

NONPROFIT RESEARCH CORPORATIONS
AND THE FEDERAL TECHNOLOGY
TRANSFER ACT

VA has authority to establish nonprofit research corporations as "flexible funding mechanisms" for conducting approved research at VA medical centers. 38 U.S.C. § 7361(a). VA also has authority to permit the directors of Government-operated laboratories to enter into cooperative research and development agreements (CRADAs) with other Government agencies, private organizations, and persons. 15 U.S.C. § 3710a(a)(1). The question presented is whether a nonprofit research corporation has authority to enter into a CRADA on behalf of the Government. As explained below, a nonprofit research corporation is not a Government-operated laboratory and therefore does not fall within the statutory language permitting such agreements.

The purpose of the statute authorizing nonprofit research corporations is to allow private entities to contribute research monies to Government projects without augmenting appropriations, and without passing monies through universities. The relationship which the statute creates between these corporations and the Federal Government is that the corporations, although formed under and subject to state corporate laws, are subject to oversight by the Inspector General and the Comptroller General. The statute does not create a relationship in which a nonprofit research corporation is an arm of the Government.

In the House Report on the Veterans' Omnibus Health Care Amendments of 1987, Congress addressed the proposed amendment authorizing nonprofit research corporations, stating that "[t]hese 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." H.R. Rep. No. 373, 100th Cong., 1st Sess., at 5 (1987).

Given this legislative history, attorneys at the Department of Veterans Affairs and the Department of Justice have concluded that the Federal Tort Claims Act does not cover employees of nonprofit research corporations, that nonprofit research corporations cannot use the GSA supply schedule, and that VA medical centers may not transfer funds received pursuant to a CRADA to nonprofit research corporations for administration.

Consistent with the conclusion that nonprofit research corporations are not Government-operated laboratories, and consistent with prior determinations finding that nonprofit research corporations have no governmental authority, we find that they also have no authority to enter into CRADAs on behalf of the Federal Government.