

**Developing Public-Private Partnerships with, and Accepting Gifts to VA from,  
Non-Governmental Organizations**

**1. REASON FOR ISSUE.** To establish the Department of Veterans Affairs (VA) policy on how to develop and maintain responsible and productive public-private partnerships with non-governmental organizations (NGO).

**2. SUMMARY OF CONTENTS/MAJOR CHANGES.** This directive sets forth policy, roles, and responsibilities for developing, maintaining and establishing public-private partnerships with NGOs. Compliance with this directive will apply to newly formed public-private partnerships with NGO partners, whether they are new partners or existing partners, beginning fiscal year 2016.

**3. RESPONSIBLE OFFICE.** Office of the Secretary (00).

**4. RELATED HANDBOOK.** For additional guidance on engaging in public-private partnerships see the August 12, 2013, memorandum from the Secretary entitled "Guidance for Engaging in Public-Private Partnerships with Non-Governmental Organizations."

**5. RESCISSION.** None.

**CERTIFIED BY:**

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

/s/

Stephen W. Warren  
Executive in Charge and  
Chief Information Officer  
Office of Information and Technology

/s/

Robert A. McDonald  
Secretary of Veterans Affairs

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## Developing Public-Private Partnerships with, and Accepting Gifts to VA from, Non-Governmental Organizations

### 1. PURPOSE.

- a. This directive establishes the Department of Veterans Affairs (VA) policy on how to develop and maintain responsible and productive public-private partnerships (P3s) with non-governmental organizations (NGOs). In addition, this directive supplements related statutes, regulations and other VA policies; and applies to VA accepting gifts. VA has a number of authorities, including title 38 United States Code (U.S.C.) §§ 513, 523, and 6306 to enter into P3s. Section 523 of title 38, U.S.C., authorizes VA to develop P3s with NGOs to achieve the effective coordination of the provision of VA benefits and services (and information about those benefits and services) with appropriate programs (and information about those programs) conducted by NGOs. VA is also authorized to accept gifts under a number of statutory authorities, as shown in Attachment A.
- b. This directive does not supersede the law as set forth in statutes and regulations, nor does it preclude Administrations and Staff Offices from developing consistent and relevant policy in the future. As such, the following P3 activities are excluded from coverage by this directive: VA contracts; provider agreements; grants and cooperative agreements; affiliation and disbursement agreements; leases and licenses; and arrangements with employee organizations, academic affiliates, and individuals acting on their own behalf that do not represent an NGO. For these excluded activities, please contact the applicable office based on the activity involved.

### 2. POLICY.

- a. **General.** To meet large scale and complex challenges requiring cross-sector solutions and collaboration, VA engages in P3s that leverage the full range of our Nation's talent, ingenuity, and commitment to action. It is VA's policy to develop and maintain responsible and productive P3s with NGOs. These P3s not only further the Department's mission and priorities, but also build capacity and create platforms for sharing resources to better serve Veterans, their families, caregivers, survivors, and other beneficiaries. As such, VA strongly encourages VA staff to foster current P3s and engage in new P3 opportunities when and where appropriate while following VA's core values of Integrity, Commitment, Advocacy, Respect, and Excellence.
- b. **Definition and Scope.** A "public-private partnership" or P3 is a voluntary, collaborative, working relationship between VA and one or more NGOs in which the goals, structures, governance, and roles and responsibilities are mutually determined to deliver the best possible services. P3s provide the capacity to achieve what may not otherwise be achieved by VA alone. Effective P3s draw together different organizations with complementary and reinforcing strengths,

allowing each partner to focus on its central capacities and assets to produce outcomes with greater impact than may be achieved independently by a single organization.

- c. **Gift or Donation.** For the purposes of this directive, a gift or donation is any property, item, service, or funds given voluntarily to the VA from an individual or organization without the expectation of compensation or privileged access in return.
- d. **Suitability.** VA staff should first consider the value a P3 would create. Possible reasons for pursuing P3s include, but are not limited to, the following:
  - (1) They advance a shared objective;
  - (2) They enhance impact through resource sharing;
  - (3) They improve programmatic reputation/visibility; and
  - (4) They achieve mutual programmatic goals.

VA staff should be able to show that the Department would be more effective if it works through a P3 for a specified purpose or task, and that associated VA resources, such as staff time, would serve VA's mission.

- e. **Avoiding Privileged Access.** In order to avoid any suggestion or appearance of privileged access, all communication or interaction between VA and NGOs must be consistent with established ethics principles that prohibit endorsement and preferential treatment. See 5 Code of Federal Regulations (C.F.R.) §§ 2635.101(b)(8) (no preferential treatment), 2635.702(c) (no official endorsements), and 2635.702 (no use of public office for private gain).
- f. **Due Diligence.** Appropriate VA staff will conduct due diligence prior to entering into a new P3 with one or more NGO(s) to ensure a responsible and productive P3. While each Administration and Staff Office may determine the appropriate level of due diligence based on available staffing, resources, and level of partnership, appropriate VA staff will consider the factors below for new partnerships by reviewing publicly available information (Note: unfavorable responses to the factors listed below do not automatically prohibit VA from entering into a partnership, but the factors must be considered):
  - (1) Whether the potential partner can demonstrate programmatic effectiveness through measurable outcomes and impact;
  - (2) Whether there are allegations that the potential partner is exploiting or misrepresenting Veterans, their families, or any others;

(3) Whether the P3 would result in any conflicts of interest, or the appearance thereof;

(4) Whether the potential partner's materials and other communications appear accurate, truthful, and not misleading;

(5) Whether the potential partner is a party to any pending legal action brought by or against a government agency (international, Federal, state, local); and

(6) Whether the potential partner is currently complying with all applicable laws, statutes, and regulations, as well as complying with their industry's standards and practices with regard to business operations and programmatic services in a manner appropriate to the organization's size and scale of operations. For example:

- a. Programmatically, the NGO uses appropriate and effective therapeutic practices; is properly registered or certified to deliver services; and uses all appropriate safeguards to protect Veteran data.
- b. Operationally, the NGO is a properly registered organization with all appropriate government agencies; and a nonprofit organization spends at least 50 percent of its total expenses on its programs and/or services.

(7) Ongoing Review.

- a. If during the course of a partnership VA staff members involved with the partnership discover, or are made aware that an NGO partner may not be operating within the scope of the initial approval, VA staff will meet with the NGO partner to discuss the breach of agreement. Discussions should include steps for both parties to fulfill the responsibilities outlined in the agreement. A determination will be made by VA as to whether the partnership will continue.
- b. If during the course of a partnership VA staff members discover, or are made aware that an NGO is not operating in a responsible and productive manner, VA staff will determine whether the partnership should continue, should be suspended pending additional information, or should be terminated. Irresponsible behavior could include activities as outlined under paragraph f. (1) to (6).

(8) As noted above, the acceptance of gifts and donations does not alone constitute a formal partnership (e.g., gifts from employee organizations, academic affiliates, and individual persons acting on their own behalf). Nevertheless, each VA office will exercise the same due diligence when engaging with NGOs in this regard, and consider factors stated in this directive. Similarly, other activities may not be considered formal partnerships, but it is the responsibility of VA officials to exercise good judgment and thorough vetting when participating in activities such as:

- a. Collaborating on a one-time outreach activity;
  - b. Serving as a Subject Matter Expert (SME) on a panel;
  - c. Attending a meeting; or
  - d. Serving as a speaker for a program or event.
- g. Approval.** Following the recommending office's assessment of the vetting information, the office's Under Secretary, Assistant Secretary, Key Official, or designee will give final approval of the VA partnership with the NGO prior to entering into the partnership.
- h. Mechanisms.** P3 activities which are not specifically provided for under statutory or regulatory language, or for which established VA policy does not exist (see Section 1 for a list of excluded activities) should be developed through a non-binding documented mechanism, in consultation with the VA Office of General Counsel (OGC). Options include a written agreement, such as a memorandum of understanding (MoU), memorandum of agreement (MoA), letter of intent (LoI), or letter of agreement (LoA). These documents should include:
- (1) Legal name and address of each partner;
  - (2) Purpose of the P3;
  - (3) Goals of the P3;
  - (4) Roles and responsibilities of each partner;
  - (5) At least one point of contact within each partnering organization;
  - (6) Clause that the P3 is non-binding;
  - (7) Amendment, termination, and limitations;
  - (8) Plan for evaluating performance metrics, impact, or efficacy of the P3;
  - (9) Annual review to determine (1) if the partnership is still needed, (2) if the goals are being achieved, (3) if expectations are being met, and (4) if the roles and responsibilities of each partner are being fulfilled; and
  - (10) Duration.
- i. Documentation.** Each Administration or Staff Office will ensure that there is a record-keeping mechanism for the purposes of recording and reporting information related to P3s. Information recorded will include at a minimum:

- (1) NGO name;
- (2) Contact information (NGO and VA);
- (3) Level of due diligence performed and date;
- (4) Description of the partnership's intent or goals;
- (5) MoU / MoA / Lol / LoA date (if applicable);
- (6) Status (active / inactive); and
- (7) Significant activity.

### 3. RESPONSIBILITIES.

**a. Secretary of Veterans Affairs.** The Secretary of VA, or designee(s), will:

- (1) Support the goals of this directive;
- (2) Provide advice and assistance to Administrations and Staff Offices on P3 activities; and
- (3) Review this directive every three years to identify information that is obsolete or needs to be updated.

**b. Under Secretaries, Assistant Secretaries, and Other Key Officials.** Under Secretaries, Assistant Secretaries, and Other Key Officials, or their designees, will:

- (1) In consultation with the Office of the Secretary, implement the policy set forth in this directive by developing consistent internal Administration and Staff Office policy and procedures;
- (2) Ensure wide dissemination of this directive and any available P3 trainings and resources;
- (3) Ensure systems, processes, and procedures are in place to document, track, monitor, and report P3 information, status, and activity;
- (4) Respond to VA data calls to provide information needed for Department-level reports on P3s; and
- (5) Designate at least one point of contact within their organization to respond to internal requests pertaining to P3s via a data call from the Office of the Secretary (OSVA).

**c. Office of the General Counsel.** The Office of the General Counsel (OGC) will:

- (1) Provide legal advice and guidance on P3s;
- (2) Review the mechanisms used to enter into P3s within 10 business days of submission to OGC; and
- (3) Answer questions regarding potential conflicts of interest and ethics laws, rules, and regulations.

**d. Office of Public and Intergovernmental Affairs.** The Office of Public and Intergovernmental Affairs (OPIA) will:

- (1) Provide consultation and training for activities utilizing social media and website platforms; and
- (2) Coordinate internal and external media support for OSVA-level P3 events.

#### **4. REFERENCES.**

- a.** 38 U.S.C. §§ 513, 523, 6306.
- b.** Guidance for Engaging in Public-Private Partnerships with Non-Governmental Organizations (VAIQ 7381698).
- c.** President's Memorandum on Transparency and Open Government.
- d.** National Security Staff Memorandum on Building Partnerships Best Practices Guide.

#### **5. DEFINITIONS.**

**a. Administration.** A generic term used to identify one of the three major VA operational elements:

- (1) Veterans Health Administration (VHA);
- (2) Veterans Benefits Administration (VBA); and
- (3) National Cemetery Administration (NCA).

When VHA, VBA, and NCA are referred to as a group, the term "Administrations" may be used.



- b. Department.** A generic reference to the entire Department of Veterans Affairs, which includes VA Central Office and all field facilities.
- c. Due Diligence.** The research and analysis of an organization prior to entering into a partnership that involves evaluating the risks and benefits of the potential partnership.
- d. Non-binding, documented mechanism.** A written agreement, which includes a memorandum of understanding, memorandum of agreement, letter of intent, or letter of agreement.
- e. Non-governmental Organization (NGO).** Any private, or commercial entity other than a Government agency (Federal, state, local, tribal), including but not limited to corporations, nonprofit organizations or associations, and international and multinational organizations.
- f. Office of General Counsel.** Includes all offices supervised by the General Counsel including VA Regional Counsel offices.
- g. Public-Private Partnerships (P3s).** A voluntary, collaborative, working relationship between VA and one or more NGOs in which the goals, structures, governance, and roles and responsibilities are mutually determined to deliver the best possible services.
- h. Staff Office.** A generic term used to identify one of the offices included under VA Central Office. This does not refer to VHA, VBA, and NCA, nor does it refer to medical facilities, regional offices, or cemeteries.
- i. VA Staff.** Includes any and all VA staff members who actively engage in researching, developing, managing, overseeing, or participating in a P3.



Gift Authorities

| Authority  | References  |
|--|---|
| Authority for the Secretary to accept gifts, for use in carrying out all laws administered by VA. Delegated to certain VA officials.   | 38 U.S.C. §§ 8301-8305; 31 USC 1321(a)(45), (b); VHA Directive and Handbook 4721; Delegation Memo of 9/10/2005; Delegation Memo of 3/7/2011; OGC Handbook Chapter 27; VA Financial Policy and Procedures, Vol. II, Chapter 7D |
| Authority for the Secretary to accept gifts of land, interests in land, or facilities for use as medical facilities.   | 38 U.S.C. § 8103(a)(1)-(2), OGC Handbook Chapter 27, VHA Handbook 4721.   |
| Authority for the Secretary to accept gifts for building, acquiring, and operating medical facilities.   | 38 U.S.C. § 8104(e), OGC Handbook Chapter 27, VHA Handbook 4721.  |
| Authority for the Secretary to accept gifts of funds and other assistance to support VA's assistance to Veterans service organizations in providing recreational activities to further the rehabilitation of disabled veterans.                                  | 38 U.S.C. § 521(b), see Delegation Memo of 3/7/2011   |
| Authority for the Director of the Office of National Veterans Sports Programs and Special Events to seek sponsorships and donations from the private sector to defray costs of carrying out the responsibilities of the Director to the maximum extent feasible. | 38 U.S.C. § 322(b)(5), see Delegation Memo of 3/7/2011  |
| Authority for the Secretary to accept gifts of uncompensated services, i.e., volunteers.   | 38 U.S.C. § 513   |
| Authority for the Secretary to accept gifts of land for national cemeteries. Authority for the Secretary to accept gifts for the purpose of beautifying national cemeteries.   | 38 U.S.C. § 2406 and 38 U.S.C. § 2407   |
| Authority for the Secretary to accept gifts of merchandise, fixtures, equipment, and supplies for the use and benefit of the Veterans' Canteen Service.  | 38 U.S.C. § 7802(h)   |
| Authority for agencies to accept gifts of payment for travel, subsistence, and related expenses with respect to attendance of the employee (and the spouse of such employee) at any meeting or similar function relating to the official duties of the employee. | 31 U.S.C. § 1353, 41 C.F.R. §§ 304-1.1 through 9.7.   |
| Authority for Government employees to accept gifts of contributions and awards incident to training in non-Government facilities and payment of travel, subsistence, and other expenses incident to attendance at meetings from certain nonprofit organizations. | 5 U.S.C. § 4111   |
| Authority for the Secretary to authorize establishment of nonprofit corporations to provide a flexible funding mechanism for the conduct of approved research and education.   | 38 U.S.C. §§ 7361-7366  |
| Authority for the Secretary to obtain by gift any automobile, motor vehicle, or other conveyance deemed necessary to provide special driver training courses.  | 38 U.S.C. § 3903(e)(3)  |