

August 20, 2004

**GUIDELINES REGARDING THE OUTSIDE EMPLOYMENT OF VHA
INFORMATION TECHNOLOGY (IT) EMPLOYEES**

1. PURPOSE: This Veterans Health Administration (VHA) Notice provides Information Technology (IT) employees with an overview of ethical issues they may encounter as they explore the possibility of employment opportunities outside of their regular Department of Veterans Affairs (VA) duty hours.

2. BACKGROUND

a. A number of Veterans Health Administration (VHA) Information Technology (IT) employees have been approached by outside companies and organizations to install, modify, and/or maintain Veterans Health Information Systems and Technology Architecture (VistA) software and systems. Based on advice from General Counsel, this Notice outlines the information VA employees need to consider as they explore the possibility of employment opportunities outside of their regular VA duty hours.

b. Once an employee is aware of an ethical issue, the Executive Branch Standards of Ethical Conduct (Title 5 Code of Federal Regulations (CFR) Part 2635) and criminal conflict of interest laws (Title 18 United States Code (U.S.C.) Chapter 11) in the following areas need to govern their response:

- (1) Gifts from outside sources;
- (2) Gifts between employees;
- (3) Conflicting financial interests;
- (4) Impartiality in performing official duties;
- (5) Seeking other employment;
- (6) Misuse of position; and
- (7) Outside activities.

c. The Executive Branch Standards of Ethical Conduct prohibit employees from using their public office for private gain (see 5 CFR §§ 2635.101(b)(7), and 2635.702).

THIS VHA NOTICE EXPIRES AUGUST 31, 2008

VHA NOTICE 2004-03

August 20, 2004

d. Criminal conflict of interest law prohibits executive branch employees from receiving compensation from a private entity for performance of their official duties, even if those duties are performed outside of their tour-of-duty (see 18 U.S.C. § 209). This is known as an illegal supplementation of salary. Criminal conflict of interest law prohibits Government employees from participating personally and substantially in any official matter that would have a direct and predictable effect on their outside financial interests, including those of any outside employer (see 18 U.S.C. § 208(a)). For example, there may be a violation if, in working on VistA for VA, an employee can make that software more marketable or user friendly for the employee's outside employer. Employees in this situation would most likely have to excuse themselves from further VA work on VistA.

3. GUIDANCE

a. According to the VA Office of General Counsel (OGC), VA employees may accept compensation for outside employment involving the modification of VistA software provided they:

(1) Would not modify VistA software for outside entities as part of their official VA responsibilities;

(2) Were offered the employment based on their IT expertise rather than their VA position;

(3) Would not participate personally and substantially in any VA matter that would have a direct and predictable effect on the financial interests of the outside employer; and

(4) Do not perform any work for an outside employer during their VA tour-of-duty.

***NOTE:** IT employees who seek outside employment may wish to seek Regional Counsel or General Counsel advice if they have any questions as to whether their contemplated outside employment would conflict with criminal conflict of interest law or the Executive Branch Standards of Conduct. The review is intended for the protection of the employee. The Regional Counsel or General Counsel determines if such outside activities comply with current rules and regulations prior to the employee engaging in such activities.*

b. IT employees who need clarification about the applicability of any of these rules may consult with VA ethics officials who are in the Regional Counsel Offices or in OGC at (202) 273-6334. These officials are there to answer employee questions and help them understand what is required of VA employees.

4. RESPONSIBLE OFFICE: The Office of Information (19B) is responsible for the contents of this Notice. Questions may be addressed to 202-273-8664.

5. EXPIRATION DATE: This VHA Notice expires August 31, 2008.

S/ Arthur S. Hamerschlag for
Jonathan B. Perlin, MD, PhD, MSHA, FACP
Acting Under Secretary for Health

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