



## Royalty Distribution Procedure Office of Research and Development Department of Veterans Affairs

Consistent with the objectives of the Stevenson-Wydler Technology Innovation Act of 1980, as amended, and the Technology Transfer Program's (TTP's) mission to Bring Research Advancements for Veterans to Everyone (BRAVE), this royalty distribution procedure promotes the administration, development, and transfer of VA technologies and provides appropriate incentives to VA employees who participate in the technology transfer process through the distribution of royalty revenues and other payments to inventors and research centers within VA.

Royalty revenue or other payments ("Royalty Income") to the US Department of Veterans Affairs (VA) generated under licenses and assignments of inventions will be received, monitored, and distributed by the Veterans Health Administration (VHA) Technology Transfer Program ("TTP" or "Program"). Centralized compilation of royalty revenue data is required for evaluating and reporting on Program effectiveness and to ensure compliance with applicable Federal laws.

1. Royalty Income. Royalty Income includes any money, including running royalties, alternate or periodic minimum royalties, milestone payments, and licensing or assignment fees. Royalty income does not include reimbursements for the payments of patent prosecution costs or patent maintenance fees.
2. Availability of Royalty Income. VA is permitted to utilize unobligated and unexpended royalty income until the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received<sup>1</sup>. Consequently, VA/ORD will annually establish a three-year Treasury Account Funds Symbol (TAFS) for collection and obligation of authorized royalty income. For FY 2024, this will be 0161R3 24-26. Royalties shall not be deposited in any other Research TAFS/Funds. When the three-year Royalty TAFS expires at the end of the third year, the expired unobligated balance of royalties will no longer be available to incur new obligations. However, royalty unobligated balances, will remain available for 5 years for prior year adjustments. After 5 years, the unobligated balance royalties in this TAFS will be closed and sent to the "General Fund" of the Treasury.
3. Government Ownership. For a VA inventor to receive royalties, the Government must have obtained an ownership interest to the invention, which interest may be made by a direct assignment or other determination of rights.<sup>2</sup>
4. Royalty Distribution. VA may distribute royalties only to VA inventors who were VA employees at the time of invention and have assigned rights to VA.<sup>3</sup> Royalty Income received from a VA licensing agreement for an invention with a Government ownership interest is distributed each VA fiscal year as follows:

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<sup>1</sup> See 15 U.S.C. § 3710c

<sup>2</sup> See 37 C.F.R. 501.6.

<sup>3</sup> Only a VA employee can be a VA inventor. VA Employees include Full-Time, Part-Time, Intergovernmental Personnel Act (IPA), and Without Compensation (WOC) employees of VA.



First, Royalty Income shall be distributed to the VA inventor(s) until each inventor has received \$2,000.<sup>4</sup> Thereafter, fifty percent (50%) of the remaining dollars will be distributed to the VA inventor(s), subject to a \$150,000 annual cap per inventor, unless the President approves a larger award.<sup>5</sup>

Of the remaining fifty percent (50%), thirty five percent (35%) will be distributed to the VA inventors' VA laboratory, VA Medical Center (VAMC) research budget, or special program (subject to an annual per-license cap of \$500,000) and fifteen percent (15%) will be retained by the Office of Research & Development (ORD) to manage and reinvest in VA's research enterprise. Amounts in excess of the inventor annual cap and VAMC annual cap will be retained by ORD. If an invention was primarily supported by a VA special program (e.g., the Million Veteran Program), that special program will receive the VAMC share of royalties.

VA Party	VA Royalty Share Distribution Each Fiscal Year (all references to "remainder" refer to the total amount of royalties received for a license in a fiscal year, less the \$2,000 initial payments to each VA inventor)
<b>Employee Inventor</b>	<ul style="list-style-type: none"> <li>\$2,000 to each VA inventor</li> <li>Plus 50% of the remainder, to the VA inventor(s) collectively</li> </ul> Subject to annual cap of \$150,000 total royalty income, per employee inventor
<b>VAMC (or other VA federal lab or special program)</b>	<ul style="list-style-type: none"> <li>35% of remainder</li> </ul> Subject to annual cap of \$500,000 per license agreement
<b>Office of Research &amp; Development (ORD)</b>	<ul style="list-style-type: none"> <li>15% of remainder</li> </ul> Plus, all amounts in excess of annual caps

- Multiple Inventors and VAMCs. Among multiple inventors or for multiple inventions that are licensed as a package, personal royalties will be allocated among the inventors in equal shares. Where inventorship differs across multiple inventions, royalties may be distributed either *pro rata* based on the number of inventions licensed, or according to individual royalty terms for an invention as written in the licensing agreement. Inventorship is based on US Patent Law. If the VA inventors' affiliations include multiple VAMCs, the remainder will be split among those VAMCs in proportion to the number of inventors affiliated with each at the time of the invention disclosure. For purposes of royalty distribution, an inventor's VAMC is the VAMC or individual VA lab with which the inventor was employed at the time of

<sup>4</sup> See 15 U.S.C. § 3710c(a)(1). For example, if there are two inventors and \$3,000 in Royalty Income for a fiscal year, each inventor would receive \$1,500.

<sup>5</sup> See 15 U.S.C. § 3710c(a)(3). Any excess over \$150,000 would be treated as a Presidential award.



invention. The VAMC(s) or VA lab(s) designated to receive the lab share associated with an employee inventor's contribution to the invention shall be determined by TTP in accordance with law. Any disputes regarding royalty distribution shall be resolved by TTP.

6. Leaving VA. Personal royalty distributions continue after the inventor departs or retires from VA. The VAMC portion continues to go to the VAMC where the invention originally took place. If an inventor is deceased, the personal royalties will be distributed to the inventor's estate or trust. TTP will make reasonable efforts to obtain the necessary information to distribute royalties to the estate. Subject to applicable law, if TTP is unable to obtain the necessary information from the inventor's personal representative or estate, the royalties to be distributed shall be recalculated without participation of the inventor's estate. If the necessary information is provided later, the inventor's estate will be included in future royalty distributions, but past royalties will not be restored. It is the responsibility of the inventor's personal representative or estate to provide TTP with the required information.
7. Vendors. Inventors must become a VA vendor to receive royalty distributions. Employees should contact their VA facility finance office or TTP to file the necessary paperwork to become "vendedorized." Distributions shall be made only via Electronic Funds Transfer (EFT).
8. Affiliates. In addition to royalties paid by VA under this procedure, a VA inventor who holds a dual appointment at a VA academic affiliate, or other institution, may also receive non-VA royalty payments directly from the affiliate, for inventions owned jointly between VA and the external employer. These payments are separate and distinct from any payment made to VA employees by VA, and may be determined by an affiliate's intellectual property policy/procedure and/or individual employment agreements. VA will distribute the VA institutional share of royalties with VA employees (including full-time, part-time, Intergovernmental Personnel Act, and Without Compensation) in accordance with this procedure.
9. Rights. Inventors may voluntarily waive their right to receive any royalties. Inventors may not be entitled to royalties if the inventor has an equity stake or other significant financial interest in the licensee. In such cases, the inventor's VA Medical Center and ORD shall additionally receive the VA inventor's share.
10. Examples

**Example 1.** FY 23: \$10,000, 3 VA Inventors, 1 Licensed Patent. All inventors worked at same VAMC at time of invention.

Step 1: First \$2,000 to each inventor + 50% of the remainder:  $\$2,000 \text{ plus } (\$4,000 * .50)/3 = \$2,000 + \$666.67$  per inventor. Each inventor receives a total of \$2,666.67.

Step 2: 35% of the remainder to the VA Medical Center research budget:  $\$4,000 * .35 = \$1,400$  for VAMC

Step 3: 15% of the remainder to ORD:  $\$4,000 * .15 = \$600$  to ORD

Summary: Each inventor receives \$2,666.67. The VAMC receives \$1,400. ORD receives \$599.99.



**Example 2.** FY 23: \$10,000, 2 Licensed Patents. Patent 1: Inventors A, B. Patent 2: Inventor A only. Inventor A and B were employed at different VAMCs at time of invention.

Step 1: First \$2,000 to each inventor of a licensed invention.

Step 2: Divide the remainder (\$6,000) equally across Patent 1 and Patent 2 (\$3,000 each) and distribute for each as in Example 1.

*For Patent 1:* 25% to Inventor A and 25% to Inventor B. 17.5% to Inventor A's VAMC and 17.5% to Inventor B's VAMC. 15% to ORD.

*For Patent 2:* 50% to Inventor A, 35% to Inventor A's VAMC, 15% to ORD.

Summary: Inventor A receives \$4,250 and Inventor A's VAMC receives \$1,575. Inventor B receives \$2,750 and Inventor B's VAMC receives \$525. ORD receives \$900.

**Example 3.** FY 23: \$1,000,000, 2 VA Inventors, 1 Licensed Patent

Step 1: First \$2,000 to each inventor + 50% of the remainder, up to the \$150,000 cap. Inventor share is \$202,000 over the annual cap.

Step 2: 35% of the remainder to the VA Medical Center research budget, up to the \$500,000 cap. VAMC share is \$348,600

Step 3: 15% of the remainder to ORD, including amounts in excess of the cap. ORD share is \$149,400 plus \$202,000 = \$351,400

Summary: Each inventor receives \$150,000. VAMC receives \$348,600. ORD receives \$351,400.