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**University and Veterans Joint Appointments**

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COUNCIL ON GOVERNMENTAL RELATIONS

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# FACULTY APPOINTMENTS AT ACADEMIC MEDICAL CENTERS

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A FOCUS ON UNIVERSITY AND DEPARTMENT OF  
VETERANS AFFAIRS JOINT APPOINTMENTS

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## INTRODUCTION

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The Council On Governmental Relations (COGR) is an association of leading research universities and institutions. One of COGR's important activities is assisting institutions to develop policies and effective practices that reflect the mutual interests of the research community: research institutions, their representative associations, federal agencies, and other sponsoring entities.

In March 2007, COGR released a paper titled "*Policies and Practices: Compensation, Effort Commitments, and Certification*". That paper addresses issues related to salary compensation, effort commitments, and certification policies and practices, as well as the Federal regulations governing these areas. COGR's commitment is to address related issues and concerns that arise subsequent to the original paper. Consequently, the topic of Faculty Appointments at Academic Medical Centers (AMCs), with a special focus on Department of Veterans Affairs (VA) and University joint appointments, has emerged as a priority for COGR to address.

Our objectives in this paper are to: 1) articulate the existing Federal guidance that governs faculty appointments at AMCs, with a special focus on the guidance applicable to University-VA joint appointments, and 2) define and describe recent issues related to University-VA joint appointments, and when applicable, introduce other issues associated with the broader discussion of faculty appointments at AMCs.

Unlike the March 2007 paper, this paper is not a detailed discussion of policies and practices. A comprehensive analysis is not easy because Federal guidance in this area is not substantial, which makes it difficult to describe specific compliance requirements. Furthermore, of the over one-hundred University-VA affiliations that exist across the country, there are many unique circumstances that make it difficult to define a "one-size-fits-all" model. Instead, our approach is more issue-oriented with the goal of raising some of the most complex issues, and as appropriate, using the discussions in this paper as a springboard to engage decision-makers, policy leaders, and officials from the research community.

A primary theme we address is for Federal funding agencies to continue supporting the long-held principle that distinguishes the unique contribution that faculty and research scientists at AMCs can make to multiple organizations. These individuals have the capacity to provide the country with break-through research discoveries, to teach and train our future medical professionals, and to deliver first-rate patient care to our veterans and the general public. Because of geographical convenience, these individuals are able to provide their services to multiple institutions, including their home university, the VA, the local hospital, and other medical centers and clinics. And while this paper concentrates on those joint appointments commonly seen at AMCs, it is important to note that the value gained when scientists can share appointments across multiple institutions also extends to other situations. Faculty joint appointments held between Universities and National Laboratories are a notable example. These and similar examples are not the focus of this paper; however, some of the discussions in this paper are broad and could be applied to any joint appointment scenario.

University and research administrators strictly adhere to institutional policies that ensure appropriate faculty time and effort commitments are honored, and the stewardship responsibility associated with managing federal funds is taken seriously. However, if the long-held principle that has recognized the unique contributions made by faculty and research scientists is discounted, the inherent value of having individuals be available to multiple organizations may be compromised. University administrators and faculty alike may conclude that the administrative and accounting burdens are too cumbersome, with the end result being disincentives to engage in joint appointments and a net loss to the country in terms of quality research, instruction and medical care that is provided.

## **ORGANIZATIONAL NOTES AND SECTION HIGHLIGHTS**

The two primary entities that drive the discussions in this paper are the Department of Veterans Affairs (VA) and Universities. The reader should note that varying terminology is utilized throughout the document. For example, when referring to the Department of Veterans Affairs, we will regularly refer to the conventional VA acronym, as well as referring to VA Medical Centers (VAMCs). When discussing Universities, at times we will be more specific and refer to Academic Medical Centers (AMCs).

There are two sections and two appendices that follow this Introduction. The following topics are addressed in each section:

- The first section addresses the official Federal guidance applicable to compensation and effort reporting requirements, and further defines the corresponding Federal and University concerns with how this guidance is implemented and affects research universities.
- The second section presents recent issues related to University-VA joint appointments, and when applicable, introduces other issues associated with the broader discussion of faculty appointments at AMCs.
- The first appendix is an overview of the VA and VAMCs and also provides a historical background to the University-VA relationship. It can be read independently from the rest of the paper.
- The second appendix, Sample Memorandum of Understanding (MOU), shows a sample MOU agreement and can be used as a point of reference for the reader.

## **RECOGNITION**

COGR appreciates the contribution of all its members in bringing to the attention of their colleagues across the country new challenges and strategies for addressing them. In creating this document, the COGR Costing Policies Committee, the COGR Board, and volunteers in the research community made important contributions. Special recognition is given to the Working Group, whose members dedicated many hours and significant effort to this project. The authors and contributors are shown on the back page of the paper.

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## CONCERNS AND THE FEDERAL GUIDANCE

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This paper has a special focus on University-VA joint appointments and those issues related to compensation and effort commitments. When a faculty member has a University-VA joint appointment, and research funding from another federal agency is introduced into the equation, this can create a friction in the areas of compensation, effort commitments, and the ability of the sponsor to make an award. The most common example is when the faculty member has a University-VA joint appointment and also has research funding from the National Institutes of Health (NIH).

Some of the issues that are most relevant to both Federal officials and University representatives include:

1. **Hours-based Metric.** An hours-based approach to account for faculty time is both inconsistent with the Federal cost principles defined in Office of Management and Budget (OMB) Circulars A-21, A-122, and 45 CFR Part 74 – Appendix E (OASC-3), and with how faculty manage their workload.
2. **Faculty Full-time Appointment and the VA Appointment.** University administration and the Federal agencies share the same fiduciary interest in a clear definition of what constitutes a faculty full-time appointment. Long-standing principle, practice, and Federal regulation have established that a faculty full-time appointment should be defined by the University and should be considered independent of the VA appointment.
3. **Dual Compensation and Research Overlap.** Individuals cannot be reimbursed by two separate entities for the same work. Or to phrase this another way, the same research should not be funded by more than one Federal agency. In the case of NIH, the “Other Support” pages on an NIH grant application are designed so that NIH can review the other research activities in which an applicant is engaged (or may be engaged in the future). While it is common for an individual to have funding from multiple sources, and University administration is extremely conscientious in attending to research overlap in the appropriate manner, this situation has the potential to raise the question of how conflicting interests and financial stewardship are managed.

Federal guidance begins to address some of these concerns, though the official guidance does not address every issue or question. OMB Circular A-21 contains the cost principles that are applicable to grants, contracts, and other agreements issued by all Federal agencies to Higher Education institutions, while OMB Circular A-122 contains the cost principles for Nonprofit Organizations and 45 CFR Part 74 – Appendix E (OASC-3) contains the cost principles for Hospitals. We cite Circular A-21 for the purposes of this paper, though the guidance contained in Circular A-122 and OASC-3, for the most part, is consistent with the Circular A-21 guidance. Section J10, Compensation for personal services, is the relevant section of Circular A-21. Two excerpts, one from J10.b and the other from J10.d, are shown on the next page.

**OMB Circular A-21**

**Section J10. Compensation for Personal Services (excerpts from J10)**

*J10.b.(2). Criteria for Acceptable Methods*

*(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities. A grant application from a university may request the university's share of an investigator's salary in proportion to the effort devoted to the research project. The institutional base salary as contained in the individual's university appointment determines the base for computing that request.*

*J10.d. Salary rates for faculty members.*

*(1) Salary rates for academic year. Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution.*

Section J10.b.(2)(d) emphasizes that specific activities are normally expressed as a percentage of distribution of one's institutional based activities; use of hours is not mentioned. Section J10.d specifies that salary rates and compensation are based on the compensation policy of the institution, which suggests that the University appointment be kept separate from appointments from external organizations.

The excerpt on the following page from the December 2003 version of the NIH Grants Policy Statement (GPS) focuses specifically on the Memorandum of Understanding (MOU) and the University-VA appointment, and how those appointments should be considered (NIH Grants Policy Statement, Part II: Terms and Conditions of NIH Grant Awards, Subpart B: Terms and Conditions for Specific Types of Grants, Grantees, and Activities). *NOTE: AT THE PUBLICATION DATE OF THIS PAPER, AUGUST 2010, NIH WAS CONSIDERING UPDATES TO THE ENTIRE GPS. ANY RECENT CHANGES TO THE GPS ARE NOT REFLECTED IN THIS PAPER.*

The emphasis on percentage of effort and using the University appointment as the basis for defining compensation and effort are clearly defined. While total professional effort (i.e., University and VA responsibilities) must be documented, the University appointment and the corresponding institutional salary is the base for computing the budget request. In addition, an MOU that defines the responsibilities between the University and the VA must be available and kept current. The GPS also states that there must be no possibility of dual compensation for the same work or any actual or apparent conflict of interest between the University work and the VA work being performed.

***NIH Grants Policy Statement (December 2003 version)***

***VA-University Affiliations***

*Investigators with joint appointments at a VAMC (VA hospital) and an affiliated university must have an MOU that specifies the title of the investigator's appointment, the responsibilities (at both the university and the VAMC) of the proposed investigator, and the percentage of effort available for research. The MOU must be signed by the appropriate officials of the grantee and the VAMC, and must be updated with each significant change of the investigator's responsibilities or distribution of effort and, without a significant change, not less than annually. The joint VA/university appointment of the investigator constitutes 100 percent of his or her total professional responsibilities. However, NIH will recognize such a joint appointment only when a university and an affiliated VA hospital are the parties involved.*

*A grant application from a university may request the university's share of an investigator's salary in proportion to the effort devoted to the research project. The institutional base salary as contained in the individual's university appointment determines the base for computing that request.*

*The signature of the AOO of the submitting university on an application to NIH that includes such an arrangement certifies that*

*- the individual whose salary is included in the application serves under a joint appointment documented in a formal MOU between the university and the VA, and*

*- there is no possibility of dual compensation for the same work or of an actual or apparent conflict of interest.*

*Under the above-described arrangement, there is no involvement of a VA-affiliated non-profit research corporation, which is eligible to apply for and receive NIH grants in its own right as a non-profit organization. The limitations on the payment of Federal salaries apply (see "Allocable and Unallowable Costs" in this section).*

While OMB Circular A-21 and the NIH Grants Policy Statement are the most broadly applicable policy guidance documents related to University-VA joint appointments, other Federal agency policies and practices impact the discussion. For example, the VA's standard 40-hour workweek metric plays a significant role. While Universities are not required to consider a 40-hour workweek metric, the VA's emphasis on the 40-hour workweek results in inconsistency between VA requirements based on hours and Circular A-21 cost principles based on percent of effort. In the next section we address several discussion topics that relate to University-VA joint appointments.



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## DISCUSSION TOPICS: UNIVERSITY-VA JOINT APPOINTMENTS

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The issues listed at the beginning of the prior section are discussed in varying levels of detail in this section. The primary challenge addressed is how to propose and report compensation and effort commitments to a Federal funding agency (e.g., NIH) when a faculty member has a joint appointment with the VA and the University.

The difficulty arises because of differences in how Universities and the VA describe and record time devoted to activities such as research, instruction, administration, and clinical activities. Fundamental to this problem is the fact that the VA defines a full workweek as 40 hours, whereas Universities define appointments on the basis of the activities described in an appointment letter. For purposes of mandatory reporting of effort on sponsored programs, and as specified in Circular A-21, University effort is reported as the proportion of time devoted to each activity expressed as a percentage of total university activity (see Circular A-21, J.10.b(2)(d) in the previous section). Circular A-21 recognizes that a precise accounting of hours can be difficult and unproductive, especially when considering the fine line that exists between teaching, research, public service, and clinical services. Instead, defining professional responsibilities in terms of percent of effort is more manageable and is supported by Federal officials that are responsible for research oversight.

### Reporting Requirements and the Memorandum of Understanding (MOU)

The primary intent of the MOU is to give a sense to potential NIH research sponsors as to how an investigator's time is spread across the University and VA activities, and to provide an assurance that any research commitments made can be delivered. However, an MOU format that emphasizes hours can be problematic by: a) suggesting that effort be accounted for in terms of hours, and b) overlooking the Federal principle that the University and the VA appointments are separate appointments, and subject to reasonableness standards, the University appointment should be defined by the University and measured independently from the VA appointment. The MOU has no direct bearing on the reporting of University effort, which is always expressed on the basis of 100 percent of total activities at the University. The challenge that AMCs face, however, is that the NIH, at times, has suggested that funding decisions (i.e., most common with the Career Development, or K award program, but also seen with other NIH mechanisms, such as R01s) should be based on a faculty member's total professional activities defined by the MOU rather than solely on University activities.

"Just-in-time" documentation requests refer to information that NIH requests after a grant application goes through the initial peer review process and is within the range of being funded. As part of the "just-in-time" material, NIH will request the investigator's "Other Support" document and may request either the actual MOU or documentation that the MOU has been executed. It is at this point that Universities could experience problems due to differing interpretations of effort commitments by the various NIH Institutes and Centers (ICs). While the NIH GPS (see previous section) indicates that total professional effort (i.e., University and VA responsibilities) must be documented in the MOU, the GPS clearly states that the University appointment and the corresponding institutional salary is the base for computing the budget request. Any misunderstanding between NIH ICs and the University (i.e., whether the proposed committed effort is based on University effort or total professional effort) is brought to the surface due to the format of the MOU that encompasses both University and VA activities, often shown on the basis of hours.

The unfortunate result where total professional effort and hours become the focus is highlighted when one reviews the typical MOU format where hours are used to document both the University

and the VA commitments. Using an hours-based metric, though necessary from a VA perspective, can be a source of misunderstanding as effort commitments are scrutinized by the NIH ICs.

Circular A-21 and the NIH GPS define the treatment of total professional effort and hours when determining funding decisions and documenting effort. To impose other standards places an unreasonable burden on Universities to demonstrate compliance. University and research administrators appreciate the important role of the MOU, but when hours become the key criterion used by NIH ICs, this is inconsistent with the requirements and policies specified in Circular A-21, the NIH GPS, and long-standing research funding principles.

#### Academic Medical Center Appointments and Clinical Practice Plans

AMC appointments can be complex. Most clinical appointments are full calendar-year appointments and they may or may not include participation in a clinical practice plan. If the practice plan is incorporated into the University and the faculty member receives a single paycheck (i.e., single paymaster) for duties associated with University and practice plan responsibilities, then it can be assumed that the basis for defining institutional base salary (IBS) and effort includes University and practice plan activity. If the practice plan is not legally a part of the University, then the practice plan compensation and effort could either be included or excluded. How it is treated would depend on the University's policies and practices. On August 4, 2005, NIH issued NOT-OD-05-061, which clarified the NIH policy:

*For investigators receiving compensation from the institution (grantee/contractor) and separately organized clinical practice plans, compensation from such sources may be included in the institutional base salary (IBS) budgeted and charged to NIH sponsored agreements if all of the following criteria are met:*

- *Clinical practice compensation must be set by the institution.*
- *Clinical practice activity must be shown on the institution's payroll or salary appointment forms and records approved by the institution.*
- *Clinical practice compensation must be paid through or at the direction of the institution.*
- *Clinical practice activity must be included and accounted for in the institution's effort reporting and/or payroll distribution system.*
- *The institution must assure that all financial reports and supporting documents associated with the combined IBS and resulting charges to NIH grants are retained and made available to Federal officials or their duly authorized representatives consistent with the requirements of 45 CFR Part 74.53 (A-110 Subpart C 53).*

*Set by the institution means that the grantee/contractor institution must be in a position to document and certify that the specified amount of clinical practice compensation is being paid in essentially the same manner as other specified amounts of the committed IBS (compensation) of the investigator. Further, this requires that the IBS not vary based on the specific clinical services provided by the investigator within the periods for which total IBS is certified by the grantee institution.*

*The NIH recognizes that reimbursement for investigator effort on grants must be provided consistent with the actual institutional costs of these services in accord with applicable Federal Cost Principles and other limitations for such reimbursement, such as the legislative cap on salary reimbursement. The revised criteria support conformance with applicable cost principles and consistency in the treatment of compensation across the institution regardless of the source of support for compensated activities.*

Consequently, for institutions where the practice plan is not legally a part of the University, the institution may include or exclude the practice plan activity according to the criteria defined in the NIH August 4, 2005 clarification notice. An institution's effort reporting system can be acceptable regardless if the practice plan is included or excluded. However, the method chosen must be consistently applied across budgeting, charging, and reporting practices and implemented in a uniform manner across the entire institution.

The treatment of the clinical practice plan and the associated clinical time is relevant to the discussion on the treatment of a VA appointment. In those situations where an independent practice plan is excluded from IBS and effort reporting, the practice plan and the VA appointment each represent separate appointments. When the practice plan meets the criteria for inclusion in IBS, the practice plan and the VA appointment are treated differently (i.e., the practice plan is included and the VA appointment is excluded). Thus, the treatment of practice plans varies from the treatment of VA appointments and adds to the complexity of understanding and managing multiple appointments at AMCs.

#### Other Organizational Relationships; Nonprofit Research Institutes and IPAs

While not discussed in-depth, two other organizational relationships should be mentioned.

VA Nonprofit Research Institutes/Corporations have been in existence for over twenty years (also see Appendix 1). Many VA hospitals have associated nonprofit corporations which augment the VA hospital's operations through quicker, more flexible funding mechanisms to support the VA's research environment. Because these nonprofit corporations are not subject to the same Federal regulations governing hiring practices and the acquisition of goods and services as the VA hospitals, the corporations can more quickly obtain goods and services which serve to expedite the research goals at the VA hospitals.

Intergovernmental Personnel Act (IPA) agreements are governed by the Intergovernmental Personnel Act of 1970 and enable University personnel to be reassigned to work for a government agency such as the VA for duties not to exceed four continuous years. IPA agreements make it possible for VA hospitals to quickly obtain expertise, often times from research universities, which are not available at the government location.

Both of these organizational relationships represent examples of successful public policy initiatives that have enhanced the operational flexibility of VA hospitals. However, as suggested in the previous section on clinical practice plans, each adds to the complexity of understanding and managing joint appointments at AMCs.

### An Example of Presenting Joint Appointments in NIH Proposals

Investigators with University-VA joint appointments must have an MOU that specifies the title of the investigator's appointment, the investigator's responsibilities at both the University and the VA, and the percentage of total professional effort available for research. The MOU must be signed by the appropriate officials of the applicant organization and the VA and must be updated with each significant change of the investigator's responsibilities or distribution of effort. Without a significant change, it must be signed and updated not less than annually. The University-VA joint appointment constitutes 100 percent of the investigator's total professional responsibilities.

Related to the presentation of the MOU is NIH guidance that the grant application should request the University's share of an investigator's salary in proportion to the University effort devoted to the research project. In other words, the University is the applicant organization and the VA appointment is excluded. For the purpose of proposing effort, the MOU primarily should be used to ensure that there is no possibility of dual compensation for the same work and sufficient commitment is available to address institutional responsibilities. Other factors, such as the existence of a joint appointment, the basis for the institutional base salary, and the basis of the effort commitment as a percentage of 100 percent University effort can be disclosed in the budget justification so that the activities constituting the joint appointment can be considered separately. Furthermore, the NIH "Other Support" page should indicate current and pending support applicable to any research effort or awards supported by the VA.

As an example, the following sample statement incorporates several of these principles into a typical representation in the budget justification for a faculty member with a University-VA joint appointment and who has an appointment with a University affiliated practice plan that is incorporated into the University:

*Dr. James Smith has a University-VA joint appointment and an appointment with the University's affiliated clinical practice plan. The VA arrangement is defined in a formal University-VA joint appointment MOU. The institutional base salary used in this application represents the combined salary from both the University and the clinical practice plan; it does not include salary from the VA appointment. The percentage of effort in this application represents university effort on the proposed project in relation to professional effort for the University and clinical practice plan appointments.*

### NIH Policy for Career Development (K) Awards

An NIH notice ([NOT-OD-04-056](#)) issued on August 3, 2004 clarified the policy on how total professional effort is viewed for K awards. Selected points from that notice are shown:

*A career award recipient meets the required commitment of total professional effort as long as: 1) the individual has a full-time appointment with the applicant organization; and 2) the minimum percentage of the candidate's commitment required for the proposed Career award experience is covered by that appointment. Please note that a candidate may propose a career award experience that involves sites beyond the applicant institution or organization, provided that the goals of the total experience are encompassed and supported under the appointment with the applicant organization.*

*This policy also applies to individuals who hold additional appointments with an independent clinical practice plan, the Veterans Administration or other organizations. Assuming a full-time appointment with the applicant organization, a candidate meets the professional effort requirement of the career award as long as the minimum percentage required for the proposed Career award experience is supported by the appointment at the applicant organization. Responsibilities outside of the applicant organization appointment are not restricted but also cannot be used to meet any minimum effort requirement.*

*The following example is illustrative:*

*An investigator has a full time appointment at a university and a half time appointment with another organization (VA or independent clinical practice plan). Under this new policy, the investigator can be supported because the university and candidate can commit at least 75% of the full time appointment to the award.*

The policy's key principle is that if an investigator has a full-time appointment with the applicant organization, the investigator will meet the professional effort requirement of the career award as long as the minimum effort percentage required for the award can be supported by the appointment at the applicant organization. Prior to the clarification, external effort (e.g., VA effort, independent clinical practice plan) was considered when determining the minimum effort percentage, which often made it very difficult to meet the minimum requirement. The policy clarification specifies that a VA appointment, as well as appointments with an independent practice plan (i.e., a plan not incorporated into the University and not part of IBS or the institutional appointment) or other outside organizations need not be considered when defining the appointment at the applicant organization.

In the example provided in the NIH notice, an investigator with a VA appointment (e.g., half-time or 4/8ths VA appointment) could be supported by NIH if he/she is able to commit 75% of his or her effort for the applicant organization. The award criterion in this case is based solely on having a full-time University appointment. Time devoted to external appointments, such as the VA appointment or an independent practice plan, normally should not factor into the decision to make the award.

This 2004 NIH policy notice provided an important and positive clarification for career development awards. However, there have been instances where NIH grant management officials, upon review of K award applications, have required investigators to have 30 university hours available in order to receive the award (30/40 hours – i.e., 75%, rather than 9 person months – i.e., 75% of a full-time appointment at the applicant organization). While it is reasonable to confirm that an investigator can honor his or her commitment, introducing the 40-hour metric into the equation may not adequately express the actual commitment that can be made to the K award and can lead to subjective determinations as to whether the investigator has sufficient University time to accept the award.

Further, the 2004 policy notice applies only to K awards. Some institutions have encountered resistance in receiving R01 awards under the same scenario that was cited as acceptable in the 2004 clarification – i.e., a full-time appointment at the applicable organization and a half-time appointment at the VA. For non-K awards, such as an R01, the GPS reference that total professional effort must be considered when one has a VA appointment remains applicable. This creates an inconsistency with the treatment of K awards as defined in the 2004 policy notice. A rational solution may be to specify that the appointment at the applicable organization should be the basis for determining available effort to be funded for all NIH funding mechanisms.

## The Problem with Hours and Standard Workweek Metrics

Total professional effort should be considered when determining available effort to be funded and it is understood that hours or standard workweek metrics are intuitive benchmarks to consider. Many institutions utilize MOUs that define total professional effort in terms of hours. However, the official University appointment is not measured in terms of hours and the number of hours a faculty member can work in a full-time appointment can vary significantly from faculty member to faculty member. As a result, it is inappropriate and misleading to apply conventional hours-based measures of workload (e.g., a standard 40 hour workweek) to University faculty.

It is realistic, for example, for a faculty member to have a 6/8ths VA appointment requiring 30 hours per week of VA effort and a full-time University appointment to which the faculty member might devote more than 40 hours per week. Another faculty member, for example, may have a 2/8ths VA appointment requiring 10 hours of VA effort per week and a full-time University appointment to which the faculty member might devote 60 hours per week on selected weeks. The point is, Federal sponsors should be aware of the wide variability of hours worked by University faculty – to develop inflexible metrics or to focus upon hours at the marginal level is not a model that reflects how faculty members execute their work responsibilities.

Many of the issues addressed in this paper arise most often in connection with NIH programs. That is the case partly because of large numbers and many different types of NIH research and training awards at AMCs, and partly because faculty and investigators at AMCs often have complex appointments or sets of appointments. Still, similar issues can arise in other situations, as occurred in 2008 with the DOD-U.S. Army Medical Research Acquisition Activity (USAMRAA), Congressionally Directed Medical Research Programs office (i.e., the Post Traumatic Stress Disorder, Traumatic Brain Injury research program targeting veterans returning from the Iraq war). In this particular situation, DOD initially was focused on a 40-hour workweek metric when considering an investigator's available effort to be funded, and consequently objected to a number of institutional grant applications. While this situation was successfully resolved, the fact that the concern was raised highlights the regular attention paid to this issue by Federal officials.

While it is appropriate for a funding agency to ascertain whether effort commitments can be honored, it is inappropriate for the funding agency to demand that the commitment be scrutinized in terms of hours. Faculty effort, like that of many other professional positions, rarely can be analyzed in terms of a standard 40-hour workweek. In many cases, 60, 70, or even 80 hour workweeks may be the norm. To require institutions and their faculty to support effort commitments in this manner is not consistent with how faculty conduct their duties, nor is it prescribed in the Circular A-21 cost principles.

NIH, DOD, and other research funding agencies are without question dedicated to advancing research and providing the highest quality programs. Furthermore, their commitment to safeguarding taxpayer dollars and maximizing the utility of a finite level of available funding is a priority. However, there is a risk that if program restrictions are either unreasonable or inconsistent with time-tested and accepted Federal cost principles, some institutions may choose not to participate in selected programs. In fact, the 2004 NIH policy change that emphasized full-time professional effort rather than total professional effort, as applicable to career development (K) awards, resulted in K awards becoming more attractive to investigators.

## The University's Responsibility in Defining Reasonableness

Universities understand that the combined number of hours for a University-VA joint appointment must meet a test of reasonableness. For example, a University may establish an upper limit (e.g., 60-65 hours per week averaged over the course of a year for activities at the University and the VA) as meeting this test, although the number of reasonable hours could be greater for certain faculty (e.g., a surgeon who has substantial research activity combined with an active clinical practice). No matter how many hours might be considered reasonable for a joint appointment, it seems realistic that the greater the time spent on VA activities, the smaller the amount of time will be available for University activities. Therefore, faculty with significant VA appointments might have less overall time to devote to University-based research than faculty at the same institution that do not hold a joint appointment. This consideration should be part of the analysis when defining the appropriate level of commitment that can be made.

When a faculty member has a full-time appointment at the University, regardless of his/her status at the VA, it is important for the institution to maintain documentation of the University responsibilities. For internal purposes, the full-time appointment normally is considered to equate to a 1.0 full-time equivalent (FTE) status, and that status normally is independent of other appointments such as those with the VA or other outside organizations. To combine the University appointment with a VA appointment or other outside appointments for internal purposes (e.g., to define institution-wide FTEs) is not required by Federal rules or regulations.

The Faculty appointment letter is the important document that ultimately specifies duties and activities, and University administration has an interest in ensuring that faculty have the time available to meet their institutional responsibilities. Federal funding agencies rely on the validity of the appointment letter to confirm compensation and responsibilities. While the faculty appointment letter may not specifically address time available to conduct a potential new research project, well written appointment letters still can help set the definitive basis for full workload, faculty effort, and institutional base salary.

The NIH - Public Health Service (PHS) Grant Application form PHS 398 reinforces the importance of establishing reasonableness thresholds for faculty with multiple research appointments. When an individual holds multiple appointments involving support for research activities (University-based and VA-based research), information from each appointment must be included separately in the Other Support documentation. The support from each funding source needs to be clearly and separately delineated so that the separate appointments can be considered independently when determining any potential overlap. University-VA joint appointments, in which research is being conducted at both the University and the VA, are specifically cited as examples of multiple appointments. NIH requests that information on the research activities at each organization be provided on the Other Support document so that NIH can consider the separate appointments independently when determining potential overlap and also make an assessment of the individual's commitment. It is specifically noted that the effort from the combined appointments can result in an excess of 12 calendar months, but that in all cases, the individual's combined full-time professional effort for career (K) awards or total professional effort for non-K awards must meet the test of reasonableness.

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## CONCLUDING THOUGHTS

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The issue of reasonableness may be at the heart of the issue related to University-VA joint appointments – in other words, how salary and effort should be proposed and documented, and whether or not a faculty member’s available effort to be funded is sufficiently reasonable for an agency to make an award, are legitimate considerations. However, defining reasonableness lends itself to a subjective discussion and exact formulas and metrics often are inappropriate.

For example, how should the available effort to be funded be viewed for a faculty member that has a full-time University appointment and a significant VA appointment (e.g., 6/8ths or greater)? While a full-time University appointment and a significant VA appointment might raise the concern of available effort, Universities are motivated to ensure that their faculty are able to meet all of the responsibilities associated with the full-time University appointment. A “test of reasonableness” inevitably must lie at the institution-specific level. Selected “unreasonable” situations easily can be recognized and institutional policies and practices should be structured to identify and prevent these situations from occurring. However, other situations might be less clear. In these situations, utilizing the available Federal guidance in combination with institutional documentation that supports the institution’s approach should set the standard to be followed.

An ongoing challenge is that certain concepts in the Federal regulations are not intuitive. For example, OMB Circulars A-21, A-122, and 45 CFR Part 74 – Appendix E (OASC-3) emphasize “percentage of activity” rather than the more easily understood hours-based metric. However, Federal cost principles are designed to reflect the intent of the policy makers who establish public policy. When there is uncertainty or disagreement on intent and implementation of policy, it is important for Federal officials and University representatives to work together to resolve the issue with a shared understanding of the official policy.

While the issue of reasonableness merits close review, several other discussions addressed in this paper also are important to summarize:

- The need to continually reemphasize that an hours-based reporting metric is both inconsistent with the Federal cost principles defined in OMB Circulars A-21, A-122, and OASC-3, and with how faculty manage their workload. While hours-based metrics may be intuitive, the inherent problem is that hours-based metrics do not easily measure how faculty execute their work responsibilities. Circular A-21 recognizes that a precise accounting of hours can be difficult and unproductive, especially when considering the interrelatedness of teaching, research, public service, and clinical services. Defining professional responsibilities in terms of percent of effort is more manageable and is supported by Federal officials that are responsible for research oversight. There is wide variability in the hours worked and the roles of University faculty, and this is recognized in the Circulars – to confine a review of available effort to a 40-hour workweek or similar metric is a flawed methodology.
- Working closely with Program officials from the funding agencies may be necessary to ensure that a VA appointment is treated in an appropriate and rational manner when determining available University time, and ultimately, when making funding decisions.
- It is important to communicate and emphasize to Federal officials that Universities have strong incentives to define a full-time appointment in a manner that is appropriate and fiscally responsible for the University.



- Situations where there appears to be confusion or inconsistency should be addressed through constructive dialog between Federal officials and University representatives. For example, in the case of career development (K) awards, official NIH guidance permits the full-time appointment at the applicable organization to be the basis for determining available effort to be funded. For non-K awards, such as an R01 award, total professional effort must be considered when one has a VA appointment. The inconsistent treatment in this situation could be clarified by specifying that the appointment at the applicable organization should be the basis for determining available effort to be funded for all NIH funding mechanisms.
- Reasonableness standards, while not conducive to a “one-size-fits-all” model, must be developed on an institution-by-institution basis. Universities should continue to refine their policies and practices so that, when appropriate, benchmarks are defined and specific examples of compliance/non-compliance are addressed. The more that it can be demonstrated that Universities are focused on reasonableness standards, the more assurance Federal agencies will have that the level of commitment being proposed is appropriate and that the reasonableness standard has been met.

Despite challenges, the longstanding and productive University-Government research partnership suggests that issues specific to University-VA joint appointments can be addressed in a constructive manner. Universities and research institutions are committed to sound financial management, consistent application of good costing principles, and ongoing development of best administrative practices. This obligation is taken seriously.

In chorus with this strong institutional commitment to financial stewardship, the clinical researchers and scientists who perform the cutting-edge research have the potential to provide solutions and discoveries that address some of the most acute medical problems in our society. To create artificial barriers and disincentives to participate in Federal research programs would be an unfortunate outcome of any Federal policy or regulation. Working to ensure that adverse outcomes do not arise is at the core of COGR's mission, and we will continue to advocate for reasonable and practical research policy and regulation.

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## APPENDIX 1 – OVERVIEW: THE VA AND VA MEDICAL CENTERS

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The Department of Veterans Affairs (VA) is one of the fifteen executive departments that comprise the President's cabinet. The goals of the VA are to provide excellence in patient care to America's veterans, and to effectively deliver the benefits earned (e.g., compensation and pension, education, loan guaranty, insurance) by our veterans. The primary functions of the VA are structured into three organizational areas: Veterans Health Administration (VHA), Veterans Benefits Administration, and the National Cemetery Administration.

The VHA manages a large network of VA Medical Centers (VAMCs) that includes over 150 hospitals nationwide, as well as a vast array of outpatient and community-based clinics. VAMCs are organized into 22 regionally based Veterans Integrated Service Networks (VISNs). The relatively new VISN structure was established in the 1990s, and was designed to provide a more efficient VA health care system.

The relationship between Universities (and their Academic Medical Centers) and VAMCs is mutually beneficial and natural. Universities provide the VAMCs with expert medical staff and care, while the VAMCs provide a training ground for graduate medical education, as well as access to important research opportunities and populations.

For the remainder of this overview discussion, COGR is grateful for material made available from the Association of American Medical Colleges (AAMC). The AAMC seeks to foster relationships between the VA and Medical Schools from across the country, and much of the material in the remainder of this Overview is derived from AAMC resources. The three AAMC documents referenced below provide important background and historical information. Each is referenced in the remainder of the Overview.

“Viewpoint: Providing Better Health Care for Our Nation's Veterans” – Thomas J. Lawley, M.D., Dean, Emory University School of Medicine and Chair, AAMC's VA-Deans Liaison Committee, March 2004.

“The Handbook of Academic Medicine - How Medical Schools and Teaching Hospitals Work” – William T. Mallon, Ed.D. and colleagues at the AAMC, 2004.

“Testimony on the Relationship Between the VA and Academic Medicine” – Presented by John Clarkson, M.D., Senior Vice President for Health Affairs and Dean, University of Miami School of Medicine, and Presented to the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, September 12, 2002.

### *Legislative Background*

The history of the VA and the evolution of its health care network is closely tied to the conclusion of World War II and the medical needs of veterans returning from the war. An excellent summary of some important milestones in that history can be found in Dr. Clarkson's testimony. It provides important historical markers that help one understand how VAMCs operate today, and further clarifies today's relationship between Universities and the VA.

- Public Law 79-293, enacted on January 3, 1946, provided the legal basis for affiliating the VA with medical schools. Paul B. Magnuson, M.D., who chaired the department of orthopedic surgery at Northwestern University Medical School at the time, played an

important role in this process by suggesting that affiliations would solve the problem of physician shortages at the VA by allowing medical school deans to staff VA hospitals with faculty physicians, residents and interns. The affiliated VA facilities, in turn, would provide medical schools with new venues in which to educate young physicians.

- Later in January, 1946, the VA published Policy Memorandum No. 2, the "Policy on Association of Veterans' Hospitals with Medical Schools." The memo decreed that the VA would retain full responsibility for the care of patients, and that the Schools of Medicine would accept responsibility for all graduate education and training.
- The Veterans Hospitalization and Medical Services Modernization Amendments of 1966 gave statutory authority to "Deans Committees" (initially called for under Policy Memorandum No. 2). These committees would be comprised of senior medical faculty from the Medical School and play key roles in residency programs and faculty appointments. The 1966 law also made medical education and training a formal component of the VA's medical care mission and authorized the VA to enter into agreements with medical schools to share specialized medical resources such as equipment, personnel, and space.
- The 1972 VA Medical School Assistance and Health Manpower Training Act provided grants to expand existing medical education programs and facilities as well as to establish five new medical schools next to existing VA medical centers. Throughout the history of the VA affiliation agreements, the VA's construction policy would continue to favor sites near existing medical schools.
- The Omnibus Health Care Act of 1976 provided statutory authority for the VA research mission in order to protect the VA research program from potential reductions in funding that could have jeopardized some of the affiliations, as well as adversely affected patient care and physician recruitment.
- The VA Health Care Amendments of 1980 sought to remedy the perception that some affiliations were unfairly balanced in favor of the affiliate. This law required greater VA representation on the Deans Committees, improved salaries for full-time VA physicians to reduce reliance on dually appointed faculty, and mandated that VAMC Chiefs of Staff be full-time VA employees.

#### *The Research Mission and VA Nonprofit Research Institutes*

In addition to the critical VA mission of providing excellence in patient care to our veterans, the broad health care mission of the VA further extends to the support of medical education, the conduct of medical research most related to the needs of veterans, and collaboration with the Department of Defense in critical initiatives, including national emergencies.

Budget authority for the entire Department of Veterans Affairs for Fiscal Year 2010 (estimated) was \$114 billion, while the Medical Research component was \$581 million. Additional budget information is available at: <http://www4.va.gov/budget/products.asp>

The National Institutes of Health (NIH) is the leading federal agency for medical research; however, the medical research component of the VA plays an important and necessary role. According to the AAMC's 2004 "Handbook" (page 31), the "... VA research program ... makes an important contribution to biomedical, behavioral and health services research ... Nearly 80 percent of VA-funded scientists are clinical

*investigators and 70 percent of VA research funding goes to clinical trials ... The VA research program funds more than 2,000 physicians and basic scientists nationwide, most of whom are faculty members at medical schools affiliated with VA medical centers.”*

A 1998 report by the Government Accountability Office (GAO), titled “VA Hospitals, Issues and Challenges for the Future”, focused on current (at that time) and anticipated VA health care delivery and cost challenges (see <http://www.gao.gov/archive/1998/he98032.pdf>). Chapter 13, Teaching Hospitals Diversify Funding of Medical Research, included a discussion on the VA research mission.

One discussion from the 1998 GAO report that is still relevant today describes the role played by Nonprofit Research Institutes associated with VAMCs across the country. In 1988, Congress included a provision under Public Law 100-322 that authorized the VA to establish research institutes (codified under Title 38 – Subchapter IV – Research and Education Corporations, under the United States Code). Today, there are over 80 of these VA affiliated Nonprofit Research Institutes, and they serve the purpose of facilitating the flow of federal and other sponsored research funds to VA-related research activities.

#### *The Prominent University-VA Relationship*

The University and VA relationship is significant, and has a foremost position in serving the nation’s research policy interests. From the Clarkson testimony in 2002 and the Lawley viewpoint in 2004, respectively, these two statistics highlight the scope and magnitude of the relationship between Universities and the VA:

- *Currently, 107 of the 125 medical schools maintain formal affiliation agreements with VA medical centers. (Clarkson, 2002)*
- *Approximately 70 percent of VA physician staff members have some level of joint academic appointments. Some schools report a 90 percent affiliation. (Lawley, 2004)*

The AAMC “Handbook” (page 8) captures the promise of nurturing the University-VA relationship; *“the unique patient populations of VA medical centers have given medical students and residents clinical experiences not available at other training sites.”* The same holds true for the research experience, which ultimately translates to the unlimited possibilities for dramatically improving the health and quality of life for our veterans. Furthermore, what is learned through the veteran population can be conveyed to other populations and individuals.

Managing the University-VA relationship is a challenge, and the fluidity of faculty appointments between Universities and VA medical centers is a major contributing force to the challenge. In addition, faculty affiliations with Clinical Practice Plans, VA Nonprofit Research Institutes, and other external organizations contribute additional variables for consideration. At the same time, the dynamic affiliations and faculty appointments are a testament to the success of the 1946 Public Law 79-293, which provided the legal basis for affiliating the VA with medical schools. Universities, and their faculty and students, are recipients of a prime training ground for graduate medical education, as well as access to unique and important research opportunities. The VA receives access to skilled faculty and students that supports and augments the VA’s mission to provide excellence in patient care to America’s veterans. So while the relationship may present challenges, it is a mutually beneficial relationship that serves the nation’s interests.

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## APPENDIX 2 – SAMPLE MEMORANDUM OF UNDERSTANDING (MOU)

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This is an example only, and an institution should utilize an approach and format that is consistent with the institution’s financial management practices. “Hours” are not shown for “Dr. Smith” in this example with the intent of deemphasizing the focus on documenting University time and effort in terms of hours. *COGR is not suggesting a specific methodology that should be used – “hours” should be added as an additional data element if that approach is consistent with institutional practices.*

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Dr. Smith has a full-time, 1.0 FTE, appointment with the University School of Medicine. Dr. Smith also has a separate 4/8ths VA appointment at the affiliated VA Medical Center (VAMC). In compliance with University policy, Dr. Smith provides the following document to the Office of Sponsored Programs at the annual deadline. All University Investigators who hold salaried VA appointments must complete a Memorandum of Understanding (MOU). A new MOU must be prepared each year. If significant changes in research activity occur during the year, then a revised MOU must be prepared at that time. All the new and revised MOUs must be submitted to the Office of Sponsored Research.

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### MEMORANDUM OF UNDERSTANDING

This memorandum is to formalize the joint appointment of ( Dr. James Smith ) as:  
( Assistant Professor, Division of Cardiology ) at the University and  
( Physician of Medicine & Primary Care ) at the VAMC.

His/Her responsibilities are as follows:

	University	VAMC	
	% effort	“Eighths”	% effort
<b>Teaching</b>	50%		
<b>Clinical</b>	25%	2/8ths	50%
<b>Administration</b>			
<b>Research:</b>		2/8ths	50%
Grant 1: NIH Genome	25%		
Grant 2			
Grant 3			
<b>Total</b>	<b>100%</b>	<b>4/8ths</b>	<b>100%</b>

The appointment at each institution is as follows:

University	Full-time, 1.0 FTE	VAMC	4/8ths
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*(Continued on Next Page)*

It is further certified that ( Dr. James Smith ) receives salaries from each of his two appointments, the University and the Department of Veterans Affairs, and that there is no dual compensation from these two sources for the same work, nor is there an actual or apparent conflict of interest regarding such work.

Approved: *(signatures required)*

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Principal Investigator

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Department Chair, University

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Chief of Staff, VAMC

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Dean of Medical School, University

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***Notes (the notes below are not part of the MOU and are for additional clarification only):***

- a) Hours are not shown for Dr. Smith in this example. The intent of not showing hours is to deemphasize the focus on documenting University time and effort in terms of hours. COGR is not suggesting a specific methodology that should be used – “hours” should be added as an additional data element if that approach is consistent with institutional practices.
- b) Full-time University appointment shown as 1.0 FTE.
- c) VA appointment represented as “eighths”, which is common terminology used for the VA. 4/8ths, per the example, is the equivalent of 20 hours (i.e., 8/8ths equals 40 hours).
- d) This MOU documents two separate appointments – one for the University and one for the VA.
- e) Certification of Effort for Circular A-21 purposes is an independent process from the updating of the MOU. Section J10 of Circular A-21 includes General Principles, Criteria of Acceptable Methods, and other important compliance requirements for payroll certification. One important note pertaining to certification requirements is that only University effort needs to be certified. VAMC requirements for verifying and/or certifying VA related effort is an independent process and beyond the scope of this paper.
- f) Also from a Circular A-21 standpoint, a primary requirement is to certify activity associated with federally sponsored research. While categories such as Teaching, Clinical, and Administration could be shown on the MOU, the Circular A-21 requirement is to provide confirmation of activity allocable to each federally sponsored agreement (J10b.2.c).
- g) If Dr. Smith receives additional research funding, the institution will need to submit a new MOU to reflect the changes in his total professional effort.

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