register system of records notice;
- (d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13, U.S.C.;
- (e) To a recipient who has provided VA with adequate written assurance that the records will be used solely as a statistical or research reporting record, and the record is transferred in a form that is not individually identifiable;
- (f) To the National Archives and Records Administration;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the records specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual;

(i) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

NOTE: *This provision does not authorize VA to release records to individual members of Congress who are engaged in constituent service, even if they are on a committee which oversees VA. These releases require the employee's consent and are to be accounted for as specified in paragraph c below.*

(j) To the Comptroller General, or any authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to an order of a court of competent jurisdiction; and

NOTE: *The "court" must be part of a Federal or state judicial branch of government, not a part of either the executive or legislative branches. An "order" must also be signed by a court official with the power to enforce the order, e.g., with the power ultimately to impose contempt sanctions. If the court official must go to some other entity to enforce the order, e.g., to a Federal district court judge, the order does not qualify for the purposes of the Privacy Act. An order signed by an administrative law judge or a state board does not qualify as a court order. Subpoenas are not court orders unless signed by a judge or some other official who has the inherent power to enforce the order with the intent that they be treated like an order. In addition, the order must specifically require VA to produce the records. Orders giving VA permission to file records if it chooses to do not qualify as a court order for the purposes of this provision. Also, when VA produces the record pursuant to a court order, it must mail notice of the disclosure to the last known address of the subject of the record, unless the individual is present in court when the records are produced.*

(l) To a consumer reporting agency pursuant to 31 U.S.C. 3711(e).

(3) Additional restrictions also apply to the disclosure of information concerning substance abuse or mental health, as well as information concerning the identity of certain medical research subjects. See 42 U.S.C. 290dd-2 and 242(a).

c. **Accounting for Disclosures.** A written accounting will be maintained for all disclosures of personnel records except for official use within VA, or if required by the Freedom of Information Act. VA Form 70-5572, Accounting of Records/Information Disclosure Under Privacy Act, may be used for this purpose. The accounting shall include the date, nature and purpose of each disclosure, and the name and address of the person to whom the disclosure was made. The accounting will be retained for the life of the record or for 5 years after the disclosure was made, whichever is longer. The forms will be filed alphabetically within each calendar year if the record does not change custody. However, if the record may change custody, the disclosure is filed as a permanent document in the record and separate statistical data must be kept to meet the reporting requirements of the Biennial Privacy Act Report. Examples of records that change custody include the Official Personnel Folder, Merged Records Personnel Folder, Employee Medical Folder, Employee Performance Folder, Competency Folder, Credentialing and Privileging Folder, and OWCP Folder. Records of disclosure will be made available to the employee, upon request, except for disclosures for law enforcement purposes under 5 U.S.C. 522a(b)(7).

d. **State Licensing Boards.** It is VHA policy to cooperate with a State licensing board officially inquiring into the professional performance history of currently employed and former VA employees who are under the jurisdiction of that State board. Moreover, it is also VHA policy to notify a State licensing board of jurisdiction that a currently employed or separated health care employee whose behavior or clinical practice so substantially failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients, in accordance with VHA Handbook 1100.18.

11. FEES. VA will provide a copy of a record free of charge to an individual. Normally, this is accomplished when the record is created (e.g., SF's 50-B, letters of reprimand, SF's 2809, grievance and complaint files, etc.). Requests from individuals for copies of records not previously furnished will be provided free of charge. Fees may be assessed for additional copies of records previously furnished to individuals in accordance with 38 CFR 1.577(f).

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PART III. EMPLOYEE RESPONSIBILITIES AND CONDUCT

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PART III. EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. SCOPE. This part applies to all VA employees, including special government employees defined in 5 CFR 2635 and 2636. Additional conduct rules (limited to particular groups of employees) and other ethical guidance appear elsewhere in this and other parts of the 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 conduct regulations and policies so that the highest possible standards of honesty, integrity, impartiality, and ethical behavior are maintained in the Department.

3. RELATIONSHIP WITH BENEFICIARIES AND CLAIMANTS (38 CFR 0.735). 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 CFR 0.735)**a. Safety**

(1) Employees will observe safety instructions, signs, and normal safety practices and precautions, including the use of protective clothing and equipment.

(2) An employee shall report each work-connected injury, accident or disease he or she suffers.

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. An employee, however, will not be required to give testimony against himself or herself in any matter in which there is indication that he or she may be or in involved in a violation of law wherein there is a possibility of self-incrimination.

5. ADDITIONAL APPLICABLE GOVERNMENT-WIDE RULES ON EMPLOYEE CONDUCT (5 CFR 735)

a. **Gambling (§735.201).** Although all forms of gambling are prohibited, promoting betting or acting as an agent for gamblers are considered especially serious offenses.

b. **Safeguarding the Examination Process (§735.202).** An employee shall not engage (for any reason) in teaching, lecturing, or writing for the purpose of 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 (§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 CFR 2640). 18 U.S.C. 208(a) prohibits officers or 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 certain persons or organizations with which they are affiliated have a financial interest. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. 5 CFR 2640 describes in part these financial interests which are too remote or inconsequential to affect the integrity of the services of the employees to which the prohibition applies. In these circumstances, the appointing official may issue a waiver of the conflict law. 5 CFR 2640 also provides guidance to agencies on the factors to consider when issuing these individual waivers.

8. SECURITY AND LAW ENFORCEMENT AT FEDERAL AND VA FACILITIES (38 CFR 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 CFR 1.218. This section deals with VA Police and Security issues such as conformity with signs and emergency conditions, disturbances, gambling, alcoholic beverages and narcotics, solicitation, sexual misconduct, etc. Such issues, while not located specifically within HRM policy 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 CFR 101.

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PART IV. ETHICAL CONDUCT

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PART IV. 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 Executive Branch Standards of Conduct at 5 C.F.R. Part 2635.

b. VA Regional Counsels and General Counsel (023) maintain ethics expertise and provide ethics counseling services. By regulation, employees consulting these ethics counselors receive a guarantee that they will not be disciplined for conforming to the advice of these ethics counselors. Employees are encouraged to contact their respective Regional Counsels, and those at Central Office should contact the Assistant General Counsel for Professional Staff Group III (023) who serves as the Designated Agency Ethics Official. A [VA ethics website](#) is maintained by the Office of the General Counsel.

c. The U.S. Office of Government Ethics (OGE) maintains a [website](#) that provides information on, and the text of, the aforementioned 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 V of this handbook.) In addition to seeking counseling, employees concerned about whether certain conduct will implicate these laws may thus access the [OGE website](#). The fourteen principles of ethical conduct for Federal 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); and

(4) 5 CFR Section 2635.

b. Call Back provisions including call back for emergency, disaster, or other patient care needs require full-time employees appointed under title 38 U.S.C., chapter 73 and 74 to be able 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, 7 days per week. Nurses, nurse anesthetists, physician assistants, and Expanded-Function Dental Auxiliary (EFDAs) are subject to call back, 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.

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 CFR 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 Government-wide 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 CFR 2635.

f. The Designated Agency Ethics Official (Assistant General Counsel) (023), Regional Counsels, and medical center 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 no longer 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 is responsible for ensuring that no violations of these statutes and standards occur. When contractual relationships exist, medical center staff may wish to consult with the appropriate Regional Counsel or Office of the General Counsel (023) regarding possible conflicts of interest.

g. Employees should consult their supervisors and facility Human Resources Manager 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 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.** These employees, while subject to the ethics statutes and the Standards, are also subject to 41 U.S.C. 423. 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 ethics unit at the Regional Counsels Office or at the Office of the General Counsel in Washington, DC.

4. ETHICS ORIENTATION. All new employees are required to be given a minimum of one hour to review the Standards of Ethical Conduct for Employees of the Executive Branch. 5 CFR 2638.703 The Office of Human Resources and Administration provides a copy of the Standards of Ethical Conduct for Employees of the Executive Branch to all new employees.

5. [POST-GOVERNMENT EMPLOYMENT RESTRICTIONS]

a. All VA employees are subject to the criminal post-Government employment restrictions at section 207 of title 18, United States Code, and the post-employment conflict of interest restrictions at 5 CFR part 2641. Former employees who terminated service before January 1, 1991, are subject to different post-Government employment rules and regulations, and thus, they should seek additional guidance from their local Regional Counsel Office or Office of General Counsel.

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 CFR § 2641.201) Former employees also 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 CFR § 2641.202)

c. For a period of 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 CFR § 2641.204) Senior employees include personnel whose basic pay exceeds 86.5 percent of the rate for level II of the Executive Schedule (EL II).

6.] REFERENCES

- a. 5 CFR 2635
- b. [18 U.S.C. § 207
- c.] Executive Order (EO) 12674, as amended by EO 12731

APPENDIX A.
FOURTEEN PRINCIPLES OF ETHICAL CONDUCT FOR FEDERAL 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 shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, 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 handicap.
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.

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PART V. POLITICAL ACTIVITY

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PART V. POLITICAL ACTIVITY

1. BACKGROUND. 5 U.S.C. 7321 through 7326 permits employees outside of the career Senior Executive Service (SES) and Board of Contract Appeal Judges 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. For telephone numbers of the nearest Regional Counsel Office, contact your local Human Resources Management Office or Office of General Counsel, Washington, DC.

3. POLITICAL ACTIVITY UNDER THE HATCH ACT REFORM AMENDMENTS. The following permitted and prohibited activities generally apply to VA employees, except career SES and the Board of Contract Appeals judges:

May generally be involved in partisan political activities when off-duty.	May not use their official authority or influence to interfere with an election.
May be candidates for public office in nonpartisan elections.	May not 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.
May contribute money to political organizations.	May not knowingly solicit or discourage the political activity of any person who has business before the agency.
May attend political fundraising functions.	May not engage in political activity while on duty, on Federal premises, in uniform, or using a vehicle owned or leased by the government.
May attend and be active at political rallies and meetings.	May not display partisan political buttons or posters while on duty or in any government office.
May join and be an active member of a political party or club.	May not solicit, accept, or receive political contributions from the general public.
May campaign for or against candidates in partisan elections.	May not run for the nomination or as a candidate for public office in a partisan election.
May make campaign speeches for candidates in partisan elections.	May not complete allotment forms for voluntary contributions to PACs at work or on-duty, or personally deliver the completed forms to his or her agency payroll office.
May distribute campaign literature in partisan elections.	May not solicit, accept, or receive individual uncompensated volunteer services from subordinates.

<p>May participate in a political convention as a delegate, alternate, or proxy.</p>	<p>May not 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.</p>
<p>May hold office in political parties or clubs.</p>	
<p>May voluntarily contribute to a PAC through a voluntary salary allotment in agencies where the agency head permits employees to make such allotments.</p>	

4. PENALTIES FOR VIOLATIONS (5 U.S.C. 7326). Removal, unless the Merit System Protection Board determines by unanimous vote to mitigate the penalty to suspension without pay for not less than 30 days.

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 CFR, parts 733, 734
- b. [OSC website](#)

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PART VI. FINANCIAL DISCLOSURE

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PART VI. FINANCIAL DISCLOSURE AND ETHICS TRAINING

1. BACKGROUND. One component of the Department's ethics program is the financial disclosure program. There are two financial disclosure programs, public and confidential [required by the Ethics in Government Act of 1978, as amended (Pub.L. 95-521)]. Financial disclosure statements required for researchers are not covered under the Act and the requirements for submitting a Research Financial Conflict of Interest Statement are not outlined in this handbook].

2. PUBLIC

a. **Who is a Filer.** [Public filers include:

(1) Employees whose positions are classified above GS-15. See 5 CFR 2634.202(c).

(2) Employees, whose rate of basic pay is fixed, other than under the General Schedule (i.e. title 38 employees), at a rate equal to or greater than 120 percent of the minimum rate of basic pay for GS-15. See 5 CFR 2634.202(c). In most instances, the rate of basic pay used for the purpose of this determination is the Step 1 equivalent, exclusive of locality pay. For title 38 physicians and dentists, the rate of basic pay used for this determination is the Step1 rate on the Physician and Dentist Base and Longevity Pay Schedule.

(3) Employees who are appointed as administrative law judges pursuant to 5 U.S.C. 3105. See 5 CFR 2634.202(d).

(4) Employees who are in a position which is excepted from the competitive service by reason of being of a confidential or policy-making character (i.e. Schedule C employees). See 5 CFR 2634.202(e).]

b. **When to File.** The Ethics in Government Act of 1978, as amended (Pub.L. No. 95-521) requires that public filers file Public Financial Disclosure Reports [(SF 278) as follows]:

(1) [A "new entrant" report] within 30 days after appointment to a public filer position,

(2) [An "incumbent" report] annually, before May 15, while occupying a public filer position, and

(3) [A "terminee" report] within 30 days after leaving a public filer position.

[(4) Employees appointed on November 1st through December 31st file a new entrant report but do not need to file an incumbent report the following year. Employees appointed on January 1st through October 31st will still need to file an incumbent report no later than May of the following year, in addition to the new entrant report.

(5) Employees who leave a public filer position in another Executive Branch Federal agency within 30 days prior to appointment to VA do not file a new entrant report. See 5 CFR 2634.201(b)(2)(i). Human Resources staff should notify the Office of General Counsel (023C) of the appointment and

request the new employee to provide a copy of his last incumbent report filed at the former agency to the Office of General Counsel (023C).

(6) Public filers do not need to fill out a terminee report if, within 30 of separating from VA, the employee transfers to another covered position with another Executive Branch Federal agency. Notify the Office of General Counsel (023C) that the employee will transfer to another covered position at a different Federal agency so the Office of General Counsel can update its records and provide the gaining agency a copy of the filer's previous SF 278.

(7) Public filers that will separate from the covered position on January 1st through May 14th need only file a terminee report. They do not have to file an incumbent report for that year. The rules permit employees combine the incumbent and terminee reports if the employee will separate from the covered position after May 15 but before August 13. Employees should contact Office of General Counsel (023C) to request the required extension necessary to file a combination report.]

[c.] **Where to File.** Completed [original SF 278] reports must be filed directly with the DAEO in the Office of General Counsel (023C) for review and approval. [Reports are considered filed when received by the Office of General Counsel (023C).] The address is Office of the General Counsel (023C), 810 Vermont Avenue, NW, Washington, D.C. 20420. The DAEO (023), the Assistant General Counsel for Professional Staff Group III[, or his designee] in the Central Office, can grant extensions. Failure to file the report in a timely manner results in a \$200 fine.

3. CONFIDENTIAL

a. **Who is a Filer.** The determination as to [which employee must file] a confidential financial disclosure report is [based on the duties of his or her position]. (See 5 CFR 2634.904.) The Department has determined which positions are confidential filing positions. The DAEO, the Assistant General Counsel (023), has the authority to maintain and amend the listing. A copy of the position listing can be obtained from the DAEO's office or from a Regional Counsel's Office.

b. **When to File.** The Ethics in Government Act of 1978, as amended (Pub.L. No. 95-521) requires that [] employees [in designated positions] file Confidential Financial Disclosure Reports [(OGE Form 450) as follows]:

(1) [A "new entrant" report] within 30 days after assuming a designated position and

(2) [An "annual" report every year], no later than October [31], while occupying a designated position.

(3) Employees appointed to designated positions on August 2nd through September 30th file a new entrant report but do not need to file an annual report in October of the year of appointment. They will file an annual report in October of the following year. Employees appointed on October 1st through August 1st will still need to file an annual report in October, in addition to the new entrant report.

(4) Employees that transfer from another executive branch Federal agency from a public or confidential filer position within 30 days of appointment to VA, do not file a new entrant report. See 5 CFR 2634.903(b)(2)(i). Notify the Office of General Counsel (023C) of the appointment and request the new employee to provide a copy of his last annual report to the Office of General Counsel (023C).

(5) Employees who retire or otherwise leave VA before the October 31st due date are not required to complete a confidential disclosure report. Employees that will retire or leave VA after the October 31st due date, however, are required to complete a confidential disclosure report if they worked over 60 days in the designated filing position during the fiscal year. See 5 CFR 2634.903(a).]

c. **What to File.** Certain [confidential] “filers,” may substitute a shorter “[Confidential Certificate of] No New Interests [], [OGE Optional] Form 450A” [form] instead of the [long] form []. The short form may not be used [by new entrant filers or by annual filers] for more than three consecutive years. Filers should contact either the DAEO’s office or a Regional Counsel’s office for clarification of the proper form to file.

d. **Where to File.** [] Central Office [and Resident Engineer filers must submit completed original] confidential financial disclosure reports [] to the Office of General Counsel (023C). In the field, all confidential financial disclosure reports [] are submitted to Regional Counsel within the appropriate jurisdiction. [Reports are considered filed when received by the appropriate office.]

4. ETHICS TRAINING. Public financial disclosure filers, i.e., SES, Schedule C, noncareer SES appointees and [certain] title 38 executives are required to receive one hour of [“verbal”] ethics training each year by a qualified [instructor]. [See] 5 CFR 2638. [The training regulation requires that all confidential filers receive annual ethics training. Unlike the public financial disclosure filers, the confidential financial disclosure filers require “verbal” training only once every three calendar years and may receive written briefings for the other two years. See 5 CFR 2638.705.] Regional Counsel [ethics staffs] conduct training for [public and confidential filers] in the field; the DAEO’s ethics staff in Central Office conducts training for [public and confidential filers in] Central Office []. [Facilities may require their employees to receive additional ethics training and may request ethics attorneys as presenters or secure videos or other materials for that purpose.]

5. NEW EMPLOYEE ORIENTATION. [Within 90 days from the time an employee begins working for VA,] Human Resources Management Service provides new employees a minimum of one hour to review a copy of the Standards of Ethical Conduct for Employees of the Executive Branch pursuant to 5 CFR 2638.703. The Standards are available on the [VA ethics website](#).

6. CONTACT INFORMATION. For more information, Human Resources Management Service staff or other VA employees may contact their Regional Counsel or the DAEO.

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PART VII. EMPLOYMENT OF RELATIVES

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PART VII. 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 CFR, 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 as pay 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 CFR, part 310. Management officials will take appropriate actions to avoid situations which have the potential for, or appearance of, being in violation of nepotism requirements. As a minimum, management officials and HRM Officers will identify and document those instances in which relatives are employed, or are being considered for employment, in the same organizational element or in 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 contained in 5 U.S.C. 2302 and 5 U.S.C. 3110 have been met. (title 5)

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 the event of an emergency resulting from a natural disaster or similar unforeseen event, the Office of Personnel Management may prescribe regulations authorizing the temporary employment of individuals whose employment would otherwise be prohibited.

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PART VIII. CLAIMS AGAINST THE GOVERNMENT

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PART VIII. 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 CFR 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 that 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 at the time 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 Director of the facility 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 CFR 14.664 through 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 CFR 17.115 (see par. 2 of this part), and was denied.

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PART IX. EMPLOYEE LIABILITY

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PART IX. 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 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 6 months to consider it prior to its approval or denial. The Regional 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 in order 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 exclusive remedy against the Government for work-related injuries. See VA Directive 5810, Managing Workers' Compensation Cases and Costs.

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PART X. EMPLOYEE ORGANIZATIONS AND ACTIVITIES

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PART X. 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 9, 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, to serve their common welfare, or to make their relationships and their 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 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 which is held in a facility which 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 an installation. 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-ASSOCIATION RELATIONSHIPS

a. Employee associations and their interests are essentially private matters and their activities are private activities. Yet associations are composed entirely of VA employees and are closely identified with VA. The relationship between an 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 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 association or activity to meet a clear need. The human resources office will usually represent management in dealing with 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.)

[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 Human Resources Officer or other appropriate administrative official:

(2) Publicize its activities by the use of bulletin boards and by circularizing employees.

(3) Exercise such other privileges which will not add any expense to the Government or interfere with the regularly assigned duties of employees or with 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 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 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 will either be 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 of changes therein shall be supplied the installation's human resources office. Copies of activity and financial reports will also be supplied the human resources office.

(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. 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 National Credit Union Administration.

b. In accordance with the provisions of 12 U.S.C. 1770, VA installations may allot space for the transaction of credit union business. In addition, credit unions may be permitted (1) to transact business during working hours, provided there is no interference with the performance of the employees' official duties; (2) to publicize their activities through the use of bulletin boards and by circularizing individual employees; (3) to make incidental use of office equipment; and (4) to 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 human resources management office will usually represent management in dealing with credit unions.

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

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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]

