

June 5, 2008

Ms. Belinda J. Finn (52)  
Assistant Inspector General for Auditing  
Office of the Inspector General  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

Dear Ms. Finn:

I am writing on behalf of the National Association of Veterans' Research and Education Foundations (NAVREF) in regard to 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.

NAVREF is the membership association of the 84 VA-affiliated nonprofit research and education corporations (NPCs) established and operated under 38 U.S.C. 7361-7368, including the five NPCs that were the subject of this audit. While we firmly believe that NPC boards and administrative employees strive to be conscientious stewards of NPC funds and to attain full compliance with the requirements applicable to them, we thank the OIG for its thorough review of these five NPCs and for bringing to light areas of management that provide opportunities for improvement.

It is noteworthy that the OIG report cited no instances of misuse of funds, dual compensation of federal employees or fraud among the five NPCs reviewed and their combined revenues of \$40 million under administration during the period audited. We consider the report validation that management of the NPCs is fundamentally sound and that they are indeed operating as flexible funding mechanisms for the conduct of VA research and education as Congress intended. However, we agree there is room for improvement in NPC administration, and we take very seriously the OIG finding that these NPCs did not have adequate controls over some of the processes for the funds they manage.

**Factual Corrections.** Please make note of the following corrections to the report:

1. It appears that the auditors used the NAVREF membership roster to identify the number and locations of the NPCs. Please be aware that Paralyzed Veterans of America is a respected member of NAVREF, but it is not an NPC. Additionally, the Madison Veterans' Research and Education Foundation exists in name only. According to NAVREF records, there are 84 active NPCs as well as two inactive ones not listed in the report.
2. The report incorrectly states that "Federal law and VA policy prohibit NPCs from receiving appropriated funds." Rather, NPCs are prohibited from receiving transfers of funds **appropriated to VA**. There is no such prohibition on NPC receipt of funds appropriated to other agencies – directly from the other agencies or indirectly as transfers from VA or sub-awards from universities. Importantly, approximately half of NPC revenues are derived

from grants and contracts supported by funds appropriated to other federal agencies, primarily the Department of Health and Human Services and the Department of Defense.

3. In the course of the audit, standards were misapplied to NPCs. The 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 your report, those particular ones are not among the many standards regarding management and internal controls applicable to NPCs.

4. In regard to the finding that three NPC employees failed to submit financial disclosure statements, our own research indicates that the referenced document is the "Research Financial Disclosure Statement" and that this documentation is the responsibility of the facility Research Administration Office. Even personnel of the affected Research Administration Office agreed that this lapse should not be attributed to the NPC.

### **Audit Objectives**

NAVREF objects to the stated purpose 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 statute or its legislative history, OIG incorrectly imputed to VHA responsibilities that are in actuality the responsibility of NPC boards and management. Therefore, the OIG findings that VHA failed to exert controls over NPC management and accounting clearly are inconsistent with the intent of Congress, and we disagree with the findings citing deficiencies in VHA controls over NPC 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.**

A more appropriate and defensible objective for the audit would have been "to determine whether VHA performed effective **oversight** of NPC management and accounting." The NPC authorizing statute and the legislative history are explicit in making oversight a VA responsibility and NAVREF is in complete agreement with the OIG findings that VHA has failed in its oversight responsibilities.

### **Audit Findings**

Without more detail, NAVREF is not in a position to comment on the specifics of the OIG findings. However, we object to the OIG starting its descriptions of the findings pertaining to NPCs – particularly in the executive summary - with misleading statements such as "NPCs did not . . ." or "NPC employees did not . . ." This creates an exaggerated impression of the extent of the problems identified. We hope this was not the OIG's intent, but we feel these undifferentiated statements do a disservice to those NPCs – and we are confident that is most of them - that are competently managing the areas identified in the report findings.

### **Audit Recommendations**

NAVREF agrees with the OIG recommendations. However, we have some concerns about the VHA Action Plan to implement the recommendations, particularly in regard to the large number of people – many of whom may not have nonprofit experience - being engaged to participate in executing the VHA plan. We are also concerned about 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 VISNs have had virtually no interaction. In our view, a Nonprofit Program Office (NPPO) staffed by personnel qualified for their positions should be capable of providing meaningful oversight efficiently and effectively. However, it appears that VHA has now chosen a different approach to overseeing the NPCs. NAVREF is 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.

### **Conclusion**

NAVREF and NPC personnel are justifiably proud of the significant value NPCs bring to VA and to the VA investigators who contribute to medical advances in treatment for veterans. In order to continue to provide benefits to VA in support of VA research and education at VA medical centers across the country, we firmly believe that VA must have confidence in NPC management. Effective VA oversight is an essential component of ensuring that confidence. We thank OIG for fostering VHA interest in improving its oversight and for identifying areas of NPC management in need of attention.

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Thank you for considering our views. We would be pleased to meet with you or any member of your staff to discuss our response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barbara F. West". The signature is written in a cursive style with a large initial 'B'.

Barbara F. West  
Executive Director