

DEPARTMENT OF VETERANS AFFAIRS**National Research Advisory Council
March 2024 Recommendations**

The National Research Advisory Council (NRAC) presents the following recommendations for consideration to the Secretary of Veterans Affairs. These recommendations are based on inputs from the Department of Veterans Affairs (VA) Office of General Counsel (OGC), VA Office of Research and Development (ORD), and the Office of Government Ethics (OGE) regarding a change to the interpretation and implementation of 18 U.S.C. § 208 with respect to research as discussed at the March 6, 2024, NRAC meeting.

18 U.S.C. §§ 201-209 comprise the criminal conflict of interest statutes for all Federal employees. Section 208 prohibits Federal employees from participating personally and substantially as part of their official duties in a “particular matter” that has a direct and predictable effect on their financial interests or the financial interests of an outside employer or certain others (such as the employee’s spouse). For “dually appointed” researchers employed by VA and an academic affiliate (Affiliate) or VA nonprofit research and education corporation (NPC), participation in a VA research project that, for example, involves co-owned inventions that are being licensed or when an Affiliate or NPC administers the research funds violates section 208 because the project affects the financial interest of the Affiliate or NPC.

Under the guidance of the OGE, OGC revised its interpretation of “particular matter” under section 208 in such a way that presents a significant conflict of interest challenge for VA researchers and educators holding dual appointments. The new interpretation, which will be enforced by OGC as early as September 30, 2024, will adversely impact these researchers from beginning or continuing their work and create burdensome administrative delays because the statute does not recognize the unique circumstances of their dually appointed status. The new interpretation also could necessitate thousands of waiver requests, impose considerable administrative burdens, and, in the worst case, lead to the departure of VA researchers and educators and jeopardize VA’s relationships with Affiliates and NPCs.

Ultimately, the new interpretation of section 208 would have a significant and negative impact on VA research and patent licensing activities and potentially impede the research mission to advance knowledge and improve the health and well-being of Veterans. Legislative action is required.

Recommendation 1: Support a VA ORD coordinated Integrated Project Team (IPT) and encourage participation by the relevant program offices within VHA. The Integrated Project Team (IPT) will consist of stakeholders from affected program offices. The IPT will be tasked with the following.

1. Evaluate the impact of section 208 to dually appointed VA researchers, as well as the potential impact of section 208 to VA non-research clinicians and educators who are employed by or otherwise work with Affiliates and NPCs.
2. Explore the impacts of section 205 and section 203 to ensure that any legislative proposals to remedy section 208 also address potential conflicts of interest risks to VA employees in the performance of their Affiliate or NPC duties.
3. Revisit the previous legislative changes made in the Consolidated Appropriations Act of 2023 (P.L. 117-328) to address section 209 for VA researchers and determining whether those authorities should be amended to cover VA non-research clinicians and educators.

VA Response: Concur. The new interpretation of section 208 would have a significant and negative impact on VA research and patent licensing activities and potentially impede the research mission to advance knowledge and improve the health and well-being of Veterans. Legislative action is required. The IPT will evaluate this impact and make recommendations for changes that will minimize negative repercussions.

Recommendation 2: Prioritize and advance the legislative recommendations resulting from the IPT that address sections 203, 205, 208, and 209.

VA Response: Concur. Per the preceding, the new interpretation of section 208 would have a significant and negative impact on VA research and patent licensing activities and potentially impede the research mission to advance knowledge and improve the health and well-being of Veterans. Legislative action is required. SECVA support of recommendations will help advance legislation that prevents negative research and academic consequences. In response to a request from the Senate Veterans' Affairs Committee for Technical Assistance, ORD and OGC drafted and advanced proposed changes to the relevant statutes to the Office of Congressional and Legislative Affairs (OCLA) on June 4, 2024. OCLA forwarded the proposed language to the Senate Veterans' Affairs Committee on June 7, 2024.

**Department of Veterans Affairs
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