

June 5, 2008

The Honorable Michael J. Kussman, MD (10)
Under Secretary for Health
Veterans Health Administration
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Dr. Kussman:

I am writing on behalf of the National Association of Veterans' Research and Education Foundations (NAVREF) in regard to the Veterans Health Administration comments contained in the Department of Veterans Affairs (VA) Office of Inspector General (OIG) report on the *Audit of Veterans Health Administration's Oversight of Nonprofit Research and Education Corporations, Report No. 07-00564-121*, issued on May 5, 2008.

Thank you for your statement in the VHA response to the draft OIG report that "VA Nonprofit Research and Education Corporations (NPCs) are effectively fulfilling their congressional mandate to serve as a flexible funding mechanism for advancing VA-approved research and education." NAVREF sincerely appreciates your confirmed regard for the value NPCs bring to VA research and to VA investigators.

NAVREF recognizes that VA oversight is an essential component of ensuring VA and congressional confidence in NPC management. In our view, a properly staffed Nonprofit Program Office (NPPO) should have been capable of providing oversight efficiently and effectively. However, we understand that VHA has now chosen a different approach to overseeing the NPCs. We do have some concerns about the number of people – many of whom may not have nonprofit experience - being engaged to participate in implementing the VHA Action Plan and the challenges of involving 22 VISN offices in performing oversight of non-governmental organizations for which to date VISNs have had no responsibility and with which they have virtually no interaction. However, please be assured that we are committed to supporting the VHA Action Plan for the sake of the NPCs and the substantial benefits they provide for VA research, education, investigators and veterans.

Toward our mutual objective of well-run NPCs, we invite you or Mr. William Feeley to participate in all or a portion of the next NAVREF board meeting. This will be held at the Indianapolis VA Medical Center on July 28 from 8:00 a.m. to 4:00 p.m. The purpose of the participation would be to become better acquainted and to explore how NAVREF and VHA might work together to ensure effective oversight of the NPCs. In the meantime, we would appreciate your considering the following five points and the recommendations that follow.

1. We were surprised that VHA did not challenge the objective of the OIG audit: ". . . to determine if VHA had effective controls over the administration of funds used for research and education activities at NPCs." Please be aware that House Report 100-373 (accompanying HR 3449) states:

These corporations would not be considered for any purposes as corporations owned or controlled by the United States except for the limitations made applicable to these corporations by this Act.

There being no delegation of controls to VA in the NPC statute or its legislative history, OIG incorrectly imputed to VHA responsibilities that are in actuality the responsibility of NPC boards and management. This fundamental OIG misinterpretation blurs a vitally important distinction between oversight and control. The NPC statute and legislative history provide that VA has broad power to oversee NPCs, something we understand and fully support. However, controls over funds and operations are the responsibility of the board and management. **If an NPC fails to implement adequate controls over administration of funds, then NPC boards and management must be held accountable, not VHA.**

2. Please be aware that in the course of the audit, standards were misapplied to NPCs. The OIG report cites the Government Accountability Office's "Standards for Internal Controls in the Federal Government" and Office of Management and Budget Circular A-123 "Management Accountability and Internal Controls" as the basis for some of the OIG conclusions about NPC shortcomings. To the best of our knowledge, both of these define management's responsibility for internal control in **federal agencies**. However, as the report states, NPCs are independent, state-chartered nonprofits, **not** federal agencies, and accordingly should be judged for compliance with regulations that are applicable to nonprofit operations. Furthermore, the NPC authorizing statute states:

Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation and its directors and employees **shall be required to comply only with those Federal laws, regulations, and executive orders and directives** which apply generally to private nonprofit corporations.

Consequently, in the absence of a VA regulation or a statute provision invoking the standards cited in the IG report, those particular ones are not among the many standards regarding management and internal controls applicable to NPCs.

3. The absence of NPC-specific VA financial policy guidance noted in the OIG report should not be taken to mean that NPCs are without applicable regulations. Please be aware that a myriad of standards apply to nonprofits. These include IRS and accounting standards, as well as a host of operational-specific federal, state and local requirements such as those applicable to human resource management. Many of these set reasonable standards for nonprofits depending on the amount of their revenues and scope of activities. For those nonprofits that administer federal awards, the regulations applicable to grants and contracts include:
 - OMB Circular A-110; Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
 - 2 CFR 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

- For nonprofits that expend more than \$500,000 from federal grants, OMB Circular A-133; Audits of States, Local Governments, and Non-Profit Organizations.
 - Federal Acquisition Rules (FAR)
4. Nor should the lack of VHA oversight to date be taken to mean that NPCs are not generally well-run or that oversight is not being performed. For example, in addition to reviews of three NPCs performed during 2007 by the Office of Audit of the VHA Office of Finance:
- NPCs are subject to excruciatingly rigorous (and very expensive) independent financial audits in accordance with stringent Financial Accounting Standards Board (FASB) requirements, including a number of new internal controls requirements promulgated under a recently released new suite of Statement on Auditing Standards, SAS 104-112.
 - In addition to audits performed in accordance with OMB Circular A-133 by independent financial auditors, NPCs that administer federal grants are subject to annual audits by the funding agencies' own auditors; these cover financial accountability and internal controls as well as compliance with officially promulgated programmatic requirements.
 - As electronic submission of IRS Form 990s is phased in, the IRS is increasingly identifying and questioning omissions, inconsistencies and outlier reporting and is imposing penalties for incomplete or inaccurate reporting, or misuse of nonprofit funds.
 - The IRS is adding to its reporting requirements questions about nonprofit governance and conflicts of interest and has disseminated guidance on its expectations.
5. Please be aware that NAVREF is in the midst of planning the program for its 2008 Annual Conference, October 19-22. We are planning sessions to ensure that NPCs have policies that address the OIG findings. Because some of these are driven by VA requirements or federal ethics regulations, we would appreciate your agreement that VA personnel with the necessary expertise may work with us to develop the content and to present it during the conference.

Also, we are recruiting an expert nonprofit accountant to conduct a one and a half day Annual Conference workshop on financial policies and procedures for NAVREF members. The focal points will be 1) ensuring that NPCs have policies that address the OIG findings; and 2) standards applicable to all nonprofits. If there are areas that you feel are in need of particular attention, please let us know.

Recommendations

1. We are concerned that the deadline specified for revision of Handbook 1200.17 is unrealistic. This important project should be accomplished deliberately with the involvement of stakeholders, including NPC administrators and NAVREF, to ensure that it provides meaningful and clear operational guidance to end users while respecting the NPCs' statutory nature as non-governmental, independent flexible funding mechanisms.

Also, to avoid duplicative effort, work on the handbook should extend at least through the end of the current congressional legislative session during which NAVREF is cautiously optimistic that Congress will enact significant improvements in the NPC authorizing statute. As you may recall, this legislation has its genesis in your suggesting to us that legislative action would be the most effective way to clarify the issues that we are addressing in S. 2926. Many of the changes support improved NPC oversight and clarification of NPC authorities that should be reflected in the new handbook.

2. NAVREF has been dismayed by the turmoil of the Nonprofit Program Office (NPPO) to date. With the NPPO director planning to go on maternity leave for four months beginning in August, we are concerned that continuity in leadership will remain problematic, especially at a time when important issues need to be addressed, e.g., rollout of the VHA Action Plan, staffing the new committees, and the intensive job of rewriting Handbook 1200.17.
3. Even under the structure outlined in the VHA Action Plan, it is as essential as ever to staff the NPPO with personnel possessing in-depth knowledge of nonprofit governance, accounting and operations. As stated in previous correspondence, NAVREF encourages VHA to retain the NPPO director as a GS 15 position. We understand the challenges of obtaining approval for a GS 15 these days, but it would seem reasonable that a complex, \$230 million program with high visibility and national impact surely merits at least one GS 15 position and that such a pay grade is necessary to attract qualified applicants to manage this program which is nearly one half the size of the VA research appropriation.
4. We encourage VHA to appoint NPC administrative personnel and NAVREF representatives to the Steering Committee, the Multi-Disciplinary Expert Working committee and the group tasked with updating Handbook 1200.17. In our view, the effectiveness of these committees would only be enhanced by having among their members individuals with firsthand experience in managing NPCs. Broad representation has worked well for the CRADA Work Group, and we highly recommend following that model for the VHA Action Plan.
6. We recommend that the NPPO should be the focal point for communications to NPCs and that such communications should be disseminated directly to NPCs in addition to using VISN and medical center channels.
7. We encourage VHA to consider using the NAVREF NPC Self Assessment Tool (S.A.T.) as a starting point for developing oversight tools (attached). This tool should be particularly useful to VISN offices, which are unlikely to have personnel with in-depth knowledge of nonprofit operations, and will ensure consistency in oversight practices among the 22 different offices. The NPC S.A.T. was painstakingly developed to incorporate standards specific to VA NPCs as well as those that apply to all nonprofits. This format is particularly useful because it establishes clear standards and requires documentation to support that the NPC has met each one.

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Conclusion

Each time one of these reports is published, the NPCs have suffered the consequences right along with VHA. If the oversight measures detailed in the VHA Action Plan succeed in satisfying OIG and instilling confidence in NPCs management, while preserving their statutory purpose to serve as independent flexible funding mechanisms in support of VA research and education, then that will be the win-win for NPCs and VHA. NAVREF and NPC personnel take great pride in the resources and services NPCs bring to VA, and we want to do everything possible to ensure that they may continue to provide these benefits to VA and the VA investigators who contribute to advances in medical treatments for veterans.

Thank you for considering our views. We very much hope that you or Mr. Feeley will accept our invitation to participate in the NAVREF board meeting on July 28 to discuss our response and recommendations as well as ways that NAVREF may be of assistance as implementation of the VHA Action Plan moves forward. If your very full schedule precludes physical attendance we could arrange for you to join us by phone for a discussion. If that is not possible, we would be pleased to meet with you or any member of your staff at a convenient time.

Sincerely,



Barbara F. West
Executive Director

cc: VA Nonprofit Oversight Board (NPOB)
Warren Blackburn, MD
Ms. Amy Centanni
Malcolm Cox, MD
Gerald M. Cross, MD, FAAFP
Mr. Paul Hutter
Mr. Paul Kearns
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Mr. William Feeley, MSW, FACHE