THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

January 8, 2016

The Honorable Jeff Miller
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In accordance with the requirements of title 38, United States Code, section 7366(d), enclosed is the Department of Veterans Affairs (VA) report on Nonprofit Research and Education Corporations, as well as the required statement of cost for preparing the report.

VA is grateful for your continuing support of Veterans and appreciates your efforts to pass legislation enabling VA to provide Veterans with the high-quality care they have earned and deserve. As the Department focuses on ways to help provide access to health care in your district or state and across the country, we have identified a number of necessary legislative items that require action by Congress in order to best serve Veterans.

Flexible budget authority would allow VA to avoid artificial restrictions that impede our delivery of care and benefits to Veterans. Currently, there are over 70 line items in VA's budget that dedicate funds to a specific purpose without adequate flexibility to provide the best service to Veterans. These include limitations within the same general areas, such as health care funds that cannot be spent on health care needs and funding that can be used for only one type of Care in the Community program, but not others. These restrictions limit the ability of VA to deliver Veterans with care and benefits based on demand, rather than specific funding lines.

VA also requests your support for the Purchased Health Care Streamlining and Modernization Act. This legislation would allow VA to contract with providers on an individual basis in the community outside of Federal Acquisition Regulations, without forcing providers to meet excessive compliance burdens. Already, we have seen certain nursing homes not renew their agreements with VA because of these burdens, requiring Veterans to find new facilities for residence. VA further requests your support for our efforts to recruit and retain the very best clinical professionals. These include, for example, flexibility for the Federal work period requirement, which is not consistent with private sector medicine, and special pay authority to help VA recruit and retain the best talent possible to lead our hospitals and health care networks.

This report has also been sent to other leaders of the House and Senate Committees on Veterans' Affairs.

Sincerely,

Robert A. McDonald

Enclosures

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

January 8, 2016

The Honorable Corrine Brown
Ranking Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Brown:

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Robert A. McDonald

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THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

January 8, 2016

The Honorable Johnny Isakson
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the requirements of title 38, United States Code, section 7366(d), enclosed is the Department of Veterans Affairs (VA) report on Nonprofit Research and Education Corporations, as well as the required statement of cost for preparing the report.

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Robert A. McDonald

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THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

January 8, 2016

The Honorable Richard Blumenthal
Ranking Member
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Senator Blumenthal:

In accordance with the requirements of title 38, United States Code, section 7366(d), enclosed is the Department of Veterans Affairs (VA) report on Nonprofit Research and Education Corporations, as well as the required statement of cost for preparing the report.

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Sincerely,

Robert A. McDonald

Enclosures

DEPARTMENT OF VETERANS AFFAIRS (VA)

Nonprofit Research and Education Corporations (NPC)

2014 Annual Report

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I. BACKGROUND

In 1988, Congress passed Public Law (P.L.) 100-322 [now codified at sections 7361-66 of title 38, United States Code (U.S.C.)], which permitted the Secretary of the Department of Veterans Affairs (VA) to authorize the establishment of Nonprofit Research and Education Corporations (NPCs) at VA medical centers (VAMCs). This laid the foundation for creation of unique partnerships to conduct VA-approved research. P.L. 100-322 allowed the establishment of private, state-chartered, nonprofit entities to provide flexible funding mechanisms for the administration of funds, other than those appropriated to VA, for the conduct of VA-approved research.

II. NPCs' ROLE IN SUPPORT OF VA RESEARCH AND EDUCATION

In 1999, Congress expanded the NPCs' authority to include support for VA's education and training missions. The fundamental purpose of NPCs is to serve Veterans by supporting VA research and education in order to improve the quality of care that Veterans receive.

Beyond administering research projects and education activities, NPCs support a variety of VA research infrastructure and administrative expenses. They have provided seed and bridge funding for investigators, staffed animal care facilities, funded recruitment of clinician researchers, paid for research administrative and compliance personnel, supported staff and training for institutional review boards, and much more.

III. NPC LOCATIONS

VAMCs throughout the country have long recognized the benefit of establishing NPCs to help support the conduct of VA-approved research and education activities. During 2014, there were 83 NPCs located in 44 states, Puerto Rico, and the District of Columbia. All of the NPCs filed annual reports. NPCs in Huntington, West Virginia, and New Orleans, Louisiana reported little or no financial activity this fiscal year. During 2014, there were 76 research and education NPCs and 7 research-only NPCs. As shown in the table below, the NPCs vary greatly in size:

Revenues Range	# of NPCs (2014)	# of NPCs (2013)	# of NPCs (2012)	# of NPCs (2011)	# of NPCs (2010)	# of NPCs (2009)
Below $500K	29 (36%)	27 (33%)	32 (41%)	25 (32%)	29 (35%)	29 (35%)
$500K- $1M	12 (14%)	15 (18%)	10 (11%)	13 (16%)	14 (17%)	13 (16%)
$1M- $ 10M	35 (42%)	34 (41%)	33 (41%)	34 (43%)	34 (40%)	32 (39%)
$10M & Above	7 (8%)	7 (8%)	6 (7%)	7 (9%)	7 (8%)	8 (10%)
Total NPCs	83	83	81	79	84	82

NOTE: Inactive NPCs not included in 2011 through 2013

IV. ANNUAL REPORTING

Under title 38, U.S.C., section 7366(b), NPCs must submit to the Secretary of VA a detailed statement of their operations, activities and accomplishments during the previous year.

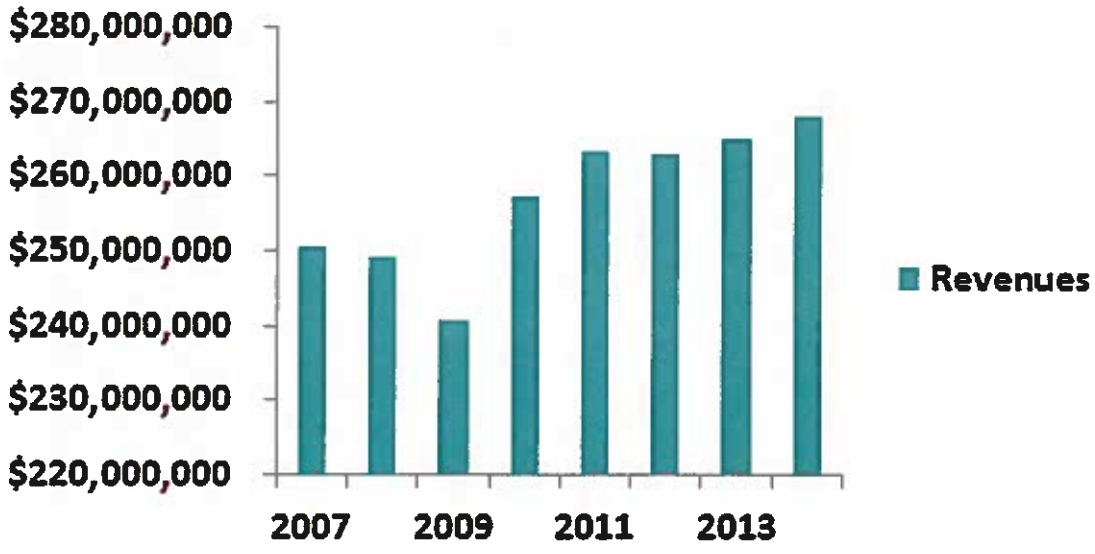
Veterans Health Administration (VHA) *Handbook 1200.17, VA Nonprofit Research and Education Corporations Authorized by Title 38 U.S.C., Sections 7361 through 7366,* dated December 8, 2010, requires each NPC to submit an Annual Report to VA's Chief Research and Development Officer on or before June 1 of each year. VA's Nonprofit Program Office (NPPO), located in VHA Office of Research and Development (ORD), reviews the NPC Annual Reports and is responsible for summarizing the information for NPC Annual Report to Congress. The information submitted by NPCs consists of, but is not limited to, IRS Form 990 – *Return of Organizations Exempt from Income Tax*, audited financial statements, auditor's management letter (if applicable), and related revenue and expense information.

V. FINANCIAL REPORTING

Revenues

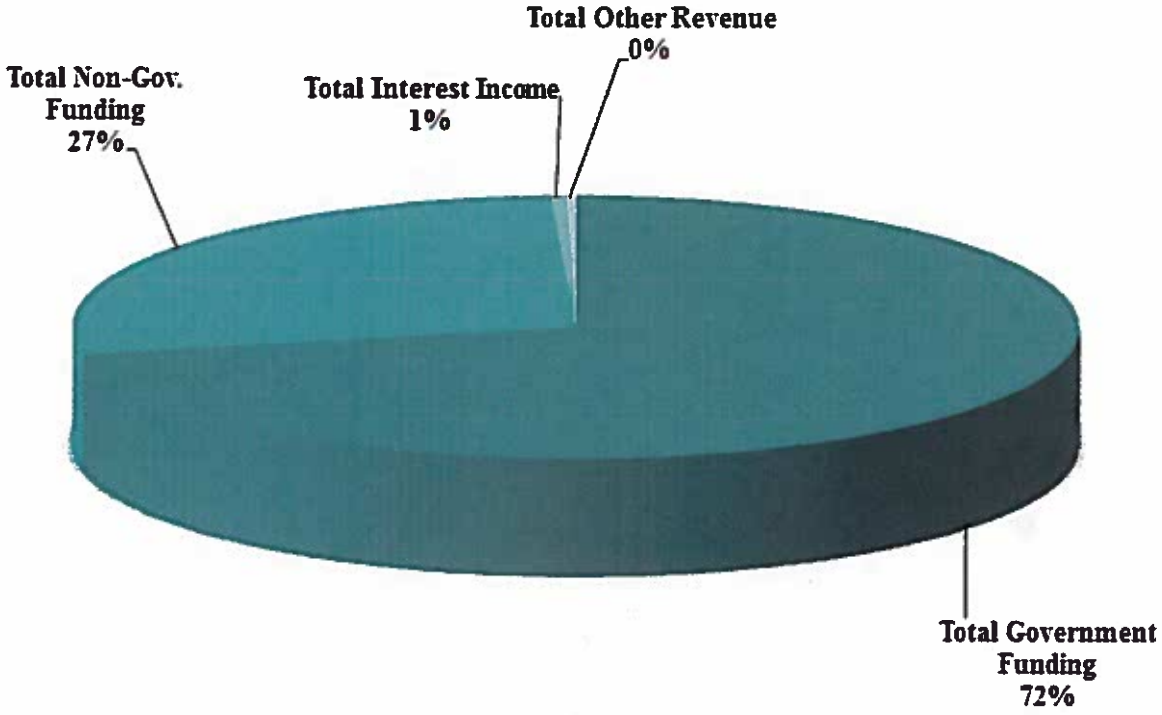
In June 2015, NPCs reported **$267,999,051** total revenues during the 2014 reporting period including interest income and other miscellaneous receipts. This represents a one percent increase in NPC revenues over the previous year. From 2000 to 2007, total NPC revenue trended up. In 2008 and 2009, revenues decreased. Revenues increased substantially in 2010 and 2011, were flat for 2012, but increased in 2013 and 2014. Forty-five NPCs reported an increase in overall revenues in 2014 compared to 47 in 2013. For 2014, 36 NPCs experienced declines in revenues.

NPC Annual Revenues – 2007 to 2014



Under the title 38 statutory reporting requirements, NPCs are required to report research and education revenues and expenditures separately. In addition, they must report revenues based on governmental or non-governmental (private) funding sources. Ninety-eight percent of total revenue was received in support of research, while one percent was received in support of education. The remaining one percent was received from other sources such as interest income.

2014 NPC Revenues by Funding Source



As in the previous year, revenue from governmental research and education sources comprised the largest component of funding received by NPCs (approximately 72 percent). In 2014 governmental funding increased to $192 million, or by $4.2 million (two percent), from $187.8 million in 2013.

Revenue from non-governmental sources decreased by one percent from the 2013 amount of $74.9 million to $73.8 million for 2014. Other revenue sources (e.g. interest income) was nearly the same as in 2013 at $2.2 million.

In 2014, the number of NPCs reporting revenue from governmental sources (including VA) was 65, an increase from 61 NPCs reporting governmental revenue in 2013.

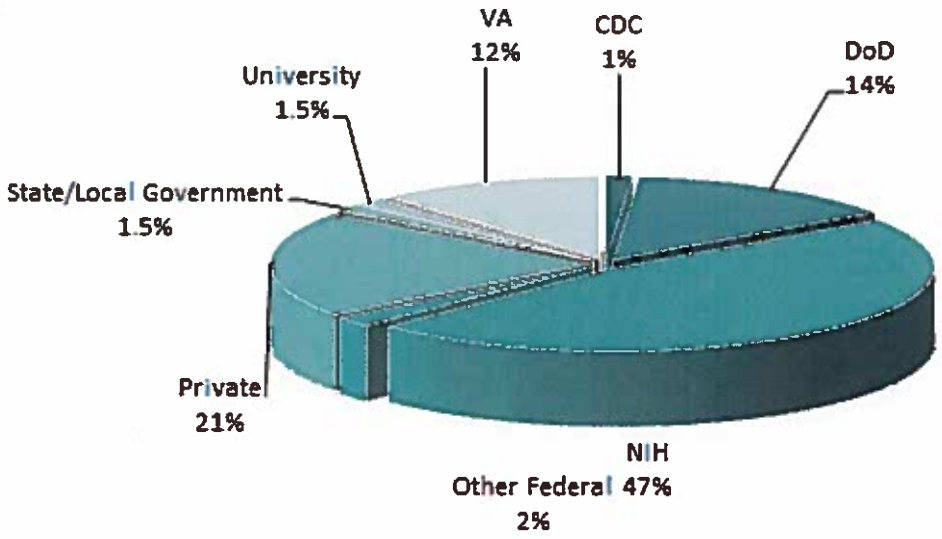
Funding Sources

NPCs continue to obtain funding from diverse sources, including private sector companies, charitable foundations, private individuals, state and local governments, universities, and Federal entities such as the National Institutes of Health (NIH), Department of Defense (DoD), and Centers for Disease Control and Prevention (CDC).

Funds coming to NPCs from VA are for Intergovernmental Personnel Act (IPA) assignment agreement reimbursements, or are funds from another agency or private entity that have been passed through VA to NPCs.

NPCs are required to identify the funding sources for both governmental and non-governmental amounts greater than $25,000 (see chart below for the breakdown). For 2014, the total revenue received from these sources was 236.4 million.

2014 Revenues
>$25,000 by Funding Source

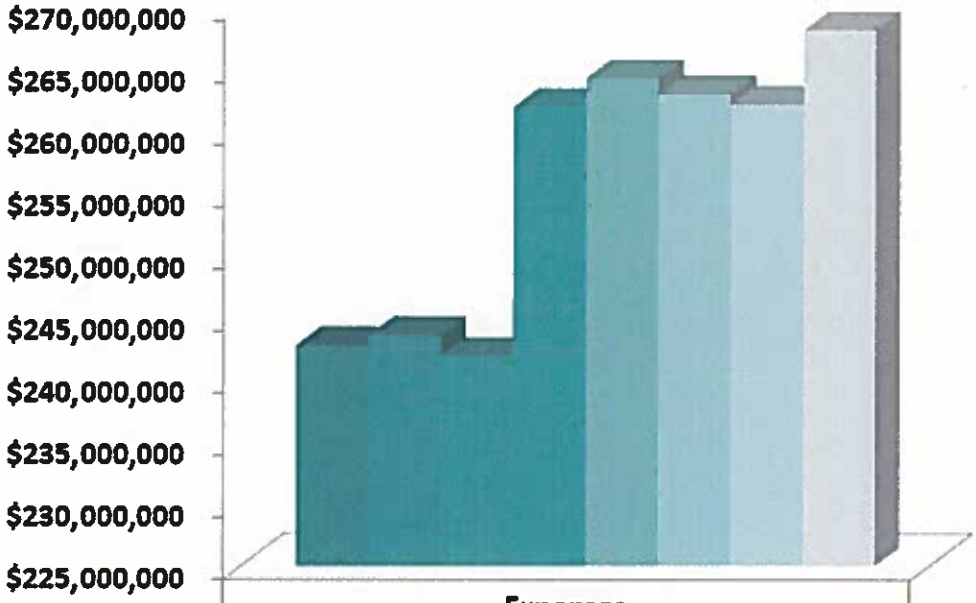


Expenses

In June 2015, NPCs reported expenses totaling **$268,078,955** during 2014, an increase from 2013 expenses which were $262.1 million. These expenses financed research projects and their supporting infrastructure as well as salaries, equipment, and other research and education-related costs. NPCs employed approximately 2,800 people, supported nearly 2,300 principal investigators, and administered more than 3,400 research projects.

Because the statutory purpose of NPCs is to facilitate VA research and education, all funds spent must support those activities with the exception of amounts that cover NPC administration.

NPC Annual Expense
2007-2014

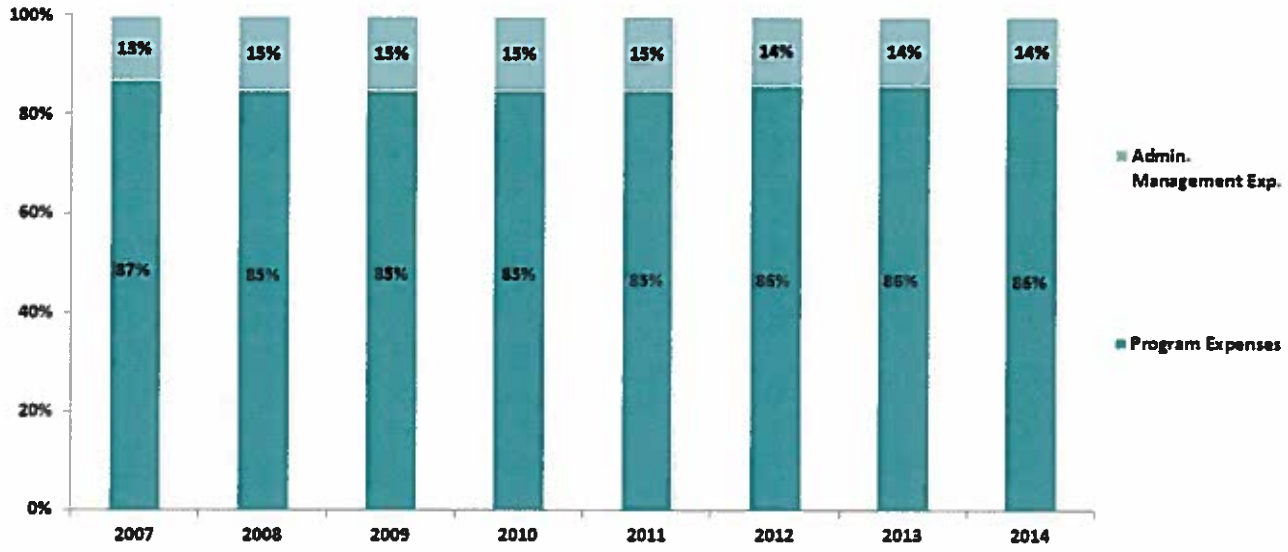


	Expenses
2007	$242,693,786
2008	$243,514,458
2009	$241,852,017
2010	$261,844,581
2011	$264,173,853
2012	$262,900,276
2013	$262,103,137
2014	$268,078,955

During 2014, approximately 54 percent of total expenses covered salaries and benefits; approximately two percent of total expenses covered travel, and the remaining 44 percent represented other expenses in direct support of VA research and education activities or NPC business operations.

NPCs continue to spend a relatively small amount on administrative expenses, averaging 14 percent ($37.5 million) of total expenditures for 2014.

NPC Total Combined Administrative Management Expenses vs. Direct Program Expenses 2007-2014

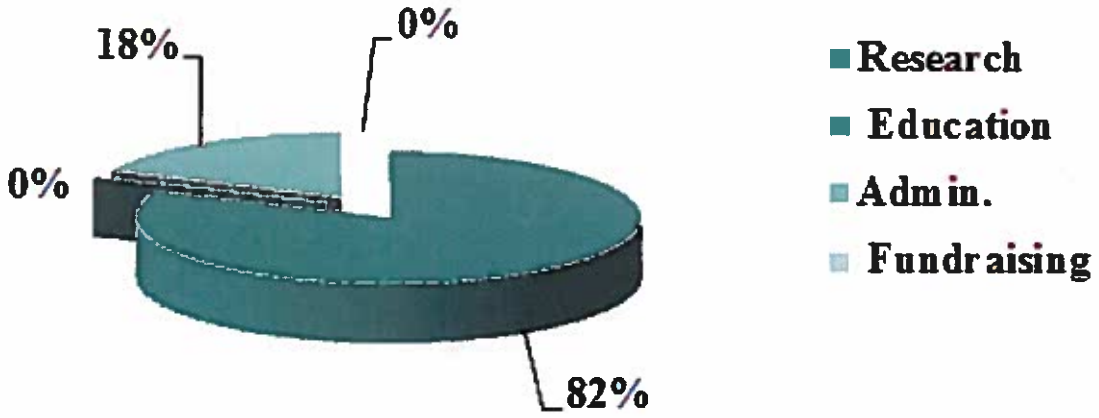


Compensation Expense

During 2014, 80 NPCs reported compensation expenses including benefits totaling $145.1 million, a one percent increase over 2013. NPC salary expenditures supported a variety of personnel (including research technicians, pharmacists, scientists, nurses, physicians, and administrative staff).

Of the $145.1 million spent for compensation, 82 percent ($118.0 million) was used to support personnel directly engaged in VA research. Approximately 18 percent ($26.6 million) was expended for NPC administrative salaries. Less than one percent ($475,165) was expended in support of staff involved in educational activities.

2014 Compensation Expense by Category

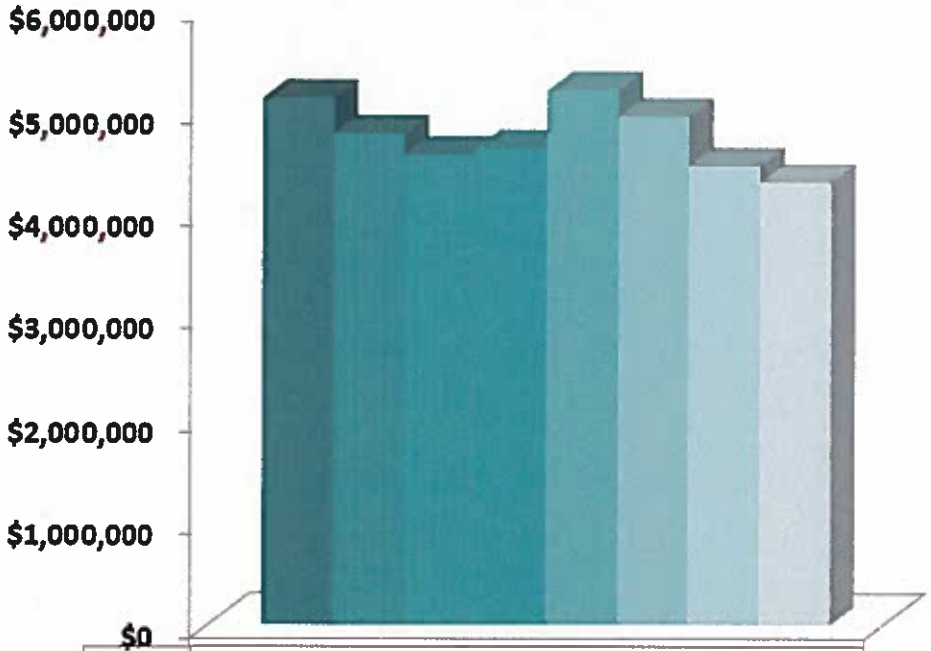


Travel Expense

NPCs support travel for VA and NPC personnel to attend scientific and educational meetings, seminars, and conferences. VA benefits from such travel because it enhances the ability of VA staff to pursue research and education endeavors important to VA's health care, training, and research missions. Seventy-seven NPCs reported travel expenditures totaling $4.3 million, a four percent decrease from 4.5 million in 2013.

Of the $4.3 million in travel expenditures, approximately 89 percent, or $3.8 million, supported travel for personnel directly engaged in research or education activities.

NPC 2007-2014
Total Travel Expense



2007	$5,123,113
2008	$4,774,334
2009	$4,568,536
2010	$4,632,173
2011	$5,193,138
2012	$4,939,757
2013	$4,464,441
2014	$4,305,415

Other Expenditures

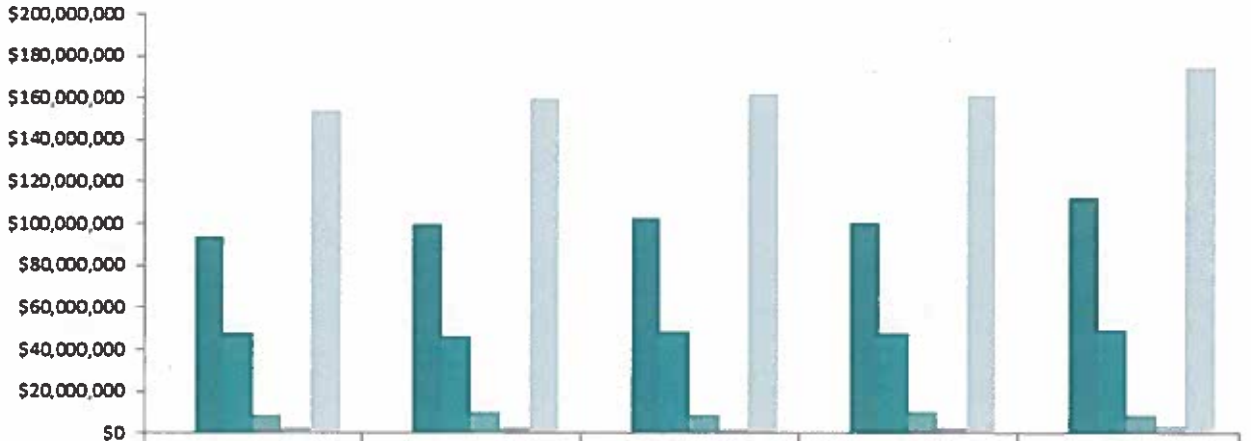
While furthering VA's research and education missions, NPCs incur a number of costs in addition to payroll, benefits, and travel. During the 2014 reporting period, other expenses totaled $118.7 million, up by 4.6 percent from $113.5 million in 2013. They included, but were not limited to, legal fees, insurance, accounting, auditing, consulting services (statisticians, information technology experts, etc.), supplies, postage, shipping, equipment purchases, rentals and maintenance, printing, publications, utilities, and conference registrations.

Payees

Each NPC hires employees and contracts with various vendors ("payees") to support the conduct of VA-approved research and education activities.

The vendors provide products and services that sustain research, education, and business operations. Any payee receiving in excess of $50,000 per year is identified in the NPC report and is presented in chart below:

Chart of NPC Payees Greater than $50K ($35K before 2010) by Type 2010-2014



	1	2	3	4	5
Payee Type	2010	2011	2012	2013	2014
Private	93,884,222	100,027,918	102,474,233	100,327,510	112,541,661
University	48,014,076	46,354,923	48,662,749	48,186,773	49,638,111
VA	8,901,718	10,653,349	8,939,402	10,044,013	8,750,158
Government	2,993,649	2,518,859	1,844,892	2,538,045	3,723,020
Totals	$153,793,665	$159,555,049	$161,921,276	$161,096,341	$174,652,950

The table above lists the four major types of payees and provides the total amount paid to each type. Private payees include employees, consultants, etc. State and private university payees may include reimbursements from grants or sub-awards.

VA reimbursements are costs reimbursed in support of VA research and education activities. Other governmental payees include sub-awards or pass-through funds to non-VA government entities.

Financial Position

NPCs reported net worth totaling **$202,343,022** at the end of 2014, a one percent decrease from 2013 net worth which was $204.4 million. Gross assets under management were $275.2 million and liabilities were $72.8 million. The ratio of net worth to revenues was 76 percent for all of the NPCs. For the top 20 NPCs that comprised 78 percent of total revenues, the net worth ratio was 53 percent. Some individual large NPCs had substantially lower net worth ratios than the average and have been advised to conserve their net worth as best they can and to augment it when possible.

VI. PROJECTS, ACTIVITIES AND ACCOMPLISHMENTS

NPCs facilitated a variety of projects during the 2014 reporting period. Many of these research projects were clinical studies that focused on the treatment of medical conditions prevalent in the Veteran population. Veterans benefit from getting access to cutting edge pharmaceuticals and medical care devices. Many Veterans who participate in VA studies benefit from the actual "hands on" care provided, but also indirectly from the interaction between NPC staff and patients.

The quality of care given to Veterans enrolled in clinical studies is exceptional and is a direct result of the close one-on-one relationships between the caregivers conducting research and the Veterans. VAMCs may potentially benefit from drugs and devices donated by sponsoring institutions and pharmaceutical companies as well as from NPC salary support for nurses and physicians caring for Veteran patients enrolled in clinical studies.

NPCs also support VA in many different ways beyond administering funds. Some examples are listed below:

- Renovate and upgrade VA research infrastructure;
- Provide funds, staffing, and training support to VA and affiliate universities to help cover Institutional Review Board requirements;
- Pay for expenses related to recruitment of research investigators to the VA system;
- Fund seed grants to new investigators to aid them in establishing their VA research careers;
- Employ support staff for VA research projects;
- Cover the cost of training VA research personnel in topics such as research compliance, good clinical practice, and board governance;
- Underwrite bridge funding for VA investigators who are between research grant awards;
- Support travel and registration fees for VA investigators to attend scientific conferences;

- Procure personnel, equipment, and supplies for VA animal research facilities;
- Provide funds for research pharmacy staff and equipment; and
- Host national educational conferences for VA personnel with incidental attendance by health professionals from surrounding communities.

VII. CONFLICTS OF INTEREST

NPC directors, officers, and employees are subject to the conflict of interest policy adopted by that NPC. VA employees who serve as NPC directors as part of their official VA duty are also subject to the Federal conflict of interest laws and regulations. At any time there is a conflict with the NPC policy, the Federal conflict of interest laws and regulations take precedence.

VIII. VA NONPROFIT PROGRAM OVERSIGHT BOARD

In 2004, VA senior leadership created the VA Nonprofit Program Oversight Board to serve as VA's senior management oversight body over NPC activities and programs. The Board meets on a quarterly basis to review the activities of the NPCs for consistency with VA policy and interests. The Board may also make recommendations to the Secretary and Deputy Secretary concerning changes to, and implementation of, VA policy regarding NPCs. Board membership is limited to VA employees and includes:

- Under Secretary for Health;
- General Counsel;
- Assistant Deputy Under Secretary for Health for Operations and Management;
- Chief Research and Development Officer;
- VA Nonprofit Program Officer;
- Chief Academic Affiliations Officer;
- Chief Financial Officer for VHA, or a designee.
- Member, Office of Research and Development Field Research Advisory Committee; and
- Chief Officer, VA Office of Research Oversight.

IX. INDEPENDENT AUDIT REPORTS

NPPO reviews the independent audit reports and the related NPC audited financial statements for the NPCs. The NPPO also reviews other documents such as the independent audit management letters, lists of program activities and accomplishments, and supplemental revenue and expenditure information. This oversight is performed in order to obtain substantive evidence of accountability and to have a balanced picture of NPC program activity.

Any material weaknesses or significant deficiencies in internal controls and related recommendations made by the NPCs' independent auditors are noted. NPPO tracks these from year to year to determine whether the NPCs have taken the appropriate corrective actions as recommended by their independent audits.

Under title 38 U.S.C. section 7366(b) each NPC with annual revenues in excess of $500,000 for the year is required to obtain an independent audit of its financial statements for the year. NPCs with annual revenues between $100,000 and $500,000 must obtain an independent audit every three years. For those NPCs with $100,000 or less in annual revenues, an independent audit is not required. For fiscal year (FY) 2014, 14 NPCs were not required to obtain an independent audit. Of the 83 NPCs, 69 (83 percent) submitted audited financial statements. For 2014, 99 percent of total NPC revenues and 99 percent of total expenses were subject to independent audits.

There are three ascending levels of independent audits:

(1) Generally Accepted Auditing Standards (GAAS) in the United States of America Audit: This audit requires the auditor to plan and perform the audit in order to obtain reasonable assurance that the financial statements are free of material misstatements. The auditor assesses internal controls, management, and governance. An NPC receiving more than $100,000 but less than $500,000 in funding is required to obtain, at a minimum, an audit in accordance with GAAS once every three years.

(2) Generally Accepted Government Accounting Standards (GAGAS) Audit: This audit also obtains reasonable assurance that the financial statements are free of material misstatements. The GAGAS audit is used when required by provisions of laws, regulations, contracts, and grants.

(3) Circular A-133 Audit: This audit is performed in accordance with Office of Management and Budget (OMB) Circular A-133, when annual expenditures are from Federal funds exceeding $500,000. The A-133 audit is designed to provide assurance that the financial statements are reasonable and there is compliance with the legal and regulatory requirements of the Federal contract(s) and grant(s), and with sound internal controls.

Type of NPC Audits Performed in 2014					
	A-133	GAGAS	GAAS	No Audit Report	Total
Number of Audits	34	1	34	14	83
Total Revenue	**$230.9**	**$1.1**	**$34.5**	**$1.5**	**$268.0**
	86%	0%	13%	1%	
Total Expenses	**$229.5**	**$0.9**	**$35.9**	**$1.8**	**$268.1**
	86%	0%	13%	1%	

Ten NPCs were cited by their auditors for material weaknesses. All of these material weaknesses are different than those reported in 2013. NPCs with material weaknesses are working closely with the NPPO and their external auditors to ensure correction of the weaknesses prior to the next audit.

The NPPO requires an in-depth action plan from each NPC with material weaknesses and significant deficiencies follows up on these during on-site reviews.

Four of the NPCs reporting material weaknesses were audited under GAAS and six were audited under an A-133 audit. The NPPO will follow up to ensure these material weaknesses and other deficiencies are corrected. The Executive Director of each NPC is responsible for providing a copy of the auditor's report to the NPC's Board of Directors and involving the Board directly in the resolution of any deficiencies. The NPPO has requested a remediation action plan from these NPCs.

X. NPPO OVERSIGHT PLAN AND RESULTS

NPPO is charged with conducting oversight for the 83 VA affiliated nonprofit research and education corporations nationwide. NPPO reviews the Operations Oversight Questionnaire with the Executive Director and the Internal Control Questionnaire that is provided in advance of the on-site visit. NPPO routinely tests samples of various transactions and accounting records, such as policies and procedures, cash disbursements, credit card purchases, bank statements and reconciliations, payrolls, and IPA assignment agreements.

The limited on-site reviews by NPPO are for the purpose of providing audit, investigative, and oversight-related services that do not involve a GAGAS full financial, attestation, or performance audit examination. NPPO's limited reviews are not designed to detect fraud, waste, abuse, or other irregularities. NPPO's reviews are substantially narrower in scope than an audit examination. The objective of an audit examination is the expression of an opinion on the subject matter, and accordingly, no such opinions are expressed. *Ref. Government Auditing Standards 2011 Revision, Chapters 2.12 and 5.56, Pages 19 and 116.* Nonetheless, NPPO reserves the rights to extend its limited reviews; initiate other reviews or investigations; and arrange for the conduct of complete GAGAS financial, attestation, or performance audits if needed for effective VHA oversight. NPPO observes auditing standards set by the Comptroller General of the United States.

1. All NPCs will be reviewed triennially regardless of financial condition. To accomplish this, one-third of the NPCs are audited each year.

2. NPCs with identified operating problems or serious internal control weaknesses will be reviewed on-site annually and monitored. Once the issues are resolved and the NPC receives a satisfactory review, its review schedule will be moved to the triennial schedule.

3. New Executive Directors (ED), are welcomed, notified of the next ED workshop, the NPPO Web site and staff contact information within the first 45 days of employment.

4. NPCs that are starting-up, reactivating, merging, or deactivating will be visited as needed.

5. NPCs with reported irregularities (e.g., by whistleblowers) will be reviewed on-site immediately and have appropriate follow-up action taken.

6. NPCs requesting on-site visits to resolve internal control, financial systems, or financial management problems will be visited as soon as possible.

All 83 NPCs were reviewed by NPPO in FY 2011 through 2013. The second triennial review began in FY 2014 and will be completed in FY 2016. For the second review, all prior recommendations are followed-up along with the normal review. Formal review reports are prepared for each of these on-site reviews.

In addition to the routine triennial reviews, NPPO has performed many non-routine whistleblower complaint, timekeeping, and fraud investigations.

Other routine oversight conducted at NPPO offices include reviews of:

1. Annual reports due June 1 on forms prescribed by NPPO.

2. Annual audited financial statements due to NPPO by June 1.

3. Annual Form 990 income tax returns due to NPPO by June 1.

4. Remediation plans for all NPCs with material weaknesses reported by their independent auditors.

5. Remediation plans for all NPCs with significant deficiencies and auditor recommendations.

6. Monthly financial statements compared to budget and last year for NPCs with identified operating problems and/or inadequate reserves.

7. Immediate attention to all NPC requests for assistance or advice.

XI. NPPO TRAINING

Over the past four years, NPPO has been engaged in training the NPCs' boards of directors and other personnel by:

1. Developed and facilitated a two-day workshop for Executive Directors that is held twice a year.

2. Developed training courses designed for VA's Talent Management System for mandatory courses:

    a. Internal Controls;
    b. Conflict of Interest.

3. Provided training sessions for the boards of directors as part of the on-site oversight reviews.

4. Maintained an easy-to-navigate, user friendly and informative website.

5. Developed PowerPoint training for the proper completion of Intergovernmental Personnel Act assignment agreements.

XII. CONCLUSION

VA-affiliated NPCs continue to make a substantial contribution to VA research and education missions. The 2014 NPC Annual Report to Congress demonstrates that NPCs are fulfilling their Congressional mandate in a responsible and conscientious manner.

Expertise in NPC governance and management is improving as evidenced in the on-site reviews and the NPCs' annual reporting to VA. VA-affiliated NPCs contribute significantly to the success of VA's research and education programs.

This report and NPPO's on-site reviews illustrate that NPCs are a highly efficient means to maximize the benefits to VA of externally funded research conducted in VA facilities. NPCs greatly facilitate research and education that benefit Veterans. Additionally, NPCs foster vibrant research environments at VAMCs, enhancing VA's ability to recruit and retain clinician-investigators and other talented personnel who apply their knowledge to state-of-the-art care for Veterans.

DEPARTMENT OF VETERANS AFFAIRS NONPROFIT RESEARCH AND EDUCATION CORPORATIONS AUTHORIZED BY TITLE 38 UNITED STATES CODE (U.S.C.) SECTIONS 7361 THROUGH 7366

1. REASON FOR ISSUE. This Veterans Health Administration (VHA) Handbook provides procedures and instructions governing Nonprofit Research and Education Corporations (NPC) created pursuant to title 38 §§ 7361 through 7366, United States Code (U.S.C.).

2. SUMMARY OF MAJOR CHANGES. This VHA Handbook constitutes a complete revision of existing procedures and instructions applicable to nonprofit research and education corporations established at VA medical centers and managed in accordance with §§ 7361 through 7366 of title 38, U.S.C. The Handbook also includes revisions based on Public Law 111-163 §§ 802-806.

3. RELATED ISSUES. VHA Directive 1200 and VHA Handbook 1058.03.

4. RESPONSIBLE OFFICE. The Office of Research and Development (ORD) (12) is responsible for the contents of this VHA Handbook. Questions may be addresses to 816-922-2042.

5. RESCISSION. VHA Handbook 1200.17 dated December 17, 2001, VHA Handbook 1400.2 dated December 5, 2000, VHA Directive 2008-038, and VHA Directive 2009-061 are rescinded.

6. RECERTIFICATION. This document is scheduled for recertification on or before the last working day of December 2015.

Robert A. Petzel, M.D.
Under Secretary for Health

DISTRIBUTION: E-mailed to the VHA Publications Distribution List 12/13/2010

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DEPARTMENT OF VETERANS AFFAIRS NONPROFIT RESEARCH AND EDUCATION CORPORATIONS AUTHORIZED BY TITLE 38 UNITED STATES CODE (U.S.C.) SECTIONS 7361 THROUGH 7366

1. PURPOSE

This Veterans Health Administration (VHA) Handbook provides Department of Veterans Affairs (VA) procedures and instructions applicable to Nonprofit Research and Education Corporations (NPC) established at VA medical centers and managed in accordance with sections 7361 through 7366 of title 38, United States Code (U.S.C.).

2. BACKGROUND

a. **Flexible Funding Mechanisms.** NPCs exist to provide VA medical centers with flexible funding mechanisms for the conduct of, and to facilitate functions related to the conduct of, approved research and education at one or more VA medical centers NPCs are not owned or controlled by the Federal government, nor are they an agency or instrumentality of the Federal government.

b. **Facilitating Conduct of VA Research or Education and Training.** NPCs may facilitate the conduct of VA-approved research as described in sections 7303(a) and education and training as described in section 7303, 7471, 8154, and 1701(6)(B) of title 38, U.S.C. Each research project approved by a facility Research and Development (R&D) Committee and each education activity approved by the facility Education Committee is considered to be a VA research project or a VA education activity respectively, regardless of the source of funding, the entity administering the funds, or the research or education site.

c. **Funds Management.** The facilitation of research or education and training referred to in the preceding paragraph includes managing funds for VA-approved research projects and education activities as well as more generally supporting facility research and education programs in conjunction with the applicable medical center.

d. **Expenditure of Funds.** NPCs may expend funds on the following VA activities:

(1) **Research Projects.** Research projects that have been approved in accordance with the procedures established by the Under Secretary for Health for VA research and reasonable and usual preliminary costs for project planning prior to approval.

(2) **Educational Activities.** Educational activities that have been approved by the VA medical center Education Committee in accordance with criteria established in 38 U.S.C. 7362 (b), and reasonable and usual preliminary costs for activity planning prior to approval. Types of education and training activities that may be approved are patient-related activities and employee-related activities, including activities for employees of VHA taking part in residency and other training programs designed to prepare an individual for an occupation or profession in health care. NPCs may collaborate with VA's Employee Education System (EES) to support approved education and training activities for the VA medical center(s) or other educational activities permitted by Federal law.

(a) Patient-related Activities. Patient-related activities include education activities for Veterans, their families and guardians that provide instruction or other learning experiences related to improving or maintaining the health of veterans.

(b) Employee-related Activities. Employee-related activities include:

1. Work-related experiences for employees designed to:

a. Improve performance of current duties;

b. Assist employees in maintaining or gaining specialized competencies and proficiencies; or

c. Expand understanding of advances or changes in patient care, technology, or health care administration.

2. Training-related activities that support accredited and non-accredited training programs designed to prepare an individual for an occupation or profession in health care such as activities that:

a. Improve educational environment, infrastructure and resources for trainees; or

b. Facilitate trainee integration into facility care processes and workforce.

3. SCOPE

This Handbook pertains to VA-affiliated NPCs established under §§ 7361 through 7366 of title 38, U.S.C. These corporations include those established to facilitate the conduct of research, or education, or both research and education at one or more VA medical centers. The term "VA medical center" includes VA health care systems.

4. VA OVERSIGHT

a. **VA Responsibility.** VA is responsible for ongoing oversight of NPCs.

b. **Oversight Mechanism.** NPC oversight is performed by:

(1) **Nonprofit Program Oversight Board (NPOB).** The NPOB is VA's senior management oversight body, as outlined in the NPOB charter, for NPCs. The NPOB is responsible for reviewing NPC activities for consistency with VA policy and interests, and for making recommendations through the Under Secretary for Health to the Secretary of Veterans Affairs regarding VA policy pertaining to NPCs.

(2) **Nonprofit Program Office (NPPO).** The NPPO, which is located in VHA is the liaison between VHA and NPCs. The NPPO is responsible for coordinating policy regarding NPCs and provides oversight, guidance and education to ensure compliance with applicable regulations and VA policies affecting the operation and financial management of NPCs. This includes

responsibility for performing on- and off-site reviews, substantive reviews of annual reports submitted by each NPC, and for compiling such annual report data for VA's required annual report to Congress. Additionally, the NPPO institutes measures to ensure that any deficiencies in the operation and management of an NPC are corrected in an appropriate and timely manner.

(3) **Chief Financial Officer (CFO).** The VHA CFO exercises financial oversight of NPCs by review of NPPO activities and review of any audit of an NPC by independent auditors, as necessary. Results of such CFO reviews must be made available to the NPPO and NPOB through the Chief Research and Development Officer.

5. ESTABLISHMENT OF VA RESEARCH AND EDUCATION CORPORATIONS

a. **Establishment of NPC.** The Secretary of Veterans Affairs has delegated to the Under Secretary for Health the authority to approve the establishment of a new NPC. A new NPC may be established to facilitate research and education at either one VA medical center (Single NPC) or at more than one VA medical center (Multi-NPC). Establishment of a Single NPC requires compliance with subparagraphs 5a(1) and (2), including all subparagraphs. Establishment of a Multi-NPC requires compliance with subparagraphs 5(1) and (2), including all subparagraphs, and paragraph 6.

(1) **Request to Under Secretary for Health.** The medical center Director of a facility interested in establishing a new NPC must contact the NPPO before beginning the process of incorporation and must submit a request to the Under Secretary for Health through the NPPO that includes a:

(a) **Business Plan.** The medical center Director must submit to the NPPO a business plan that demonstrates how the NPC will be assured of generating a revenue stream sufficient to cover its administrative expenses. The business plan must address:

1. Whether the facility has an established:

a. Research and/or education program;

b. Research & Development Committee and/or Education Committee;

c. Federalwide Assurance (FWA);

d. Institutional Review Board (IRB) of record registered with Office of Human Research Program and listed on the VA medical center's FWA;

e. Public Health Service Assurance (PHS assurance or Animal Welfare Assurance) issued by the Office of Laboratory Animal Welfare, Health and Human Services;

f. Affiliation with a university;

2. The viability of the NPC as evidenced by:

a. The potential number of research projects or educational activities the NPC is likely to

administer;

b. The number of potential principal investigators (PIs); and

c. Other factors the facility deems relevant.

(b) Certification of Responsibilities. The medical center Director must provide a statement signed by the prospective statutory VA Directors certifying their understanding of the responsibilities they will assume as members of the NPC Board of Directors upon incorporation (a sample of the certification is found at App. A).

(2) **Approval.** ORD, the Office of Academic Affiliations (OAA), (if NPC supports education activities), and the Office of the Deputy Under Secretary for Health for Operations and Management (10N) must evaluate the business plan and certification of responsibilities, and must make a recommendation to the Under Secretary for Health whether to approve establishment of the new NPC. The Under Secretary for Health may seek input from the NPOB before reaching a decision. After approval by the Under Secretary for Health, the medical center Director may initiate incorporation of the NPC.

b. **State Law.** To the extent not inconsistent with Federal law, each NPC must conform to the applicable nonprofit corporation law(s) of the state in which it is incorporated.

c. **Official Resources.** Reasonable and necessary VA resources, including start-up funds and VA employee time, may be used to establish an NPC until it is incorporated.

d. **Permanent Authority to Establish Corporations.** VA has permanent authority to establish new NPCs at VA medical centers.

6. MULTI MEDICAL CENTER RESEARCH CORPORATION (MULTI-NPC)

a. **Approval of a Conversion of an Established NPC to a Multi-NPC.** The authority to approve the conversion of an established NPC to a Multi-NPC that will facilitate VA research and education at more than one VA medical center rests with the Secretary of Veterans Affairs who may delegate this authority. The Board of an NPC that converts to a Multi-NPC must agree to facilitate research and education at more than its own medical center and will add each other affected medical center Director to the Multi-NPC Board. If a Single NPC exists at a VA medical center when a Multi-NPC resolves to facilitate VA research and education at that VA medical center, the Single NPC may consolidate with the Multi-NPC through dissolution, merger or acquisition.

(1) **Request to Secretary, or Delegee.** The medical center Director of the VA medical center where the Multi-NPC will be established must submit a request to the Secretary of Veterans Affairs, or delegee, through the NPPO that includes a:

(a) Business Plan. This plan must demonstrate how the Multi-NPC will facilitate research at any other medical centers identified in the proposal and must address the viability of the Multi-NPC as affected by the proposed additional responsibilities as evidenced by:

1. The potential number of total research projects or educational activities the Multi-NPC is likely to administer;

2. The number of total potential principal investigators (PIs); and

3. Proposed amended Articles of Incorporation and By-Laws; and

4. Other factors the medical center Director deems relevant.

(b) Resolution. The Board of the Single NPC desiring become a Multi-NPC must pass a written resolution permitting facilitation by the corporation of the conduct of research, education, or both at the other Department medical center or medical centers concerned.

(c) Certification by Statutory VA Directors. The medical center Director, where the Multi-NPC is to be established, must provide a statement signed by the prospective Multi-NPC Statutory VA Directors, including the other medical center Directors of all the VA medical centers to be served by the Multi-NPC, certifying their:

1. Agreement to serve on the Board of the Multi-NPC;

2. Understanding of the responsibilities they will assume as members of the Multi-NPC Board; and

3. Affirmation that they have read and approved the business plan. ***NOTE:*** *A sample of the certification is found at Appendix B.*

(d) Additional Certifications by Each Affected Medical Center Director. Each affected Medical Center Director (other than the medical center Director at the VA medical center establishing the Multi-NPC) must submit a statement agreeing that the Multi-NPC may facilitate research and/or education at the Director's medical center.

(2) **Approval.** ORD, the Office of Academic Affiliations (OAA) (if NPC supports educational activities), and the Office of the Deputy Under Secretary for Health for Operations and Management (10N) must evaluate the business plan and certifications, and make a recommendation to the Secretary of Veterans Affairs, or delegee, whether to approve the conversion to a Multi-NPC. The Secretary of Veterans Affairs, or delegee, may seek input from the NPOB before reaching a decision.

b. **State Law.** To the extent not inconsistent with Federal law, each NPC must conform to the applicable nonprofit corporation law(s) of the state in which it is incorporated.

7. DISASSOCIATION BY VA

a. **Secretary Determination.** Upon determination by the Secretary of Veterans Affairs that an NPC is not acting in the best interests of VA, the Secretary may authorize the Under Secretary for Health to require remedial measures up to and including VA's disassociation from the NPC.

b. **Tax-Exempt Status.** If an NPC has not been recognized as a tax-exempt organization under § 501(c)(3) of title 26 U.S.C. by the end of the 4-year period beginning on the date of incorporation of the NPC, the Secretary of Veterans Affairs must order its dissolution.

8. NPC DIRECTORS, OFFICERS AND EMPLOYEES

a. **Board of Directors.** An NPC's board members (Directors), known collectively as the Board of Directors (Board), are responsible for governance of the NPC in accordance with applicable Federal and state laws and regulations, and VA policies.

(1) **Board Composition for a Single NPC.** The Board of an NPC facilitating the conduct of VA research and education at a single VA medical center needs to include the following:

(a) Statutory VA Directors. Statutory VA Directors serve on an NPC Board in their official VA capacities and need to ensure that the NPC furthers the best interests of VA. Statutory VA Directors must be those VA employees at the medical center who hold the following positions, either by title or by exercise of equivalent responsibilities:

1. Medical Center Director;

2. Chief of Staff (COS);

3. Associate Chief of Staff for Research and Development, if the NPC is a flexible funding mechanism for research activities, and

4. Associate Chief of Staff for Education, if the NPC is a flexible funding mechanism for education activities.

(b) Statutory Non-Federal Directors. There must be no less than two Directors who are not officers or employees of the Federal Government and who have backgrounds or business, legal, financial, medical, or scientific expertise of benefit to NPC operations.

1. NPC employees and persons with Federal appointments (with or without compensation) are not eligible to hold these statutory non-Federal positions.

2. Statutory Non-Federal Directors may not be affiliated with, or employed by, any entity that is a source of funding for VA research or education, unless that source of funding is a governmental entity or an entity the income of which is exempt from taxation under the Internal Revenue Code (IRC) of 1986 as amended.

(2) **Board Composition of Multi-NPC.** The Board of a Multi-NPC that will facilitate the conduct of VA research and education at more than one VA medical center must include the following:

(a) All of the Directors described in preceding subparagraph 8a(1) for a Single NPC. In the case of a start-up Multi-NPC not involving an established Single NPC, the Board must include all of the Statutory VA Directors of the VA medical center that establishes the Multi-NPC.

(b) At a minimum, the medical center Director, (by title or by exercise of equivalent responsibilities) of each additional VA medical center where the Multi-NPC will facilitate research and education activities.

(3) **Authority to Act.** The Board of each NPC has authority to govern the NPC as provided in its articles of incorporation and bylaws.

(4) **Compensation.** Statutory VA Directors may not receive compensation for their services as Directors of the NPC because their service as Directors is part of their official VA duties and responsibilities. The NPC may compensate other Directors who do not serve on the Board as part of any government employment. Such compensation must be consistent with applicable state and Federal laws, and the NPC's bylaws or policies.

(5) **Expense Reimbursement.** NPCs may reimburse Directors for out-of-pocket expenses associated with their service on the Board in accordance with the NPC's reimbursement policies. Statutory VA Directors may accept reimbursement only in accordance with Federal statutes, regulations and VA policy regarding acceptance of non-Federal travel support under section 1353 of title 31, U.S.C. or § 4111 of title 5, U.S.C.

b. **Officers of the NPC.** NPC officers are appointed by the Board in accordance with state law and the NPC's bylaws. Statutory VA Directors may serve as officers of the NPC, but may not be compensated for such services because they serve as part of their official VA duties. The NPC may compensate other Directors who serve as officers. Such compensation must be consistent with applicable state and Federal laws, and the NPC's bylaws or policies.

c. **Employees.** An NPC may employ individuals to carry out its purposes and may determine their compensation. NPC employees who are given a VA Without Compensation (WOC) appointment in accordance with subparagraph (2)(a) to provide research or education services for VA must be supervised by VA employees while providing such services to VA.

(1) **Executive Director**

(a) Appointment. The Board must appoint an Executive Director of the NPC. Pursuant to section 7363 of title 38 of the U.S.C., the Under Secretary for Health must concur with the appointment of the Executive Director. This responsibility has been delegated to the Director of medical center where the Single or Multi-NPC is established.

(b) Compensation. The Executive Director may receive salary from the NPC for services provided to the NPC.

(c) VA Employee as an Executive Director. If the Executive Director is also a VA employee, the Executive Director may be compensated by the NPC only for services to the NPC that are outside the scope of the Executive Director's VA duties and that are performed outside VA-duty hours. ***NOTE:*** *Criminal ethics laws raise conflicts of interest and representational issues. Executive Directors who are also VA employees should seek advice from a VA Government ethics official (Regional Counsel or Office of General Counsel, Professional Staff Group III) to ensure they do not violate conflict of interest laws and regulations.*

(2) **VA WOC Appointments for NPC Employees**

(a) WOC Appointments. NPC employees who are directly or indirectly involved or engaged in approved VA research or education and training activities, and who perform such duties under the supervision of VA personnel, must have a VA WOC appointment. If performing such duties, the NPC employee must sign a VA Intellectual Property Agreement prior to performing such work.

(b) VA Employees. VA employees who work for the NPC during their non-VA duty hours, and who are assigned to VA to work on research projects or education and training activities during those NPC hours, must have a WOC appointment. Such work must be different from the VA employee's official VA duties.

9. CONFLICTS OF INTEREST

a. **General.** NPC Directors, officers and employees are subject to the conflict of interest policy adopted by that NPC. VA employees serving as NPC Directors as part of official VA duty are also subject to the Federal conflict of interest laws and regulations that control if in conflict with NPC policy. Other than Statutory VA Directors, VA employees serving as NPC Directors, officers or employees do so in their personal capacities and are prohibited by Federal conflict of interest laws from participating personally and substantially as part of their official VA duties, in any matter that will have a direct and predictable effect on their own financial interests or the financial interest of the NPC.

b. **Conflict of Interest Policy.** Each NPC must establish a written policy on conflicts of interest applicable to NPC Directors, officers, and employees. The NPC Board retains responsibility for oversight of the conflict of interest policies at the NPC. At a minimum, such policy must:

(1) Describe when a conflict of interest may exist;

(2) Require training for Directors, officers, and employees about the policy upon hire or affiliation and annually thereafter for Directors, officers and employees with decision-making authority (key employees);

(3) Require disclosure of potential conflicts of interest by NPC Directors, officers and key employees;

(4) Require a statement of acknowledgment of understanding and agreement to comply with the policy by each Director, officer and employee (see App. C); and

(5) Include a process for identifying and managing conflicts of interest.

c. **Training Requirements.** The NPC conflict of interest policy must include training requirements and a mechanism for tracking fulfillment of training requirements. All Directors, officers (including the Executive Director), and employees of the NPC must receive training in the NPC conflict of interest policy within 90 days of employment or affiliation with the NPC. Additionally, all Directors, officers (including the Executive Director) and other key employees who file an annual disclosure form with the NPC must receive training in the NPC's conflict of interest policy annually thereafter. ***NOTE:*** *The NPC conflict of interest training does not fulfill the requirement for all new VA employees to take Government ethics training, nor does VA Government ethics training fulfill the NPC conflict of interest training requirement.*

d. **Disclosure Form.** NPC Directors, officers and key employees have a fiduciary responsibility to the NPC that includes making decisions that affect the interests of the NPC in a manner that is free from conflict of interest. In order to ensure that potential conflicts of interest can be identified and managed, these individuals must file disclosure forms, approved by the NPC board, with the NPC annually. The NPC conflict of interest policy will set forth the process for filing, reviewing, and tracking disclosure forms. ***NOTE:*** *NPCs are strongly encouraged to reference applicable Internal Revenue Service (IRS) instructions to protect their exemption under section 501 (c)(3) of the Internal Revenue Code. The NPC conflict of interest disclosure form does not fulfill the VA financial disclosure requirement for VA employees. However, the NPC may choose to accept a copy of the Public Financial Disclosure report (SF-278) or Confidential Financial Disclosure report (OGE 450) in lieu of the NPC-approved disclosure form.*

e. **Policy Statement.** Every NPC Director, officer, and employee must, upon hire or affiliation, sign a statement acknowledging their understanding of the NPC conflict of interest policy and their agreement to comply with the policy. Such statement must be maintained by the NPC (see App. C for a sample statement).

f. **Certification.** Annually, the Executive Director must include in the report to the Secretary of Veterans Affairs certification that each NPC Director, officer and employee has:

(1) Been trained about the conflict of interest policy;

(2) Acknowledged understanding of and agrees to comply with the policy; and

(3) Submitted a conflict of interest disclosure form.

10. LIABILITY AND INSURANCE

a. **Liability Protections.** An employee of an NPC who has a VA appointment, either with or without compensation, and is directly or indirectly involved or engaged in approved research or education, and performs such duties under the supervision of VA personnel is considered an employee of the Federal Government in cases where the United States is a defendant (section 1346(b) of title 28, U.S.C.) or for tort claims procedures under the Federal Tort Claims Act (FTCA) (28 U.S.C. §§ 2671-2680), or if appropriate, must be considered a medical care employee of VA for purposes of malpractice or negligence claims defended by the United States (section 7316 of title 38, U.S.C.).

b. **Insurance.** Because Federal coverage, FTCA or other, may apply only to NPC activities and personnel directly or indirectly related to approved VA research or education, NPCs are advised to purchase insurance to protect Directors, officers and employees against liability for actions of the Board and for employment practices, as well as coverage for NPC property and other activities.

c. **Worker's Compensation.** NPCs with employees must comply with state laws requiring purchase of worker's compensation insurance for work-related injuries.

11. PROVIDING AND FUNDING ADMINISTRATIVE AND RESEARCH SERVICES

a. **Use of VA Resources or Time to Support Management or Other Operations of an NPC**

(1) **VA Resources.** As provided in subparagraph 5c, VA resources may be used to establish a new NPC until such NPC is incorporated.

(2) **Official VA Time.** Except for statutory VA Directors carrying out NPC Director responsibilities and VA employees working to establish a new NPC, VA employees may not use official VA time to carry out NPC administrative functions.

(3) **Statutory VA Directors.** Statutory VA Directors may use VA-time and other VA resources as necessary to fulfill their responsibilities as Directors.

(4) **VA Resources That Incidentally Further NPC Purposes.** The NPC may receive any incidental benefits that result from VA employees using VA resources to carry out their official duties to promote VA research and education missions. The medical center also may provide the NPC with space for its activities and with services, such as maintenance, repair, and utilities, without reimbursement.

b. **Reimbursement and Compensation Related to Approved Research Projects or Education Activities**

(1) **VA Employees.** VA employees may be assigned as part of their VA duties to work on

VA-approved research projects or education activities for which an NPC is the flexible funding mechanism.

(2) **Reimbursement.** NPCs may reimburse VA for salaries and other costs incurred by VA in the conduct of VA-approved research projects or education activities. A VA medical center may retain and use funds provided to it by a NPC. Such funds must be credited to the applicable VA appropriation account and available for account purposes without fiscal year limitations as provided for in § 7364(b)(3) of title 38, U.S.C.

(3) **NPC Hiring VA Employees.** NPCs may hire and directly pay VA employees to perform work that is different from their official VA duties and performed outside their VA duty hours. Note: Federal law prohibits illegal supplementation of Federal salaries. NPC payment to VA employees for work that is the same as their official VA duties, even if the work is performed outside VA duty hours, may violate criminal statutes. Therefore, NPCs are encouraged to reimburse VA for such work rather than pay VA employees directly.

c. **Federalwide Assurance (FWA).** NPCs facilitating human subject research must comply with Department of Health and Human Services and VA policy with regard to obtaining and maintaining FWA.

12. AUTHORITIES AND LIMITATIONS AFFECTING RESEARCH AND EDUCATION NPCS

a. **Revenue.** NPCs may, solely for the purpose of facilitating functions related to the conduct of approved VA research and education activities:

(1) Accept, administer, retain and spend funds derived from gifts, contributions, grants fees, reimbursements, and bequests from individuals and public and private entities.

(2) Set fees for education and training facilitated by the NPC and receive, retain, administer, and spend funds in furtherance of such education and training. Such fees charged for individuals who are VA employees may not be paid for by funds appropriated to VA.

(3) Reimburse applicable VA appropriation accounts for expenses of the Office of General Counsel in providing legal services attributable to research and education agreements administered by that NPC. Such reimbursed amounts may be used by the Office of General Counsel only for staff and training and related travel for the provision of such legal services and must remain available without fiscal year limitations.

(4) In accordance with its own governing documents (IRS application for exemption from federal taxation, articles of incorporation and bylaws), NPC Directors, officers and employees may engage in fundraising activities under the following conditions:

(a) Statutory VA Directors may engage in fundraising in their official VA capacities as board members. Other VA employees may participate in NPC fundraising activities in their personal capacities to the extent permitted by applicable Federal and state law, regulations and VA policy. All are encouraged to seek advice from a VA Government ethics official before

engaging in such activities.

(b) No solicitation of VA employees is permitted outside of approved Combined Federal Campaign activities.

(c) An NPC may hire a professional fundraiser to assist with fundraising activities.

b. **VA Reimbursement to NPC.** A VA medical center may reimburse an NPC, and the NPC may accept such reimbursement, for all or a portion of the pay, benefits or both, of an NPC employee who is assigned to such medical center under an Intergovernmental Personnel Act (IPA) Agreement.

c. **Assurances.** NPCs must not give assurances or other commitments concerning VA decision-making, including assurances that VA will fulfill any particular purpose for which a donor intends a gift to be used.

d. **NPC Contracts and Agreements.** NPCs may enter into contracts and other forms of agreements with individuals and public and private entities for research and education purposes as well as for their own operational purposes. NPCs are encouraged to consult with VA Regional Counsel on agreements pertaining to research projects and education activities.

(1) **State and Federal Law.** NPCs may not enter into agreements that purport to supersede, or are contrary to, state or Federal law.

(2) **Agreements.** NPCs may not enter into agreements on behalf of VA or that purport to bind VA.

(3) **Contracts.** VA and NPCs may not enter into contracts with each other. This prohibition also applies to sharing agreements under § 8153 of title 38 U.S.C.

(4) **Cooperative Research and Development Agreements (CRADAs).** NPCs may be parties to CRADAs even when VA is also a party. However, each CRADA must contain a statement that the NPC and VA are independent from one another and that the CRADA does not establish a contract between VA and the NPC.

(5) **Documentation.** Business transactions between VA and an NPC must be supported by documentation. Such documentation may include a bill for collection, an Intergovernmental Personnel Act (IPA) mobility assignment, or a Memorandum of Understanding (MOU), as well as other records.

e. **Federal Law.** If state law conflicts with Federal law governing the NPCs, Federal law preempts the conflicting state law.

f. **Interpretation of Law.** Only VA General Counsel speaks authoritatively on the numerous Federal laws governing the VA mission. General Counsel interpretation of such laws is controlling within VA and the NPCs.

g. **Legal Counsel.** Either VA legal counsel or private legal counsel paid by the NPC may be used in the operation of the NPC. ***NOTE:*** *If an NPC obtains written private legal advice that is contrary to VA policy, the NPC must provide a copy to the appropriate VA Regional Counsel.*

h. **Training.** NPCs must ensure that Directors, officers, and employees receive all applicable training as required by this handbook.

i. **NPC Reportable Events.** NPCs need to report the following to the NPPO:

(1) Change of physical address, e-mail address, and phone numbers.

(2) New Executive Director, name and contact information.

(3) New Board President, name and contact information.

(4) New Principal Accountant, i.e., new CFO, Controller, or Bookkeeper, name and contact information.

(5) Disputes with independent auditors other than over fees.

(6) All findings by any other governmental auditors.

(7) Significant adverse events, such as:

(a) Major loss of property from fire or storm.

(b) All thefts and embezzlements, regardless of amount.

(c) All threatened or actual litigation against the NPC.

(d) Board votes for dissolution, merger or significant transfer of assets.

(e) Current or projected inability to meet financial obligations.

13. NPC FINANCIAL MANAGEMENT

a. **Donation Documentation.** NPCs must document acceptance of donations not otherwise documented in a grant, contract or other agreement. The NPC must send an acknowledgement letter to the donor (per IRS requirements) for donations, if $250 or more. The acknowledgement must contain a statement setting out the nature and conditions of the donation, if any (see App. D for a sample donation acknowledgement letter).

b. **Investment Practices.** Guaranteeing the safety of NPC assets is a primary goal in management of NPC funds. An NPC may deposit funds in interest bearing Federally-insured accounts at either a bank or through a brokerage firm providing Federal Deposit Insurance Corporation (FDIC) (or equivalent credit union) coverage of deposits. NPCs may use idle funds to purchase instruments backed by the full faith and credit of the United States Government such

as Treasury bills, notes, and bank certificates of deposit. Investment in stocks, mutual funds, certain Federal agency financial instruments not backed by the full faith and credit of the United States Government, or similar investment vehicles is not allowed.

c. **Internal Controls**

(1) **Policies.** Each NPC must have a written policy and procedures detailing its internal controls. Such internal controls must provide for sufficient procedures and mechanisms to protect its assets and to meet the requirements of the applicable external audit. The internal controls policies need to include the training requirements set forth in subparagraph 13c(4) Internal Controls Training.

(2) **Oversight.** The NPPO must evaluate the effectiveness of internal control policies through review of the IRS Form 990, external audits, and annual NPC reports to the Secretary of Veterans Affairs submitted through the ORD. The NPPO also will conduct other reviews as necessary. The NPPO must track the results of such reviews, and any NPCs found to have deficiencies or material weaknesses will be required to submit to the NPPO a plan for corrective action. The NPPO needs to continue tracking such deficiencies until corrections are fully implemented.

(3) **Official Approval.** An appropriate official of the NPC must approve all expenditures. That official may be the Executive Director or another person designated by the Executive Director or the NPC Board.

(4) **Internal Controls Training.** All new NPC Board members, including Statutory VA Directors, and all new Executive Directors, officers, and key employees must take internal controls training within 90 days of assuming the role. Approved training is available on the VA EES web site or via an Internal Controls Training DVD available through the NPPO. Proof of completion of training must be provided by individuals to the NPC. The NPC is responsible for retaining training certification as long as the individual holds the position. The NPC ED must certify compliance in the annual report to the Secretary of Veterans Affairs.

d. **Limitations on Expenditures**

(1) **Publications.** NPC funds may be used to pay for publications and scientific journals that facilitate VA's research and education missions.

(2) **Professional Memberships.** NPC funds may be used to pay for corporate memberships in professional organizations that facilitate VA's research and education missions.

(3) **Travel Expenditures.** NPC funds may be used for travel that facilitates VA research, education or NPC operations. VA employees are responsible for following Federal laws, regulations, and VA policies regarding acceptance of non-Federal travel support paid by or administered through an NPC. Each NPC must have a travel policy that provides reimbursement under an IRS accountable plan.

(4) **Licensure.** The NPC may not pay for required professional licenses for VA employees.

The NPC may pay for licensure for qualified individuals who work exclusively for the NPC if such payment can be related to support of the VA research or education mission.

e. **Funds Administration**

(1) **Multi-Center Activities.** An NPC may administer funds for multi-site research projects or education activities, provided that, in doing so, the NPC is serving the research and/or education missions at least at one of the medical center or centers it serves. Such efforts may be done without the need for a Single NPC to become a Multi-NPC.

(2) **Transfer of Funds from VA.** VA may not transfer funds appropriated to VA to an NPC except those funds reimbursed to an NPC under an IPA agreement (see subpar. 12b). VA may transfer to an NPC any other funds received by VA for the conduct of research or education.

(3) **Transfer of Funds from NPCs**

(a) Funds and Equipment Associated with Active Research Projects or Education Activities. An NPC may transfer to another NPC or to a VA entity funds and equipment associated with an active research project or education activity subject to the applicable agreement and approval of the Board, the funder and the recipient institution.

(b) Residual Funds

1. Any funds and/or equipment remaining after completion of a research project or education activity that the sponsor does not require to be returned (residual funds) must be used for the general support of VA research or education consistent with the requirements of this Handbook.

2. Upon departure of an investigator from a VA medical center, residual funds and equipment associated with that investigator may be retained by the NPC in accordance with Board policy. Alternatively, such funds and equipment may be transferred, but only to another NPC or to a VA medical center, subject to approval by the Board and the recipient NPC or VA entity.

f. **Records and Record Retention**

(1) **Records.** The NPC must make and preserve records of the organization, including its functions, policies, decisions, procedures, and transactions, in accordance with commonly accepted nonprofit practices and commonly accepted accounting practices.

(a) These records, maintained for the benefit of the NPC, need to be designed to protect the legal and financial rights of the NPC, VA, and persons directly affected by the NPC's activities.

(b) An NPC must maintain timekeeping, payroll, and other records of compensation paid. In the case of dual VA or NPC employees, where compensation is paid to the employee by the NPC, such documentation must clearly demonstrate that compensation is paid only for work that differs from the employee's official VA duties and is conducted outside the VA tour of duty.

(2) **Fiduciary Obligations.** The NPC's officers and Directors must fulfill their fiduciary obligations to the NPC by providing documentation that will:

(a) Demonstrate approval by the NPC Board of Directors of major business decisions, and

(b) Provide information necessary to respond to an IRS inquiry or audit.

(3) **Tax and Non-Tax Records.** NPC tax and non-tax records must be retained by the NPC in accordance with applicable Federal and state statutes and regulations and funding source requirements.

(4) **Consistent with Accounting Procedures.** Financial records must be created and maintained by the NPC in accordance with accounting procedures established by the NPC and applicable Federal and state statutes and regulations and funding source requirements.

14. ACCOUNTABILITY

a. **Record Availability**

(1) **Secretary of Veterans Affairs.** The records of an NPC must be available to the Secretary of Veterans Affairs.

(2) **Audits and Investigations.** In connection with any audit, inquiry, investigation, or review of NPC activities, the NPC must cooperate with and make its records available to the VA Inspector General, the Comptroller General, the IRS, the Secretary of Veterans Affairs, and the state(s) where the NPC is doing business.

(3) **Records Disclosure.** NPC business records are not subject to disclosure under the Freedom of Information Act (FOIA).

b. **Annual Report to the Secretary.** By June 1 of each year, each NPC must submit an annual report to the NPPO, ORD, VA Central Office detailing NPC revenues and expenditures. The annual report is required even if the NPC did not accept or expend funds during the previous year. ORD is responsible for submitting the annual report of education-only NPCs to OAA. The information contained in each NPC report is used to prepare VA's annual report to Congress regarding the NPCs, as well as for VA's oversight purposes. The NPC's annual report to the Secretary of Veterans Affairs must include at a minimum:

(1) **Audit Report.** An independent auditor's report for the NPC's last completed fiscal year. Each NPC with revenues in excess of $500,000 for any year must obtain an independent audit of the financial statements of the NPC for that year. A NPC with annual revenues between $100,000 and $500,000 must obtain an audit of the NPC at least every 3 years.

(2) **IRS Form 990 or 990 EZ.** IRS Form 990 or 990 EZ with schedules, Return of Organization Exempt from Income Tax, for the NPC's last completed fiscal year even if revenues fall below the IRS's mandatory Form 990 filing threshold of $1 million.

(3) **Certification.** An annual statement signed by the NPC's Executive Director verifying that each Director, officer, and employee has certified awareness of, and compliance with the NPC conflict of interest policy in accordance with subparagraph 9b(3) and that Directors, officers, and key employees have fulfilled the Internal Controls Training requirement (see subpar. 13c(4)).

(4) **Location.** The physical address of the NPC along with the identity of the VA medical center(s) served by the NPC.

(5) **Revenue.** The amount of revenue received by the NPC during the previous year, including:

(a) The total amount received;

(b) The amount received from governmental entities for research and the amount received from governmental entities for education;

(c) The amount received from all other sources for research and the amount received from all other sources for education; and

(d) The amount received from any source that exceeds $25,000, as well as information that identifies the source.

(6) **Expenditures.** The amount expended by each NPC during the year including:

(a) The amount expended for salary for research staff, the amount expended for salary for education staff, and the amount expended for salary for administrative staff;

(b) The amount expended for direct support of research and the amount expended for direct support of education; and

(c) The amount and identification of the payee if the amount expended with respect to the payee exceeded $50,000.

(7) **Travel Expenditures.** The amount expended by the NPC during the year for travel conducted in conjunction with research and the amount expended for travel in conjunction with education.

15. REFERENCES

a. Title 38 U.S.C. Sections 7361 through 7366.

b. Title 38 U.S.C. 7368, Repealed by Public Law 110-387, Section 806.

c. Title 18 U.S.C Sections 202-209.

d. Title 38 U.S.C. Section 512.

e. Title 26 U.S.C. Section 501(c) (3).

f. Title 31 U.S.C. Section 1301.

g. Title 28 U.S.C. Sections 1346(b), and 2671-2680.

h. Title 28 .U.S.C. Chapter 171.

i. Title 38 U.S.C. Section. 7316.

j. Title 38 U.S.C. Section 311.

k. Title 38 U.S.C. Section 7303(a).

l. Title 38 U.S.C. Section 7302.

m. Title 38 U.S.C. Section 7471.

n. Title 38 U.S.C. Section 8154.

o. Title 38 U.S.C. Section 1701(6)(B).

p. Title 5 CFR Sections 2640.201-202.

q. Internal Revenue Code of 1986, as amended.

r. Title 31 U.S.C. Section1353.

s. Title 31 U.S.C. Section 4111.

t. Executive Branch Personnel Public Financial Disclosure Report (SF 278).

u. Executive Branch Confidential Financial Disclosure Report (OGE Form 450).

v. Title 38 Code of Federal Regulations 1.218 (a) (8).

**PROSPECTIVE NONPROFIT RESEARCH AND EDUCATION CORPORATIONS (NPC)
STATUTORY VA DIRECTORS'
CERTIFICATION OF RESPONSIBILITIES
Single NPC**

Each of the undersigned, as a prospective statutory Department of Veterans Affairs (VA) Director of a VA-affiliated nonprofit research and education corporation (NPC), certifies the undersigned's understanding of undersigned's statutory responsibilities to the NPC. Each understands that the undersigned will serve as a member of the Board in the undersigned's official VA capacity. Each commits to allocating sufficient time and resources to establish the NPC as well as to fulfilling the undersigned's own responsibilities as a Board member.

_____ _____
Signature, Insert Name, Medical Center Director Date

_____ _____
Signature, Insert Name, Chief of Staff Date

_____ _____
Signature, Insert Name, Associate Chief of Staff for Research if applicable Date

_____ _____
Signature, Insert Name, Associate Chief of Staff for Education if applicable Date

PROSPECTIVE MULTI-MEDICAL CENTER RESEARCH CORPORATION STATUTORY VA DIRECTORS' CERTIFICATION OF RESPONSIBILITIES

As prospective Statutory Department of veterans Affairs (VA) Directors of a multi-medical center research corporation (Multi-NPC), the undersigned certify understanding of the undersigned's responsibilities to the Nonprofit Research and Education Corporations (NPC). Each understands that the undersigned will serve as a member of the Multi-NPC Board in the undersigned's official VA capacity. Each commits to allocating sufficient time and resources toward fulfilling the undersigned's responsibilities as a board member. Each has read and approved the business plan for the prospective Multi-NPC.

_____ _____
Signature, Insert Name, Lead Facility Medical Center Director Date

_____ _____
Signature, Insert Name, Lead Facility Chief of Staff of the Lead Facility Date

_____ _____
Signature, Insert Name, Lead Facility Associate Chief of Staff for Research, if applicable Date

_____ _____
Signature, Insert Name, Lead Facility Associate Chief of Staff for Education, if applicable Date

_____ _____
Signature, Insert Name, Other Facility Medical Center Director Date

If needed, insert additional "other facility" Statutory VA Directors

SAMPLE

AFFIRMATION OF UNDERSTANDING OF AND COMPLIANCE WITH THE NPC CONFLICT OF INTEREST POLICY

Instructions: Each Nonprofit Research and Education Corporations (NPC) Director, Officer, or Employee must sign this statement after having read the NPC Conflict of Interest Policy upon hire or affiliation with the NPC.

I hereby certify that I am aware of and am in compliance with the ___(NPC Name)___ conflict of interest policy with respect to conflicts of interest related to the performance of my official functions at the ___(research or education NPC)___.

(Signature)
(Typed or Printed Name)

_____

_____

_____ _____
Date

SAMPLE ACKNOWLEDGEMENT OF DONATION LETTER FOR GIFTS VALUED AT $250 OR MORE

Nonprofit Research and Education Corporations (NPC) Letterhead

Date

Addressee
Address

Dear *(insert name)*,

Thank you for your generous donation of ___(*insert exact amount of a cash contribution or identify the in-kind gift)*___ in support of Department of Veterans Affairs (VA) research and/or education. *Add more details as needed including the purpose of the gift, restrictions, terms or conditions if any.*

If goods or services were exchanged for the donation: The estimated monetary value of the services (or goods such as a meal at a fundraising event) provided in exchange for your donation was ___$*(insert amount*___. Only the portion of your contribution that exceeds the value of the services (or goods) you received may be tax deductible.

If no goods or services were provided, state: No services or goods were provided in exchange for or in connection with this donation.

If an in-kind gift was provided: Thank you for your in-kind gift of ___*(describe in detail)*___.

If donor advised (that is, donor will be allowed to influence use of the donation): Please be aware that your donation has been characterized as "donor advised" and may not be tax deductible. In accordance with IRS rules, this letter constitutes notification that such funds are the property of ____(*insert NPC name)*___ subject to the exclusive control of ___*(insert NPC name)*___ and may be used only for charitable purposes. They may not be used for the benefit of you, your family members or your advisors, or for any other impermissible private benefit.

Please retain this letter as a written proof of your donation for your tax records. ___*(Name of NPC)*___ is an exempt from Federal taxation under section 501(c)(3) if the Internal Revenue Service code. Our Federal ID number is ___*(XX-XXXXX)*___.

Thank you again for your generous gift.

Sincerely,
Insert your signature
Insert your typed name
Insert your title

Estimate of Cost to Prepare
Congressionally-Mandated Report

ATTACHMENT

Short Title of Report: Nonprofit Research and Education Corporations

Report Required By: Title 38 United States Code, Section 7366

In accordance with Title 38, Chapter 1, Section 116, the statement of cost for preparing this report and a brief explanation of the methodology used in preparing the cost statement are shown below.

Manpower Cost:	$17,090
Contract(s) Cost:	$0
Other Cost:	$0
Total Estimated Cost to Prepare Report:	$17,090

Brief Explanation of the methodology used in preparing this cost statement:
Hours worked directly on the Report were accumulated by preparer and then multiplied by the employees' actual hourly pay rates including an estimated amount for payroll fringes.