Antonio Laracuente: So, before we get started, I just want to let you all know that we have two panelists: Kurt Lichtenberg from the CARDS team in HR. And Kurt has been extremely, extremely helpful in trying to navigate this WOC issue over the past year. Kurt has been in VA for quite a long time, and we're really appreciative of him in helping us to get to where we think is going to be a good endstage here. And of course, Dr. Karen Jeans is here to make sure that if I make any mistakes, she can address them and correct them, but also from the regulatory side, she has a lot of input. She has helped us tremendously with this as well.

So, let's talk about today's objectives. We're going to talk a little bit about some key terms, a little bit of history of what's been going on and talk about what's been happening over the past 15, 20, 30 years with WOCs. We're going to talk a little bit about how to process IPAs and WOCs going forward, what you're going to need to do to provide to HR, and then what's going to happen later this year, potentially. And then we're going to get to the topic which I know many of you want to talk about, which is this whole issue with the non-citizens, the VISNs, and the HR offices saying they can't put a non-citizen on WOC appointment. And so, we're going to get to the truth of where we went ahead with this and talk about what you guys are going to have to be doing over the next year or so. And as Parker said, please ask questions if we're not clear on something because this will definitely be something that we want to work with HR to address.

One more thing is that we're going to send the presentation out-- at the end of this presentation, we're going to send it out along with some of the job aids that HR looks at for IPAs and WOCs, and the checklist, and kind of a detailed document that talks about the non-citizens.

So, this is for Jason Berlow. If you go to the Finance, you may have seen these slides before, so I kind of took it from him. Jason likes to have some levity in his presentations, and so... why is this important? Anybody can be a WOC, right? Anybody could walk into the federal government, into a facility and do federal work without having any kind of appointment. But that's not quite sure. So, let's review key terms.

What is WOC? Of course, an employment without compensation. The key point here is that we in VA, are allowed to accept services without compensation under 38 USC 7405. A lot of this is for technical and scientific work that we do in research. What's an IPA? It's an intergovernmental personal agreement. It really talks about a temporary assignment. It's a detail from a state entity and in our case, for research and mostly it's from state or local government, non-VA institution of higher education, and VA non-profits, to come to and assist in doing federal research projects or VA research projects.

So, what's a contractor? And this is really important because a lot of what we have seen is that contractors have been provided WOC appointments for specific access to systems or access to facilities. And you really should not be giving contractors WOC forms. They're not eligible. So, a contractor is a person working under a contract. The contract means that it's a mutually binding agreement where we're buying services from another institution.

And then the CARDS, you're going to hear CARDS a lot over the next year or so. It's the Consult Assistive Review Development Sustain team. It's an HR group out of workforce management that supports the field on HR matters. It's kind of the way I look at it, and Kurt is part of that team and really is kind of the go-to person for me when I have questions about HR issues.

And then one more thing is HPTs-- Health Professions Trainees. There is distinction between health profession trainees and non-HPTs, non-health profession trainees. Most of our research folk fall into the non-HPT appointments; however, if somebody is in a formal training program at the VA under supervision and so forth, then they may fall into an HPT, which is a different way of providing a WOC appointment. So, these are specifically training experiences at the VA. It's not that I'm a student at the university and I can walk over and come to the VA because I'm a student. It's more about having that experience in the program that's at the VA.

So, what's happened recently? Over the past year, questions have arisen from some facilities, including one major research program regarding a process to reappoint non-citizens without compensation appointments. The HR was not doing it. They were not going to do it, that it was inappropriate, and so these people had to stop. It also led to questions about who could be on an IPA. Is it students? Is it post-doc fellows? Is it not citizens? Is it somebody who's on a temporary appointment at the university and so forth? While specific guidance was disseminated previously to the field about 10 years ago regarding H-1B visa holders that they should've been placed on an IPA, on no-cost IPA, not on the WOC appointment, not very many facilities were following this guidance. And so, this issue came up and we said, we'll just put them on an IPA. But you can't put them on an IPA... but you can... but you can't. So, there's a lot of back and forth going on.

So, HR, OGC, and ORD had already begun discussions on policy and implementation. And so, this has been going on for about nine to ten months, and we've had a lot of discussion about the impact, what the breadth of the issue, what's the impact. So, we did an assessment to figure out what the impact was. Thank you to everybody who responded. It turns out that we do have quite a bit of H-1B, and J-1 visa holders that are on WOC appointments or on IPAs. So, this was an ability to review the guidance, update it, and disseminate it to both HR and research. So, that's what we're doing now. Last week, HR was briefed on this whole situation, briefed on the new guidance by Kurt, and so I think we're in a good place right now to disseminate the guidance to you all via some job aids. And then there's also confusion about appointing IPAs and WOCs. In conversations with some of you, your facilities were automatically given WOC appointments to IPAs, or they required a WOC appointment with an IPA, and that's not quite the case and we'll talk a little bit about that.

So, this is all common knowledge, we all know this. Why are we doing this, Tony? How do we get them on board? That's the issue. How do we get this people on board? So, the CARD guidance on non-HPTs-- and I'm going to focus on non-health provider trainees, is does the WOC appointment meet the criteria outlined in VA Handbook 5005 Part II Chapter 3, Section G? You need to go memorize that because that's a really important part of this. So, the acceptance of services of qualified individuals who may be directly or indirectly involved in patient care activities on WOC basis is permissible. So, this is not to circumvent hiring practices where you can pay the person, but this is just to accept the services. Part of this is for scientific and technical personnel, and laboratory assistance were utilized in VA research. So, if the individual considered for WOC appointment is a non-citizen, it says in there you must review the WOC eligibility guide to determine the individual's eligibility. Now, this is a critical point because not all non-US citizens are the same, right? We have permanent residents, we have visa holders, we have TNs, we have EADs, all that stuff. So, we have to be able to look at that document and make sure that you understand what you're doing. IPAs and contractors cannot hold WOC appointments. Very clear in the guidance.

So, the take-home message with HPTs, for health professions trainee, is that you must be enrolled in an educational program, you've got to have certain approvals through education in place in order to obtain a WOC. The education program can include a research component. So, there are forms that you've got to fill out, the 2850d, you have the research supervisor who's responsible for overseeing the work, and so forth. So, this is really a very quick slide to tell you that you need to talk to the designated educational officer at your facility when it involves HPTs. They should be able to help you out with this.

So, a slide about IPAs really quick. Recent questions have arisen about how to best process non-VA employees who hold an appointment under IPA while also providing additional research services at VA facilities. Some facilities have inappropriately addressed the scenario by appointing the individual on an IPA and a without compensation appointment, simultaneously. So, just remember IPA holders should not be on a WOC appointment. They should not hold a concurrent WOC appointment. So, individuals who only hold one IPA appointment which covers the entire scope of work in support of VA research, including both reimbursed and non-reimbursed services to the entity. So, yes, I said non-reimbursed services. So, it is clear in the IPA guidance from OPM that you can actually have an IPA that is a zero-dollar value IPA, or it can be a ten dollar value, or it could be a proportionate value that is on the merit review, and then the rest of the work is on NIH grant, so only part of it is reimbursed back to the university.

So, this is the key to ensuring that when you have an IPA and a person is at the VA 100% time, that you want to make sure that that IPA covers both the VA reimbursed time and the university time as well. So, one thing about IPAs is that people have told me that they need to have a WOC appointment, so they could get a badge, or they get a background check. Well, that's not true. So, the reality is that you can get what's called an affiliate badge. Don't call it an affiliate appointment, it's an affiliate badge. So, if they're accessing VA secure facilities or data and a background check should be completed, but it doesn't necessarily mean that you have to have a WOC appointment to get a background check. It's just you're going to be onsite almost kind of like a contractor, but then you would have what's called the affiliate badge. And so, you would work out with HR on how to process that. And I will have some good news at the end.

So, let's talk about an example. So, the GREAT VAMC has an employee from the affiliate who is working on several projects at the VA. One project is the VA Merit Review that reimburses the affiliate for effort at 50%. The other project is 50% effort administered by the university but performed at the VA. So, the person is a 100% geographically located at the VA. So, the VA does not reimburse for this time. In this case, a full-time IPA will be processed delineating the reimbursed and the non-reimbursed effort. So, under the IPA statute, a detail of an employee from an outside organization to the federal government may be made with or without reimbursement by the federal government. The regulations governing the IPA agreement state that before an IPA assignment begins, you guys will come into a written agreement on the responsibilities of both parties, your obligations. The OPM guidance also says cost-sharing arrangements can be agreed upon for IPA assignments as negotiated. The federal agency can agree to pay all sum or none of the costs associated with the assignment. So, that's a real key point here. You can agree to pay all sum or none of the costs associated with the assignment.

So, let's talk about non-federal employees. These are nonprofit employees, university employees. So, if a non-citizen meets all eligibility requirements in the eligibility chart directly below, the IPA regulations do not prohibit an IPA detail of a non-citizen. Let's be clear about that. IPA detail of a non-citizen, so US citizens do not have to be cleared before detailing an eligible non-US citizen under an IPA agreement. However, you've got to make sure that they qualify. So, what does it mean to qualify? So, IPA treats both citizens and non-citizens equally. So, the research offices are going to have to be able to provide to HR acceptable proof or documentation that non-federal employees, private sector, non-profit employees, etc., are being considered for the IPA are in a non-temporary appointment, which is a position without time limit, and had been in a non-temporary appointment for at least 90 days. So, what's valid is an appointment letter, an offer letter, a written agreement, or an attestation from the other institution that shows the effective date of the individual's non-temporary appointment with the private sector, and clearly indicates that the individual is in an appointment without time limit. So, example, a nonprofit gives an offer letter to an employee. It says, "This appointment is effective 1/1/2023, through 9/30/2023." That person would not be eligible for an IPA. Even if you intend to extend that appointment, that person is not eligible for an IPA. However, if the appointment letter says you're on a regular appointment or you're on an appointment, welcome to the foundation, etc., and it doesn't have a time limitation, then you're fine, as long as it's up to 90 days of the start date, they can go on an IPA. So, it's a little nuanced because we know that some nonprofits feel strongly that they have to have kind of an expiration date. But if the expiration date of the appointment is put onto a letter, they cannot enter into an IPA.

So, some additional considerations regarding IPAs. One employee on assignment should only have one IPA even if they're working on multiple projects and/or across multiple appropriations. So, we know about rural health folks. We know about projects where HSR&D in rural health, and so they're split and there are two forms of payments. You'll only need one IPA. Don't do multiple IPAs. One IPA per person or per project. So, you may want to consider making the IPAs project based and what I mean by that is that they're going to be working on projects X, Y, Z that's why you want to add project A, B, C, so you can actually modify the IPA. But try to make the IPAs project based. Clearly detail the effort on the IPA and who's paying for that effort. So, 25% on the NIH grant, 25% on merit review, 50% rural health. So, it can get extremely complicated, but again you have space on that, or you can do an attachment to the IPA itself that clearly delineates the agreement between two parties. Now, yes, we all know Cleland-Dole passed. Thank goodness! Thank goodness for 209. Thank goodness for certain positions that are now going to have some direct higher authority. Thank goodness for IPA. However, even though the law passed, ASO is to not vote policy and they are working on trying to develop this policy. So, we cannot implement until policy and guidance are provided. So, right now, while the law says that the secretary can do some exceptions and so forth, we don't have policy in place for that. So, ORD is working closely with HR to develop that policy, and we'll definitely let you guys know what's going on with that policy as it comes through.

All right, so let's get to whatever everyone really wants to talk about which is what does this mean for all non-citizens. So, what's changed? Nothing really other than the enforcement of policy by several HR offices. What happened with these H-1B, J-1 visa holders which are the primary focus of all this. So, regarding the H-1B and WOC question, the simplest way to put it is as follows: WOC appointments are employment appointments. The individuals on WOC appointments do not receive a salary. We know that by definition. However, this is the problem: The VA cannot attest to what they're paying the individual. Are they paying the individual with prevailing wages identified on labor condition application? And even if VA is identified as an alternate worksite, which many have you done or many people have done, we would still be viewed as an employer of the individual because they're working on VA research at the VA. So, WOC appointment to work on VA research at the VA-- no, that's problematic. So, placing an H-1B on an employment appointment at the VA distorts the employer-employee relationship between the sponsor and H-1B visa holder. The individual would be working onsite at VA and would likely be supervised by VA employees in performing VA work. For all intents and purposes, VA would appear to be the individual's employer as opposed to the actual sponsor. That could open up the sponsor to scrutiny-- not the VA but the sponsor-- to scrutiny and possible fines from USCIS for falsifying information on the H-1B petition. It could also subject the VA to scrutiny as well. So, now you can see the picture starting to be painted here. We can see what it looks like and the fact that H-1Bs, they come for a purpose, they're sponsored and so forth, and there's not two separate employer potentials.

So, let's talk about without compensation non-US citizens. When undersecretary for health determines it's not possible to recruit qualified citizens from the necessary services, we can appoint. So, in the past many years, we put out an announcement, nobody applies, we're good, right? Or we'd put on an announcement on the ORD website, we're good. Or we'd put an announcement on the billboard outside, we're good. Because nobody's applied for it, so boom, people put any non-citizen onto WOC appointment. However, we talked about H-1Bs, and we'll talk about J-1s in a second. The non-citizens may be utilized on WOC basis when no qualified US citizens are available, and it's deemed in the best interest of the facility. So, the above policy is to WOC eligible non-US citizens. It should be viewed as an overarching. There are specific things that we're going to describe in the next slide about the eligibility categories.

So, this is a general-- I want you to understand that we're going to place the WOC eligibility guide to get a better understanding on the website, and we're going to send that out as well. So, this is a very, very, short synopsis of that, but a permanent alien resident, a green card holder, yes can be put after the required documentation which we just talked about. And so, you can put them on the appointment. A visa holder, H-1B, definitely not. Never ever can they be put on WOC appointment. J-1B visa holders, in certain circumstances, but unlikely in research, and these are because they're tied to specific problems that are listed, that are posted and so forth. And so, again, the guide is going to give you the details on that. F-1 visa holders, yes, after one full year, one-year full time course curriculum, and so forth. Again, documentation has to be provided. O-1s are maybes and there's some guidance in the WOC guide. And then the EADs, yes after required documentation. Somebody asked about TNs, and again, that's in the guidance, but the TNs, likely you can after completion of certain documentation and so forth. Again, not comprehensive here, comprehensive in the eligibility guide which we'll be sending out with the documentation. So, if you've got an H-1B, the take home message is no. If you got J-1, probably not. Everybody else has a potential.

So, where are we? ORD estimates that we have about 10,000 WOCs and IPAs out there. More likely it's more. It's a very conservative estimate. One site told us that they had 800. One site told us they have 500. One site told us they had 300. Many sites told us it's about 300. So, conservative estimate considering we have 106 research programs nationwide.

Kurt Lichtenberg: Tony, can you hear me okay.

Antonio Laracuente: Yeah, go ahead Kurt.

Kurt Lichtenberg: Yeah, sorry. I wanted to reinforce something that when you're looking at a non-US citizen for a WOC appointment considering them and you inform the HR service that you're wanting this individual, if they're not a student then HR is going to have to post a vacancy announcement, a job opportunity announcement on USA Jobs for 14 calendar days. And that is to clear US citizens. If they are a student, then an attestation from the university staff indicating that everyone in that specific program was notified of this WOC opportunity, and the only one that wanted it was this non-US citizen. So, that has to happen every single time you're considering a non-US citizen for a WOC appointment. Sorry, Tony.

Antonio Laracuente: No, that's great. Thank you for clarifying that. That's a great point. And again, we're going ot address that a little bit with centralized HR and talk about where we're at with centralized HR on that part of it. So, no, that's a great point. So, just to reiterate, students on a program, not citizens, the posting for the non-citizens of 14 days is really important to clear that person, and as I will mention later, as part of centralized HR, we're taking that into consideration as part of the whole process for WOCs.

So, again, we estimated we have about 10,000 WOCs and IPAs, of course, not all of those are non-citizens. Probably 4% or 5% maybe non-citizens. HR and research need to work together to better understand when to use an IPA detail and when to use the WOC appointment. So, the good thing is that this new CARDS guidance that has been updated really delves into the situation of when it should be used, and if there are questions from the research side, not from the HR side, from the research side, come to the ORD field operations. Kurt has asked that if there's questions from the HR side that they go through the HR leadership to him. So, we're going to handle it from the ORD side. And then, if necessary, we'll get together and talk about the issue and go from there.

So, ORD, the field should look at any non-citizens on an IPA or WOC assignment to determine appropriateness. This is where we're going to talk about what's next, the next steps. So, we know that many of you are concerned about what's going to happen with the research folks that are currently on appointments, WOC or IPA. So, thanks to Kurt's advocacy, thanks to Dr. Clancy, thanks to VISN 1 leadership. I think we've come to a place of agreement that HR staff are going to be reviewing the current WOC appointments, they're going to review current IPAs over the next period of time, especially as they come due. But that those that are not into compliance must be brought into compliance by June 30, 2024. So, they've given us a year and a few months to fix this. This is a lot better than fix it yesterday, fix it by the end of the month, because it really puts into the play that there's research going on that needs to happen. There are people's lives at stake and so forth. But really, we got to get this into compliance, and we know that this is important. These are important people to the research. As things come up, as appointments come through and so forth for extensions or for changes or whatever, you must consider the guidance when extending or when changing, and the sooner the better. But at least, we got a little bit of time to do this. Any new appointments or assignments must follow the new, published criteria. So, if you got somebody in the works that's still not appointed, they're going to have to follow the guidance. If you got somebody that is going through the process, and was not appointed, you've got to follow the new criteria.

ORD is working on the new WOC, IPA processing system for implementation as part of HR centralization. We've had a work group that's been meeting since, I want to say November, that's been looking at that. We're looking at the workflows and the criteria, and we're going to try to implement this hopefully, late spring, after we transition all the VA people. We're going to try to work through this. It will be nice because it's going to be one group that's processing these. So, you're not going to get, VISN 1 HR says this, and VISN 6 HR says this, VISN 7 HR says this, and VISN 22 HR says this or does it this way. We're going to try to make sure that it's all being done in the same manner that meets the guidance nationally. I really want to thank Sara Wycoff for this because she's actually been working really hard on this to try to come up with a system that's going to work, and so this is not easy but hopefully, we'll get this up and running by late spring.

So, developing the guidance on Cleland-Dole is going to be important as well. Those changes to the IPA time limitations. It doesn't mean it's going to be a free for all. It really is going to have to take some consideration. So, I'm thinking about it in terms of projects, in terms of what the people are doing, and so forth because the last thing you want to do is the IPA should not be used to circumvent hiring practices. So, we're definitely going to look at how we can implement this properly across the nation.

So, the final takeaways. WOC appointments are federal appointments. There are going to be guidance documents that are going to be provided to you guys to start working on going forward. IPAs will now need documentation of at least 90 days, and not on a time-limited appointment. So, this is the way to deal with the non-citizens who do not qualify for a WOC. If they can meet the criteria, then we're good. And June 30, 2024 is the date to remediate any incorrect appointments. Again, this is going to be worked on over the next months and so forth. But as you have appointments coming due, they're going to have to be fixed and properly executed. And then once we get a centralized HR, we'll definitely work through that.

Kurt Lichtenberg: Tony, on your previous slide, the two sub-bullets very important, under the second bullet. Just to clarify, if I have a WOC and the not to exceed date is June 2023, I'm going to have to work quickly to try to regularize or make that appointment legal, if it can be through a WOC. And if it can't be regularized through a WOC, then we need to consider that individual as an IPA. And that's only if you want to keep that individual, extend that individual. So, yeah, I just don't want anybody to be confused that the June 30, 2024 date is the catchall. It is the deadline to regularize everything, but there may be situations in which the not-to-exceed date for a WOC or an IPA is coming due long before that.

Antonio Laracuente: Thanks, Kurt. Okay, so I think we're going to stop here. We're going to turn it over to Parker who's going to put some questions. I saw that there are questions popping up. So, Parker, I'm going to turn it over to you. Do I need to stop sharing or you got it?

Parker: Yeah, I'm going to pass it over to Brandon. He'll bring the Power Point up.

Antonio Laracuente: Okay.

Kurt Lichtenberg: Brandon, give that another try.

Antonio Laracuente: So, what if our station requires an IPA to have a WOC first? Kurt, do you want to answer that? I can certainly answer that but--

Kurt Lichtenberg: Yeah, that's incorrect. We've been trying to train the VHA HR staff throughout all of the facilities, and as Tony mentioned, it's going to get better because everything will be done through one HR, HR Max. they're well aware that you should not have an IPA and a WOC simultaneously. Hey, look, if this is happening somewhere and you notify Tony that it's happening, he can contact me and then I will make sure that that stops.

Antonio Laracuente: Thank you, next question.

I think this is going to go to Dr. Jeans: Do IRB voting committee members need to have a WOC? They do receive a small monthly stipend from our NPC for each monthly meeting they're present at. Dr. Jeans?

Karen Jeans: I will be more than happy to take that question. So, the answer is, are they required or do IRB or any of your VA research committees who have community members, are they required to have a WOC appointment? The answer is no, they are not required to have a WOC appointment. However, OGC, Specialty Team Advising Research, STAR, has advised ORD that they recommend one. Again, I'm using that word deliberately, recommend. And that's only for tort law, protections, but again it is not required. So, that is the answer to the question. Thank you.

Antonio Laracuente: Thank you, Dr. Jeans. Next question please.

By contracts, are you referring only to VA paid contracts or including also other contractors, such as those on a personal contract with the NPC? So, this is a very difficult question to answer, and I'll tell you why because I understand that some NPCs do contract out. However, that means that they're not employees of the NPC. And so, what are they? So, from my perspective, if you're a contractor on a VA paid contract, that's very clear. If you're a contractor under an NPC contract, then I think that's where things could get a little murkier, and so I'm going to turn it over to Dr. Jeans a little bit because I think that those would not qualify for WOC appointments either. But Dr. Jeans, what are your thoughts on that?

Karen Jeans: This is Karen. You are correct, and we just had this-- again, I realize we're being taped, so I'm not going to give a legal opinion here. But we also had this situation where we have contractors from outside of VA who are working for different agencies like Henry Jackson. And so, the answer is we consider them to be contractors, they cannot have a WOC appointment. So, that's our position here in ORD.

Antonio Laracuente: Let me add on to this. If this is the case, could you work through Kim Collins' office to talk to us about this, and we can certainly work on an individual case by case. Some of these are going to be case-by-case basis. And so, we can certainly work through either STAR or Ms. Collins' office, NPPO.

Karen Jeans: Yeah, this is Karen. I was going to add also that, what Tony is saying is very important. But the details drive the answer, so we're giving very general answers here. So, again, that's the most important thing I want to emphasize. Please give us the specifics on these.

Antonio Laracuente: Thank you, next question please.

Can a contractor with a nonprofit have an affiliate appointment? I think we're not going to go in detail on this because this is a little bit beyond what we're talking about here. So, whoever asked this question, please send it to me separately, and I'll get the appropriate people to work with you on answering that question. And if anything, we can always disseminate the answer out to the rest of the community.

If a person is 75% on the IPA and 25% funded by the NPC, will the NPC be covered under federal tort for the time working for the NPC? The WOC is our protection. Okay, so here's the straight answer from OGC is that people are covered under the IPA. And so, if it's 25% funded by the NPC to do VA research, then that 25% should be covered under the IPA, they'll be covered. So, actually we would put them on 100% IPA, 75% is for the VA Merit Award, the VA funded work, and the other 25% that's funded by the NPC would be uncompensated return. So, yes, we'll put them on 100% IPA to cover. And we have worked with OGC. They are covered. I will go out on a limb right now and just say that we've been talking to Ms. Collins about this as well, and so we will be sending something out regarding the IPAs and the WOCs for addressing the handbook [Indiscernible 00:39:43]. Next question.

Please clarify, for non-citizen H-1B, J-1, F-1, paid salary via IPA provided they had 90-day employment at the non-VA institution. So, the answer is that you can have an H-1B, A-1, F-1 if they meet all the requirements, they can be on an IPA and then the VA and the non-VA institution would negotiate terms of reimbursement as needed. Remember, the VA is not paying that person directly or reimbursing the institution for the detail. Next question.

How long before an offer is made would the offer letter be used for IPA documentation? We have employees on IPAs who have worked for us for 15 or 20 years. Okay, so certainly understood what you're asking. The idea is if you have somebody that's been on your rolls for a long time, you will do an attestation. You don't have to worry about the offer letter because you can attest the fact that they start employment on X date and so forth. So, that’s why we were able to discuss about not just the offer letter but other pieces of information that you can provide, and that's going to be in the guidance as well. So, it could be an attestation from the nonprofit to the VA that this person was employed as of whatever date. So, that should take care of those 15- to 20-plus year employees. Next question.

Is there a timeframe estimate available for VA policy implementing the VIPER changes? So, I'm going to start by saying there are a lot of changes. And let's call it Cleland-Dole in the future. It's the Cleland-Dole Act. There are a lot of changes in there, and there are certain parts. I would assume you're talking about the IPA piece, and so I think it's going to take a little bit of time to negotiate this. Kurt, what are your thoughts on this?

Kurt Lichtenberg: Yeah, I can't give you a date. I'm not responsible or accountable for that portion of it. So, that is HRA, OCHCO. So, I'm sorry, I don't have information on that.

Antonio Laracuente: I will tell you that we'll be asking the question going forward. Each of the parts of the Cleland-Dole Act have certain sections that are assigned to certain people to follow up on, and so we will be following up on that. Next question please.

What is the difference between a PIV and affiliate badge? Does an affiliate badge allow access to CPRS? So, as explained to me, affiliate is a type of badge and so that badge allows access to VA, and it does allow you access to VA systems. So, the affiliate badge for the purposes of nonprofit administrative employees and would allow you access to whatever you need to do your nonprofit work. However, the affiliate badge for an IPA for example, let's focus on that. Because the work is federal work but you're not a WOC employee, you're not a paid employee. That badge will allow you to get access to systems, and yes, you can get access to CPRS through that system from my understanding.

Karen Jeans: Can I add to that? I do want to clarify that. Just because you have a PIV badge does not mean that you automatically have access to CPRS. The supervisor determines whether or not you have access to CPRS. It's about whether or not you can get access through your badge status. So, that’s the issue. But please, just because you have a PIV card, does not mean you have CPRS access in the agency. Thank you.

Antonio Laracuente: And you definitely want to talk to your [Indiscernible 00:44:15] and your local IT administrators and so forth because they're the ones who are going to help you with what access you can get and so forth [Indiscernible 00:44:24] people.

So, a clarifying question about the guidance saying that if an expiration date is on the employee's letter, that person cannot be on an IPA. If the person is not considered a contractor at the nonprofit institution, does that mean they are not eligible for an IPA? So, a contractor at the nonprofit is definitely not going to be on an IPA because they're not an employee of that nonprofit institution, so you cannot put them on an IPA. The first part of the question is if there's an expiration date on the employee letter for that person, that means they're on a time-limited appointment. And so, therefore, they cannot be on an IPA. So, this goes back to the OPM regulations on IPAs and what they considered a permanent employee of the institution. And so, if you're on a time-limited appointment, you're not necessarily considered a permanent employee of the institution. So, we have a lot of discussion with OGC about this and HR. And I think we came to the consensus that it's really all about are you on a time-limited appointment or not. Kurt, do you want to add on to that or anything? Anything I missed or anything?

Kurt Lichtenberg: You're right on the money there, Tony. Again, if the letter is void of showing anything that the appointment is time limited, then they're good to go. If it just reads that, Joe is on an appointment here at the affiliate and it doesn't indicate anywhere in the letter or the attestation that there's a time limit to the appointment, then they would be eligible if they were in that appointment for 90 days or more.

Antonio Laracuente: So, I will tell you that there are additional criteria on the IPAs that exclude-- for example, there are certain exclusions, some categories that people cannot be on an IPA. Students, for example, cannot be on an IPA. It's in the guidance that will be coming out, but I just wanted to make sure you understood that as well. But certainly, a contractor for a nonprofit cannot be on an IPA because they're not an employee of the nonprofit. Next question please.

Please clarify the recommendation to make IPAs project specific and also could the IPA be written to encompass the person's whole job carried out onsite at the VA? So, this is a recommendation that if you have a person that's on multiple projects or if you have a person that's on a merit review, for example. So, if they're on 100% on the merit review, then you would just say for VA merit review, blah, blah, blah... [Indiscernible 00:47:41] or whatever. But the key here is that if a person is doing work that is not at the VA, not physically located at the VA and they're doing VA research that is not only VA funded but also university administered or nonprofit administered, then it's better off to detail which projects that person is working on, and then if they come off that project or they go on to another project, you just do a modification to the IPA to add on the projects. The whole idea is that because in the past, you had somebody that was let's say on a 50% IPA but was 100% physically located at the VA, then you would have to do an IPA and a WOC appointment, but you can't really do that anymore. It's very unclear on what you can do. The IPA will cover that detail assignment to the VA. So, the detail assignment is, I'm going to be doing work on the merit review and I'm going to be doing work on the NIH grant. So, you would specify that in the IPA documentation moving forward. Next question.

Can an affiliate be placed on an IPA? So, remember there is no such thing as an affiliate appointment. So, I can't answer that question. Maybe a clarifying question on what they mean by an affiliate. Next question please. You can send me an email and we can talk about it.

Is there alternative documentation for not on a time-limited appointment if an offer letter is not available from the long-term employees? Yes, I think I've answered that earlier. There's attestation that you can provide on the individual, a letter that the nonprofit could provide to the VA. So, it's really just documentation that that person is not, for these long-term employees, for the nonprofit, or the affiliate-- just something that says this person was hired on whatever date and has been in our rolls. That should take care of it. Next question.

Does this take away the four-year maximum on an IPA? When the employee comes off an IPA must they go back on the home organization's funding for the employee on the IPA, do they qualify for a WOC? How is the NPC protected? Well, here's the deal, right now, we're on a four-year maximum for the IPA. If the person comes off the rolls, if the person comes off the IPA, they have to go back to the institution. When the person comes off the IPA, they have to go back to the institution. Now, we're hoping to address this with the new guidance and new policy with the IPAs thanks to Cleland-Dole. But as of right now, they would have to come off the IPA. Because right now, it is what it is right now, it's a four-year maximum. So, we'll definitely have to work through the new regulation and guidance on that. Next question please.

Based on what I'm hearing, it seems most individuals can be on an IPA if they had been employed over 90 days without a WOC and they meet all of the criteria. Yes. So, that's the fix, by the way. Oh, you skipped one, yeah.

Will there be a standardized PD to use to post for the WOC positions or will it be study specific? It's going to be as needed. There's not necessarily a standardized PD that's going to be needed to post. There will be duties and assignments of what the person's going to do. So, I think what you're saying is will there be a standardized job posting that you guys could use to help out. That's a good a point and we can discuss that with Sara Wycoff when we meet and discuss this.

So, Kurt I'm going to turn this one over to you: An EAD is not a visa status and employment authorization document available to aliens-- yes, we understand that. Kurt, do you want to talk about EADs?

Kurt Lichtenberg: As in the document? And I would just be speaking right off the document, but I can quickly get to that. Other than the visas noted above as incident to, another visa type-- and this was information that was obtained previously-- so, if there's some information on here that isn't accurate, if you get with Tony and share that with him, then I can make some changes, but it reads that other than the visas noted above as incident to another visa type, some candidates have self-sponsored for a green card and are approved. However, due to per-country limits on the number of green cards issued per year, the individual's unable to file an I485 application to register permanent resident status or adjust status. If otherwise approved by the US CIS, EAD holders of this type are employable as a WOC. Attestations or recruitments as noted, and it's just reading that you would have to post a vacancy announcement or HR would for 14 calendar days on USA Jobs, or if it's a student, then we're dealing with WOCs, and this is a non-US citizen situation. If it's a student, an attestation from the school official indicating that they've posted it to all the students of that specific program and the US citizen and the non-US citizen, the EAD, was the only one interested.

Antonio Laracuente: Great, thank you. Next question please.

An IPA can be made for a non-US citizen if they have permanent position. Yes, that is correct. Next question please.

Kurt Lichtenberg: For at least 90 days, right.

Antonio Laracuente: Oh, I got it. Sorry.

Kurt Lichtenberg: Yeah.

Antonio Laracuente: I've got to beat that horse, I know I've got to beat that horse.

The system we have to get staff access to VistA/CPRS requires that you select employee status. IPA is not an option, so they tell us they must have a WOC-- yes. Actually, yes, thank you for bringing that up. We are aware of that. We're trying to get them to change that to WOC IPA, so they understand that both are basically detail. So, thank you. We have taken that under consideration. Thank you.

Aren't all NPC employees WOCs before being eligible for an IPA as per the 90-day rule? It depends on what you're doing. So, again, it depends how you're hired. So, there is a 90-day rule. It depends on what they're doing for those 90 days. There's nothing that says that you have to have a WOC to do, kind of preparation of administrative type of work and so forth. Ms. Collins and I will get together and we'll clarify that but the answer is that it depends on the situation, as Dr. Jeans had mentioned earlier, case by case. They can engage in research without having a WOC appointment or the IPA. So, you're going to have to kind of work through it. So, if they're a non-citizen, not eligible for WOC, you're going to have to find something for them to do for 90 days before they can go on the IPA. But if they're a citizen and they're eligible for the WOC, then you may be able to put them on a WOC until the IPA comes to deploy. Again, it's case by case specific. Karen, do you want to add anything to that one? Karen...?

Karen Jeans: Oh, nothing for me. Thank you.

Antonio Laracuente: Thanks. Aren't all NPC employees-- okay, next question. We just answered that one.

What kind of access does this affiliate badge grant? Is it a flash badge or can they-- so, I'm going to tell you it should be full access. But you're going to need to look at your guidance on the affiliate badges. Next question please.

Nothing has been addressed regarding security. VA employees require background investigation and fingerprints. WOCs do not get or only get limited background investigation and fingerprints. There are issues regarding espionage in universities in research. Why is this not addressed? Well, if you would have heard me earlier, I did say this, that you do have that background check. And so, you do have to follow-- WOCs do have that background checks. They're going to be required if they're going to be onsite for a period of time and so forth. We are working through the process of making this the same nationwide. If you're facility does not require background checks with WOCs and they're in VA research space, especially secure laboratory areas, then your site may have a problem. But there are background investigations, fingerprints and so forth. And that will be a part of the process that we're outlining in the workflows that we're developing right now. So, it is addressed. Thank you. Next question please.

An NPC employee needs to get a WOC and go through badging to begin work at the VA Medical Center. Then, if they go onto IPA, they need to have a WOC terminated now but they have to be rebadged each time they go off IPA status? I would say no because we're going to be centralized, and so we'll be able to track. Right now, the tracking systems are not very [Indiscernible 00:58:33]. So, Kurt, do you have any thoughts on rebadging if you're trying going on or off...?

Kurt Lichtenberg: I'm with you, unless there needs to be a change in the type of access or a greater access, that would just be done through the supervisor, and those requests would be tacked on. I can't see a reason why they would need to be rebadged if there isn't a break in service.

Antonio Laracuente: So, Sara if you're on, can you make a note of that one please. Parker, we're at the top of the hour. I want to keep going as much as we can. I just want to see how many more questions we have or do we...?

Parker: We're about two-thirds of the way through if no more were asked.

Antonio Laracuente: Okay, how about we take three more questions and then we'll document the rest of them and get back with the person who asked the question. Is that okay?

Parker: Sounds great.

Antonio Laracuente: So, three more questions.

When can we start contacting HR Max to renew and/or correct any upcoming IPAs so that they're done correctly and ready for the 6/30/24? So, we will provide you with detailed information on WOC and IPAs while HR Max takes over that process. My goal is that we will try to do that for late spring, early summer. It is very ambitious, but I think we're going to be able to do that. Hopefully, by late spring, early summer we'll be able to start that transitioning piece. However, if somebody is coming due before that, you should handle that locally with your local HR.

Kurt Lichtenberg: So, Tony, we're having discussions with the chief human resources officers at the VISNs Thursday, and we expect to have a plan in place very soon for HR staff in the VISNs at the strategic business units which is the facilities to start auditing reviewing the WOCs and the IPAs, and initiate any processes. Of course, they're going to have to be working together with the research service staff, the AOs, and the managers to ensure the documentation is there.

Antonio Laracuente: All right. Thank you. So, next question.

Can someone have an IPA for RD and a WOC for patient care in the clinical setting? Interesting question. I'm only focusing on the RD part of things, so I will tell you this is a difficult one. So, Kurt, do you want to-- they're not supposed to have IPAs for patient care activities. Those are done under [Indiscernible 01:01:50] medical contract and so forth. So, I think we'll have to look at this case on case by case basis. But do you have any thoughts on this one?

Kurt Lichtenberg: Yeah, I agree with you. And we would probably have to get OGC staff involved because I think it's an overall arching issue that they don't want them to be on an IPA and a WOC together in general, but I could be wrong. So, that's why we would need to get further clarification from OGC.

Antonio Laracuente: So, if you want further clarification, email me separately and we'll take it up to OGC and ask them that question. So, I'm going to take one more. I lied, I'm going to take one more.

If an NPC currently has H-1B employees with WOCs, what is your recommendation for action that needs to be taken? As their appointments come in due, you need to correct it. However, if you feel like you want to go ahead and put them on an IPA and you have all the appropriate documentation to put them on an IPA, then I would move to fix that appointment now rather than later. Kurt, any advice on that?

Kurt Lichtenberg: Yeah, that's exactly what we're advising to act on anything and everything if there's a possibility to regularize it either through making sure all the requirements are done for a WOC or if they're eligible for an IPA to make sure all that's done prior to that June 30, 2024 date, but obviously, if they're not to exceed date is before that, it needs to be done before that. And then if you want it done, then it can be done long before that date. And that's going to be the guidance that we're sending out to HR staff. Again, all that's going to be coming rather quickly, and they're going to start focusing in on auditing all the non-US citizen current WOCs and current non-US citizen IPAs.

Antonio Laracuente: And most of you have given me those numbers, so you should know which ones [Indiscernible 01:04:03]. Okay, Parker, one more because we're going quickly through these. One more and that's it, I promise.

When Research Service is eventually serviced by WMC, will that include all WOC research and paid research...? The answer is, yes. Okay, one more. This is it.

Please clarify that HR has to post on USA Jobs each individual WOC position for which a PI wishes to hire a non-citizen. These are predominantly lab staff already working for the PI at the affiliate. So, I'm going to say the answer is yes. They're going to have to because they have to make sure that there's no eligible citizens that want to take on that job at the VA under WOC appointment. Kurt, you want to...?

Kurt Lichtenberg: Yeah, I wanted to make sure we differentiate WOCs and IPAs. For IPAs, this is not needed. Testing the market for non-US citizen that you're considering for an IPA, you do not have to test the market to see if there's US citizens for that position. But for a WOC, if it's not a student, and that individual is coming from some other type of private institution, then HR is going to have to post a job opportunity announcement on USA Jobs for 14 days to clear you as citizens.

Antonio Laracuente: Thank you. Okay, Parker, you're going to send me the questions. Karen, Kurt, and I will look at them and try to respond to as many as possible, as quickly as possible. So, I just want to close by thanking everybody. I want to thank Kurt and Karen for being on the panel and for helping me answer questions.

This is the beginning of a dialogue, please. I think that we really need to thank HR for giving us a good timeframe for dealing with this issue. We also need to regularize, as Kurt said, regularize these appointments and make sure that they work through the issues, and put people in the right appointment and the right detail if needed. More to come. I think this is a good start, and as we start putting the systems together to address this going forward, I think we'll find this to be much more efficient and I think the good thing is that we have an alternative to the WOC with the IPA and that will help us going forward. So, thank you everybody. I appreciate it, and everybody have a good afternoon and more to come soon.

Kurt Lichtenberg: Thank you, Tony.