



# Boston VA Research Institute, Inc.

Date 9/11/2009

Human Resources

**POLICY NO.09 18**

## TITLE OF POLICY:

DUAL COMPENSATION POLICY

### 1.0 PURPOSE:

The receipt by VA employees of compensation from a private source, such as the Boston VA Research Institute, Inc. (BVARI), for performing VA duties is a violation of Federal law **18 U.S.C. § 209**. This policy is to protect the investigator and BVARI from criminal sanctions related to prohibitions against federal government salary supplementation from non-federal sources and dual compensation.

### 2.0 SCOPE:

This policy covers employees who do work for both BVARI and the VA.

### 3.0 POLICY:

The VA Medical Center and BVARI require specific information to support faculty compensation by BVARI. In particular, to determine that the BVARI work is different or dissimilar in kind to the services provided to VA.

BVARI may pay salary to a VA employee provided that the following conditions are met:

1. The BVARI work is different or dissimilar in kind to the services provided to VA;
2. The BVARI work is not performed during the VA tour of duty;
3. Legal counsel and the Medical Center Director sign off on the legality of the arrangement.

Work done for BVARI pay must be clearly distinguishable from the work the VA employee performs during his/her normal VA tour of duty. Any research project funded by the VA research appropriation cannot be administered by BVARI. Consequently, any work done on those projects, no matter when the work is done, is by definition VA work. Only VA can pay for work on VA-funded projects.

Similarly, if a principal investigator or a VA-paid employee works on a project funded by a drug company or any other non-VA source during his/her VA tour of duty, or if such work is part of his or her official VA duties (within the scope of his/her government work), regardless of when the work is done, that research activity is part of his/her VAMC employment. Consequently, BVARI is prohibited from providing any compensation for work on that project, even if some of the work is done on the investigator's or employee's own time.

#### **Gifts**

NPCs may not give VA employees cash bonuses or gifts for doing their VA job. This would be a violation of the dual compensation statute and/or the federal ethics regulations at 5 CFR 2635.

#### **Segregation of Duties**

To avoid the appearance of dual compensation, VA employees must be extremely careful about

segregation of duties while performing work for BVARI. Time cards signed by supervisors must reflect that VA employees perform BVARI work only during non-VA duty hours. VA employees that use an "indefinite" or "irregular" designation during their VA tour of duty should make every effort to maintain a reasonable log of duties and time worked for both VA and BVARI positions.

### **Overtime Compensation**

As joint employers, pay for VA employees who are working for BVARI may be subject to the overtime requirements of the Fair Labor Standards Act (FLSA) even if the VA employee works less than 40 hours for BVARI.

To establish whether a VA employee must be paid by BVARI at an overtime rate, it is incumbent on the NPC to determine whether the VA employee is exempt or non-exempt from the overtime requirements of the FLSA for purposes of both the VA and BVARI position

## **4.0 DEFINITIONS:**

Joint employment: VA and an BVARI may constitute "joint employment" for purposes of federal labor law. BVARI and the VA Medical Center may be considered joint employers as defined in 29 CFR 791.2 (a)

(a) . . . the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act, including the overtime provisions, with respect to the entire employment for the particular workweek . . .

and

(b) where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employer relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

## **5.0 RESPONSIBILITIES:**

5.1 BVARI Board of Directors: The BVARI Board of Directors is responsible for the overall policy, planning and coordination of all BVARI activities within the VA Boston Healthcare System.

5.2 CEO: The BVARI CEO is responsible for developing, administering and coordinating a business process that provides optimal internal controls for BVARI.

5.3 Director of Human Resources : BVARI's Department Director is responsible for

ensuring that the BVARI employees follow the policies defined in the policy.

### 5.0 PROCEDURES:

A grant may be submitted before receiving final approval; however, BVARI will not make compensation available until it receives the Medical Center Director's approval and a fully executed Memorandum of Understanding (MOU) that outlines how work performed for BVARI and the VA will be kept separate. Salary changes will require an updated Director's concurrence and MOU.

Time Sheets submitted to BVARI by VA employees must certify that all work claimed on the time sheet was performed off VA tour of duty.

### 7.0 RELATED DOCUMENTS:

Dual Compensation Memo.doc

### 8.0 REVISION HISTORY:

<b>Revision Letter</b>	<b>Author</b>	<b>Revision Date</b>	<b>Description of Changes</b>
A	Nancy Watterson-Diorio	9/11/2009	

Human Resources

**POLICY NO.0918**  
**Transmittal Sheet**

Date

**REASON FOR ISSUE:**

**SUMMARY OF CHANGES:**

**RELATED DOCUMENTS:**

**RESPONSIBLE OFFICER:**

Director of Human Resources

**RESCISSION:**

**RECERTIFICATION:** This policy is scheduled for recertification on or before the last working day of September , 2011 .

Nancy Watters on-Diorio  
Chief Executive Officer

**DISTRIBUTION**

Board of Directors, Date:

FLD: Sharepoint Server \_\_\_\_\_, E-mailed \_\_\_\_\_ to:

BVARI Staff, Stakeholders