

From: Bradsher, Tanya J.
Sent: Sat, 3 Apr 2021 12:00:09 +0000
To: DRM
Subject: Fwd: HOT - letter from Senator Grassley to SECVA
Attachments: 2021-04-02 CEG to VA.pdf

Sir,

This letter from Sen Grassley came in last night. I wanted you to see it in case he releases it to the media. I see that Tom is mentioned, I don't recognize the other names and have asked who else listed are still VA employees.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McClain, Kimberly A. (b)(6)@va.gov
Sent: Saturday, April 3, 2021 7:34:32 AM
To: Bradsher, Tanya J. (b)(6)@va.gov; Hipolit, Richard (OGC) (b)(6)@va.gov;
Jackson, Tahmika R. (OGC) (b)(6)@va.gov
Cc: Johnson, Glenn (SES) (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

Get [Outlook for iOS](#)

From: (b)(6)@va.gov
Sent: Friday, April 2, 2021 6:51 PM
To: VIEWS-001B@va.gov
Cc: McVicker, Carrie A.; (b)(6) Johnson, Glenn (SES) (b)(6) McClain, Kimberly A.; (b)(6)
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs

2026 Rayburn House Ofc. Bldg., Washington, DC 20515

Desk: (b)(6) Mobile: (b)(6)

<https://www.va.gov/OCA/docs/VA-Casework-Guide-2019-Aug-16-Update.pdf>

From: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6)@va.gov>
Cc: (b)(6) Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>; CEG (Judiciary-Rep) <CEG@judiciary-rep.senate.gov>
Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)
Investigative Counsel
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
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TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARIZONA
JOHN KENNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

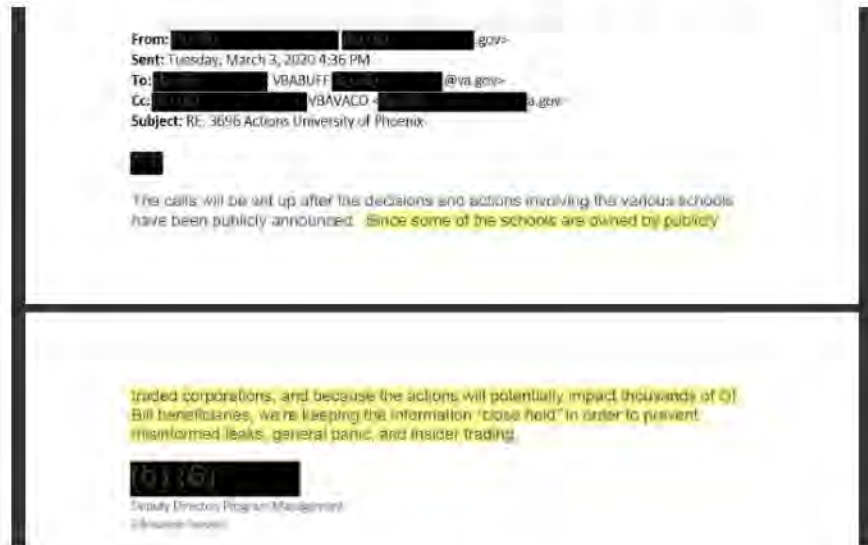
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
5. What steps does the VA take to protect retail investors by safeguarding market sensitive information regarding potential enforcement announcements related to publicly-traded companies?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
6. If the VA is aware that market sensitive information was potentially leaked, has the VA investigated this leak of information? Please provide the report of investigation.
7. Did the VA Office of General Counsel ever provide a legal opinion with respect to Mrs. Bogue and her involvement with any of her husband's companies?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
10. Under current law and regulation, is Mrs. Bogue required to report financial information of her spouse via a public financial disclosure report? If so, did Ms. Bogue list her husband?
 - a. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's employer(s)? If not, why not?
 - b. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's salary with respect to his work? If not, why not?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
11. If Mrs. Bogue did not report where Mr. Bogue currently works, and if she participated in VA business related to VES, would that constitute a conflict of interest as described by applicable law or regulation?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (b)(6) Thank
you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares
9

10
11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

Case No.: '21CV84 H MSB

15 MARIA A. POMARES,
16 Plaintiff,

17 v.

18 UNITED STATES DEPARTMENT OF
19 VETERANS AFFAIRS,
20 Defendant.
21
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23
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28

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 1. This action is brought under the Freedom of Information Act (“FOIA”). 5
 2 U.S.C. § 552, as amended, for an order compelling Defendant United States Department
 3 of Veterans Affairs (“VA”) to produce, provide access to, and make available certain
 4 records specified below that were requested by Plaintiff Maria Pomares.

5 **JURISDICTION AND VENUE**

6 2. This Court has jurisdiction and venue over this action pursuant to 5 U.S.C. §
 7 552(a)(4)(B).

8 **PARTIES**

9 3. Plaintiff is a citizen of the United States and a resident of the County of San
 10 Diego.

11 4. Defendant is an agency of the United States Government and has possession
 12 and control of the records that are the subject of this action.

13 **THE RELEASE OF THE RECORDS SOUGHT** 14 **WOULD SERVE THE HIGHEST PUBLIC INTEREST**

15 5. Plaintiff seeks records from the Department of Veterans Affairs (“VA”)
 16 relating to the VA’s selective release of nonpublic information during the period from
 17 January through March 2020 that adversely affected the stock price of Career Education
 18 Corporation (“CEC”),¹ a U.S. publicly traded company. During this period, the stock
 19 price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price
 20 and over \$800 million in market capitalization. By July 2020, the VA had decided it
 21 would take no action against CEC,² but for many investors who sold during the near
 22

23 _____
 24 ¹ The name of the company was changed from Career Education Corporation to Perdoceo
 25 Education Corporation effective January 1, 2020. The company’s former name is used in
 26 this complaint, because the records requests and released records primarily use that name.

27 ² Danielle Douglas-Gabriel, *VA Backs down from Plan to Suspend University of Phoenix*
 28 *and Other Colleges from Accessing GI Bill Benefits*, WASH. POST, July 2, 2020,
<https://www.washingtonpost.com/education/2020/07/02/va-backs-down-plan-suspend-university-phoenix-other-colleges-accessing-gi-bill-benefits/>, last visited Jan. 13, 2021.

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;

17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;

20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and

23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar language to the VES letter and citing the same federal statute.⁷

14. In particular, on March 9, the VA “notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁸ In particular, the VA took the following actions:

A. “The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁹

B. “After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law.”¹⁰

///

⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at University of Phoenix, Career Education Corporation, Bellevue University and Temple University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>, last visited Jan. 15, 2021.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

15. The VA issued its press release almost two hours after the markets had closed, but the press release was not news to those who sold CEC stock short that day.¹¹ During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC stock, roughly 370 percent of its daily average volume since the beginning of the year. Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale volume since the beginning of the year. The price of CEC stock fell from \$18.83 on January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

16. The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had “notified military and veterans service organizations today” of its impending enforcement action.¹²

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¹¹ The Securities and Exchange Commission provides this concise description of a short sale:

A short sale is generally the sale of a stock you do not own (or that you will borrow for delivery). Short sellers believe the price of the stock will fall, or are seeking to hedge against potential price volatility in securities that they own.

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss.


Short sales must be done in compliance with SEC Regulation SHO.

<https://www.sec.gov/investor/pubs/regsho.htm>, last visited Jan. 14, 2021.

¹² Press Release, VES, Veterans Education Success Praises Decision by the Department of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),


<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



Veterans Education Success 
@GIBillRights

 **BREAKING**  @DeptVetAffairs announced their intent to stop new #GIBill enrollments at the University of Phoenix, Colorado Technical University, American InterContinental University, Bellevue University, and Temple University.  Read our reaction:

**VETE
EDUCATION**

Press Release: Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838-...
 vetsedsuccess.org

11:26 AM · Mar 9, 2020 · Twitter Web App

17. The VA's selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA's press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA's selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College 'Critics' Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to implement VES's January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES's efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue's Public Financial Disclosure Report does not disclose her husband's financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

disclosed that he is paid a salary and receives an unspecified amount in “consulting fees.”¹⁶ The public interest in the release of information and its implications are growing, as a recent series of posts by a national ethics watchdog confirms.¹⁷

21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.

22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.

23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in which it asserted a “Glomar” response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:

1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
2. Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

///

¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, Nov. 12, 2020, <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>, last visited Jan. 15, 2021.

¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020, <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>, last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
 2 the subject matter of this complaint also sought records which Defendant VA is
 3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
 4 “Glomar” response in any of its communications with Plaintiff in relation to the records
 5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
 8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
 9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
 10 FOIA requests with separate tracking numbers, separate processing by different offices
 11 and administrations within the VA, separate appeal processes, and separate dates for
 12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
 13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
 14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
 15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
 16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
 19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
 20 documents as follows:

21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
 22 the following email addresses between December 15, 2019, and March 15,
 23 2020:

24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
 26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
 and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in
carrie.wofford@veteranseducationsuccess.org would make this
email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

36. On December 11, 2020, Plaintiff's counsel confirmed with his email the conference call he held the day before with the VBA FOIA specialist. During the conversation, Plaintiff's counsel was informed the FOIA request had been transferred to "tier 3... because it involves upper or senior management, which will delay the release of these records." Plaintiff's counsel stated his position as follows:

As you know, I disagreed with any extension of time for this request, since it involves an electronic search of records that did not appear to be subject to any exemption. I also understand you have nearly completed your review, so there should be little justification for delay, absent the late decision to transfer this matter to Tier 3.

Plaintiff's counsel requested further information. Specifically:

1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new tier?
3. What is the definition and rule or regulation applied in determining that Ms. Bogue is at a sufficient high level of management within the VBA that this request should now be transferred to Tier 3?

A true and correct copy of this email is attached hereto and incorporated by reference as Exhibit 9, at 34.

37. On December 15, 2020, since the VBA FOIA specialist had not responded, Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA FOIA specialist informed Plaintiff's counsel the request was being reviewed by the Office of General Counsel (OGC). The email continued:

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made this week. Secondly, I have reviewed your questions below concerning IT processes. I have contacted the Chief of VBACO Desktop Support Services for question #1.... This request is being reviewed by OGC because the subject matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
 2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
 4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
 6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
 8 Substantial Interest request from the date of its receipt of Plaintiff's November
 9 9, 2020, request and thus Defendant VA was dilatory in making said
 10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
 12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
 14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
 17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
 18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
 19 Technology by email and first-class mail. Plaintiff requested access to and copies of
 20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
 22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
 24 Offices, and Centers that contain any of the following terms:
 25 a) University of Phoenix,
 26 b) Perdoceo,
 27 c) Bellevue University,
 28 d) Temple University,
 e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
 2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
 3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
 5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
 6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
 8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
 9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
 10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
 15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
 16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
 20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
 21 paragraphs 25 and 39 above;

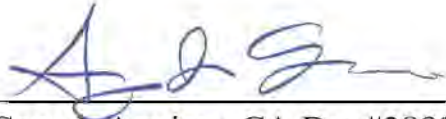
22 B. Order Defendant VA to immediately search for and release all records
 23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
 24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
 26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:

(b) (5)

Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Bradsher, Tanya J.
Sent: Sat, 3 Apr 2021 12:43:50 +0000
To: DRM
Subject: Re: HOT - letter from Senator Grassley to SECVA

Yes Sir,
Thank you and Happy Easter to you and your family.
All the best,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: DRM (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 8:42:36 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: Re: HOT - letter from Senator Grassley to SECVA

Thanks. This is all news to me.

Given that the central allegations here reference engagements with ethics officials (related to recusals in one instance and gift ban violations in another) and because I understand it to reference ongoing litigation, it is best referred to OGC. I see Dick and Tahmika are on the email. I'd recommend that you leave it with them to work. Please don't ask for additional information (like who still works here) since Sen. Grassley writes that this is based on whistleblower accounts.

Thanks again. And a blessed Easter weekend to you. I hope you have a great trip to NC and that you get great time with your daughters.

Thanks again,

DM

From: Bradsher, Tanya J. (b)(6)@va.gov>

Sent: Saturday, April 3, 2021 08:00

To: DRM

Subject: Fwd: HOT - letter from Senator Grassley to SECVA

Sir,

This letter from Sen Grassley came in last night. I wanted you to see it in case he releases it to the media. I see that Tom is mentioned, I don't recognize the other names and have asked who else listed are still VA employees.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McClain, Kimberly A. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 7:34:32 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika
Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.
Standing by for questions.
Thank you,
Kim

Get [Outlook for iOS](#)

From: (b)(6)@va.gov>
Sent: Friday, April 2, 2021 6:51 PM
To: VIEWS-001B@va.gov
Cc: McVicker, Carrie A.; (b)(6) Johnson, Glenn (SES) (b)(6) McClain, Kimberly A.; (b)(6)
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs
2026 Rayburn House Ofc. Bldg., Washington, DC 20515

Desk: (b)(6) | Mobile: (b)(6)

<https://www.va.gov/OCA/docs/VA-Casework-Guide-2019-Aug-16-Update.pdf>

From: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6)@va.gov>
Cc: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>; CEG (Judiciary-Rep) <CEG@judiciary-rep.senate.gov>
Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)

Investigative Counsel
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

From: McClain, Kimberly A.
Sent: Sat, 3 Apr 2021 13:49:29 +0000
To: Bradsher, Tanya J.; Jackson, Tahmika R. (OGC)
Subject: Re: HOT - letter from Senator Grassley to SECVA

Copy. Happy Easter Weekend

Get [Outlook for iOS](#)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 8:45:23 AM
To: McClain, Kimberly A. (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Subject: Re: HOT - letter from Senator Grassley to SECVA

Please disregard, we'll let OGC handle. Happy Easter, Ladies

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 7:47:59 AM
To: McClain, Kimberly A. (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Subject: Re: HOT - letter from Senator Grassley to SECVA

Thank you for reflagging. I missed this last night. I know one person is still here. Who else mentioned are still VA employees?

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McClain, Kimberly A. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 7:34:32 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

Get [Outlook for iOS](#)

From: (b)(6)@va.gov>

Sent: Friday, April 2, 2021 6:51 PM

To: VIEWS-001B@va.gov

Cc: McVicker, Carrie A.; (b)(6) Johnson, Glenn (SES); (b)(6) McClain, Kimberly A.; (b)(6)

Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs

2026 Rayburn House Ofc. Bldg., Washington, DC 20515

Desk: (b)(6) Mobile: (b)(6)

<https://www.va.gov/OCA/docs/VA-Casework-Guide-2019-Aug-16-Update.pdf>

From: (b)(6) Judiciary-Rep (b)(6)@judiciary-rep.senate.gov>

Sent: Friday, April 2, 2021 5:02 PM

To: (b)(6)@va.gov>

Cc: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>; CEG (Judiciary-Rep) <CEG@judiciary-rep.senate.gov>

Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)

Investigative Counsel

Ranking Member Charles E. Grassley

U.S. Senate Committee on the Judiciary

From: Hipolit, Richard (OGC)
Sent: Sat, 3 Apr 2021 22:15:09 +0000
To: Bradsher, Tanya J.;McVicker, Carrie A.;McClain, Kimberly A.;Jackson, Tahmika R. (OGC)
Cc: Johnson, Glenn (SES)
Subject: Re: HOT - letter from Senator Grassley to SECVA

We'll start looking this from the OGC standpoint.

Get [Outlook for iOS](#)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 10:12:04 AM
To: McVicker, Carrie A. (b)(6)@va.gov>; McClain, Kimberly A. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: Re: HOT - letter from Senator Grassley to SECVA

Thank you Carrie

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 10:11:18 AM
To: McClain, Kimberly A. (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA

Good morning.

EXECSEC will manage the letter and make appropriate assignments.

Thank you and have a great weekend.

Carrie

Carrie A. McVicker

The Executive Secretary

Office of the Secretary

Department of Veterans Affairs

(b)(6)@va.gov

From: McClain, Kimberly A. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 7:35 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

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From: (b)(6)@va.gov>
Sent: Friday, April 2, 2021 6:51 PM
To: [VIEWS-001B@va.gov](#)
Cc: McVicker, Carrie A.; (b)(6) Johnson, Glenn (SES); (b)(6) McClain, Kimberly A.; (b)(6)
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs
2026 Rayburn House Ofc. Bldg., Washington, DC 20515

Desk: (b)(6) Mobile: (b)(6)

<https://www.va.gov/OCA/docs/VA-Casework-Guide-2019-Aug-16-Update.pdf>

From: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6)@va.gov>
Cc: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>; CEG (Judiciary-Rep) <CEG@judiciary-rep.senate.gov>
Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)

Investigative Counsel
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

From: Jacobs, Josh
Sent: Tue, 6 Apr 2021 12:19:48 +0000
To: SECVA Scheduling; Clancy, Carolyn; Diaz, Chris E.; Williams, Kayla M.; McClain, Kimberly A.; Kabat, Margaret B. (b)(6) Hipolit, Richard (OGC (b)(6) (b)(6) Kelley, Raymond C.; Jackson, Tahmika R. (OGC); McVicker, Carrie A.; MacDonald, Jennifer E. (Physician); Boerstler, John (b)(6) (b)(6) (OGC); Farrisee, Gina S.; DRM;8:orgid:221139d1-759e-4b33-993e-f8cb241e76ad (b)(6); Parrish, Michael D.; Turner, Shawn S.; Bradsher, Tanya J. (b)(6); Mayo, Jeffrey;8:teamsvisitor:401b959c25c04bfe954cfd5b70324c9a

McClain, Kimberly A. - I got a call from someone last night about a Grassley issue; might be the same

From: Hipolit, Richard (OGC)
Sent: Tue, 6 Apr 2021 13:30:11 +0000
To: SECVA Scheduling; Clancy, Carolyn; Diaz, Chris E.; Williams, Kayla M.; McClain, Kimberly A.; Kabat, Margaret B.; Jacobs, Josh; (b)(6) Kelley, Raymond C.; Jackson, Tahmika R. (OGC); McVicker, Carrie A.; MacDonald, Jennifer E. (Physician); Boerstler, John; (b)(6)
(b)(6) OGC); Farrisee, Gina S.; DRM;8:orgid:221139d1-759e-4b33-993e-f8cb241e76aa (b)(6); Parrish, Michael D.; Turner, Shawn S.; Bradsher, Tanya J.; (b)(6); Mayo, Jeffrey;8:teamsvisitor:401b959c25c04bfe954cfd5b70324c9a

Carrie, Mike Hogan and Dave Barrans can designate OGC SMEs as necessary on the Grassley letter on the ethics and benefits aspects, respectively.

From: Bradsher, Tanya J.
Sent: Tue, 6 Apr 2021 19:42:40 +0000
To: DRM
Subject: FW: 2021-04-02 CEG to VA - Grassley
Attachments: 2021-04-02 CEG to VA.pdf

Hi Sir,
Grassley sent out a press release and attached the letter. We have looped in Kayla.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:04 PM
To: McClain, Kimberly A. (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

From his website:

Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics Violations at Veterans Benefits Administration

Following review of whistleblower complaints, documents, Grassley pushes VA, Inspector General, and SEC for Transparency

WASHINGTON – Sen. Chuck Grassley (R-Iowa), Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

Grassley is seeking information regarding Charmain Bogue's failure to disclose her husband's income and employment at a firm that directly did business with the VBA. He is also seeking a commitment from the Department of Veterans Affairs (VA) to comply with pending and future FOIA requests on this matter in a timely manner.

The whistleblower allegations revolve around an alleged VA Office of General Counsel memorandum that determined Charmain Bogue should recuse herself from any and all VA matters involving her husband's firms. The whistleblowers further allege that, after internal warnings about the need to protect market-sensitive information, that information may have been leaked, which was then publicly traded on, potentially affecting stock prices and retail investors.

In seeking a broad set of information and transparency, Grassley wrote to Secretary of Veterans Affairs Denis McDonough, Department of Veterans Affairs Inspector General Michael Missal, and Acting Chairwoman Allison Lee of the Securities and Exchange Commission.

In his letter to the VA, Grassley requests records relating to ethics determinations related to current and former senior officials at the VA, the steps the VA takes to protect retail investors by safeguarding market-sensitive information, any internal investigations of such information leaking, and the VA's attempts to block information released through FOIA requests relating to these matters.

Grassley is seeking a review of these potential ethics violations and disclosures failures from the inspector general, and asking whether the SEC is aware of these allegations and what steps the commissioner takes to distribute guidance to federal agencies on the importance and necessity of protecting sensitive information that could affect financial markets.

Full text of Grassley's letters follow:

[Grassley to Secretary McDonough \(VA\)](#)
[Grassley to Inspector General Missal \(VA OIG\)](#)
[Grassley to Lee \(SEC\)](#)

From: (b)(6)
Sent: Tuesday, April 6, 2021 2:52 PM
To: McClain, Kimberly A. <(b)(6)@va.gov>
Cc: Johnson, Glenn (SES) <(b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Kim,

As an FYI. He apparently has put something on his website.

(b)(6)

Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs

(b)(6)

From: (b)(6) (009) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 2:21 PM

To: (b)(6) (OGC) (b)(6) @va.gov>; (b)(6)

(b)(6) @va.gov>; (b)(6) @va.gov>; (b)(6)

(b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: RE: 2021-04-02 CEG to VA

Hi (b)(6) With this reply I am forwarding your request to the Directors of OCLA's Outreach (b)(6)
(b)(6) Corporate (b)(6) and Benefits (b)(6) Teams as I am not certain which
Congressional Relations Officer is working this correspondence from Senator Grassley (b)(6)
(b)(6) would one of you be able to assist OGC. Thanks. (b)(6)

(b)(6)

Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs

(b)(6) Direct
(b)(6) Mobile

(b)(6) @va.gov

From: (b)(6) (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 12:55 PM

To: (b)(6) (009) (b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: 2021-04-02 CEG to VA

Importance: High

I am an attorney with the OGC Ethics Specialty Team. Our office is preparing responses to the above congressional request for information. It is my understanding that OCLA spoke with Senator Grassley's office regarding this request. After speaking with (b)(6) this morning, we propose to seek clarification concerning the scope of #4: "Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds" which proposed actions were related to their acceptance of free attendance at NASCAR events at which VBA was conducting outreach.

Could there be follow-up with the Senator's office to confirm that the scope of #4 is limited to the suspension/proposed suspensions and need not include all OGC guidance related to attendance at the NASCAR events. If our office was to include all such guidance, it could include a significant amount information that is irrelevant and extraneous.

Thank you for your consideration and assistance.

(b)(6)

VA Staff Attorney
Ethics Specialty Team

(b)(6)

(BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

RICHARD J. DURBIN, ILLINOIS, SENIOR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JOHN OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMMIDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

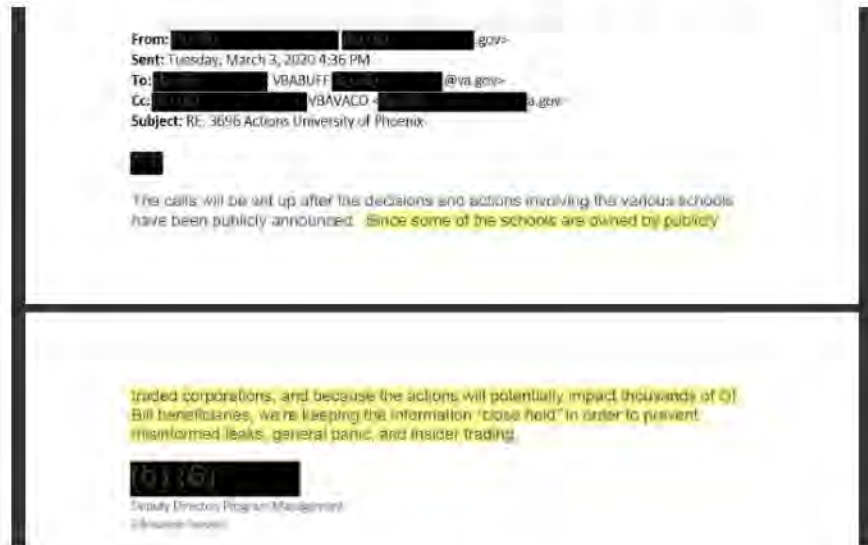
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
5. What steps does the VA take to protect retail investors by safeguarding market sensitive information regarding potential enforcement announcements related to publicly-traded companies?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
6. If the VA is aware that market sensitive information was potentially leaked, has the VA investigated this leak of information? Please provide the report of investigation.
7. Did the VA Office of General Counsel ever provide a legal opinion with respect to Mrs. Bogue and her involvement with any of her husband's companies?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
10. Under current law and regulation, is Mrs. Bogue required to report financial information of her spouse via a public financial disclosure report? If so, did Ms. Bogue list her husband?
 - a. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's employer(s)? If not, why not?
 - b. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's salary with respect to his work? If not, why not?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
11. If Mrs. Bogue did not report where Mr. Bogue currently works, and if she participated in VA business related to VES, would that constitute a conflict of interest as described by applicable law or regulation?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (b)(6) Thank
you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawapc.com
Attorney for Plaintiff Maria A. Pomares

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Case No.: '21CV84 H MSB

MARIA A. POMARES,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,
Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;

17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;

20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and

23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar language to the VES letter and citing the same federal statute.⁷

14. In particular, on March 9, the VA “notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁸ In particular, the VA took the following actions:

A. “The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁹

B. “After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law.”¹⁰

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⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at University of Phoenix, Career Education Corporation, Bellevue University and Temple University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>, last visited Jan. 15, 2021.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

15. The VA issued its press release almost two hours after the markets had closed, but the press release was not news to those who sold CEC stock short that day.¹¹ During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC stock, roughly 370 percent of its daily average volume since the beginning of the year. Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale volume since the beginning of the year. The price of CEC stock fell from \$18.83 on January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

16. The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had “notified military and veterans service organizations today” of its impending enforcement action.¹²

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¹¹ The Securities and Exchange Commission provides this concise description of a short sale:

A short sale is generally the sale of a stock you do not own (or that you will borrow for delivery). Short sellers believe the price of the stock will fall, or are seeking to hedge against potential price volatility in securities that they own.

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss.


Short sales must be done in compliance with SEC Regulation SHO.

<https://www.sec.gov/investor/pubs/regsho.htm>, last visited Jan. 14, 2021.

¹² Press Release, VES, Veterans Education Success Praises Decision by the Department of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),


<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



Veterans Education Success 
@GIBillRights

 **BREAKING**  @DeptVetAffairs announced their intent to stop new #GIBill enrollments at the University of Phoenix, Colorado Technical University, American InterContinental University, Bellevue University, and Temple University.  Read our reaction:

**VETE
EDUCATI**

Press Release: Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838...
 vetsedsuccess.org

11:26 AM · Mar 9, 2020 · Twitter Web App

17. The VA's selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA's press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA's selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

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¹³ National Legal and Policy Center, *Are For-Profit College 'Critics' Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to implement VES's January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES's efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue's Public Financial Disclosure Report does not disclose her husband's financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

disclosed that he is paid a salary and receives an unspecified amount in “consulting fees.”¹⁶ The public interest in the release of information and its implications are growing, as a recent series of posts by a national ethics watchdog confirms.¹⁷

21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.

22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.

23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in which it asserted a “Glomar” response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:

1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
2. Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

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¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, Nov. 12, 2020, <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>, last visited Jan. 15, 2021.

¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020, <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>, last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
 2 the subject matter of this complaint also sought records which Defendant VA is
 3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
 4 “Glomar” response in any of its communications with Plaintiff in relation to the records
 5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
 8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
 9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
 10 FOIA requests with separate tracking numbers, separate processing by different offices
 11 and administrations within the VA, separate appeal processes, and separate dates for
 12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
 13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
 14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
 15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
 16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
 19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
 20 documents as follows:

21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
 22 the following email addresses between December 15, 2019, and March 15,
 23 2020:

24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
 26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
 and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in
carrie.wofford@veteranseducationsuccess.org would make this
email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

36. On December 11, 2020, Plaintiff's counsel confirmed with his email the conference call he held the day before with the VBA FOIA specialist. During the conversation, Plaintiff's counsel was informed the FOIA request had been transferred to "tier 3... because it involves upper or senior management, which will delay the release of these records." Plaintiff's counsel stated his position as follows:

As you know, I disagreed with any extension of time for this request, since it involves an electronic search of records that did not appear to be subject to any exemption. I also understand you have nearly completed your review, so there should be little justification for delay, absent the late decision to transfer this matter to Tier 3.

Plaintiff's counsel requested further information. Specifically:

1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new tier?
3. What is the definition and rule or regulation applied in determining that Ms. Bogue is at a sufficient high level of management within the VBA that this request should now be transferred to Tier 3?

A true and correct copy of this email is attached hereto and incorporated by reference as Exhibit 9, at 34.

37. On December 15, 2020, since the VBA FOIA specialist had not responded, Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA FOIA specialist informed Plaintiff's counsel the request was being reviewed by the Office of General Counsel (OGC). The email continued:

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made this week. Secondly, I have reviewed your questions below concerning IT processes. I have contacted the Chief of VBACO Desktop Support Services for question #1.... This request is being reviewed by OGC because the subject matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
 2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
 3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
 5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
 6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
 8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
 9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
 10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
 15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
 16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
 20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
 21 paragraphs 25 and 39 above;

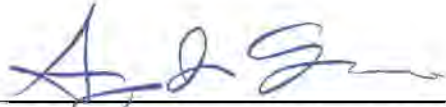
22 B. Order Defendant VA to immediately search for and release all records
 23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
 24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
 26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:

(b) (5)

Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Hipolit, Richard (OGC)
Sent: Tue, 6 Apr 2021 19:47:07 +0000
To: Jackson, Tahmika R. (OGC); Bradsher, Tanya J.; McClain, Kimberly A.
Cc: Diaz, Chris E.; Farrisee, Gina S.; McVicker, Carrie A.; Johnson, Glenn (SES); Williams, Kayla M.
Subject: RE: 2021-04-02 CEG to VA - Grassley

I agree. No problem looping in Kayla.

From: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:40 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>; McClain, Kimberly A. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Diaz, Chris E. (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; Johnson, Glenn (SES) (b)(6)@va.gov>; Williams, Kayla M. (b)(6)@va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

COS,

Absolutely. I have copied Kayla here (b)(5)

(b)(5)

V/r,
Tahmika

Tahmika Ruth Jackson
Special Counsel
Office of General Counsel
Department of Veterans Affairs
Cell: (b)(6)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:33 PM
To: McClain, Kimberly A. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Diaz, Chris E. (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

OGC – can I loop in Kayla?

Tanya Bradsher

Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McClain, Kimberly A. (b)(6)@va.gov>

Sent: Tuesday, April 6, 2021 3:26 PM

To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>;

Jackson, Tahmika R. (OGC) (b)(6)@va.gov>

Cc: Diaz, Chris E. (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov>; McVicker,

Carrie A. (b)(6)@va.gov>; Johnson, Glenn (SES) (b)(6)@va.gov>

Subject: FW: 2021-04-02 CEG to VA - Grassley

Tanya, Dick and Tahmika,

Please see below for the press release that RM Grassley's office sent out.

Dick – What is your call about accepting the call with RM Grassley's staffer? If we take the call, I would recommend OGC/Special Counsel be on the call since the responses will come from your office.

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell: (b)(6)

From: (b)(6)@va.gov>

Sent: Tuesday, April 6, 2021 3:04 PM

To: McClain, Kimberly A. (b)(6)@va.gov>

Cc: Johnson, Glenn (SES) (b)(6)@va.gov>

Subject: FW: 2021-04-02 CEG to VA - Grassley

From his website:

Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics

Violations at Veterans Benefits Administration

Following review of whistleblower complaints, documents, Grassley pushes VA, Inspector General, and SEC for Transparency

WASHINGTON – Sen. Chuck Grassley (R-Iowa), Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

Grassley is seeking information regarding Charmain Bogue's failure to disclose her husband's income and employment at a firm that directly did business with the VBA. He is also seeking a commitment from the Department of Veterans Affairs (VA) to comply with pending and future FOIA requests on this matter in a timely manner.

The whistleblower allegations revolve around an alleged VA Office of General Counsel memorandum that determined Charmain Bogue should recuse herself from any and all VA matters involving her husband's firms. The whistleblowers further allege that, after internal warnings about the need to protect market-sensitive information, that information may have been leaked, which was then publicly traded on, potentially affecting stock prices and retail investors.

In seeking a broad set of information and transparency, Grassley wrote to Secretary of Veterans Affairs Denis McDonough, Department of Veterans Affairs Inspector General Michael Missal, and Acting Chairwoman Allison Lee of the Securities and Exchange Commission.

In his letter to the VA, Grassley requests records relating to ethics determinations related to current and former senior officials at the VA, the steps the VA takes to protect retail investors by safeguarding market-sensitive information, any internal investigations of such information leaking, and the VA's attempts to block information released through FOIA requests relating to these matters.

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Full text of Grassley's letters follow:

[Grassley to Secretary McDonough \(VA\)](#)
[Grassley to Inspector General Missal \(VA OIG\)](#)
[Grassley to Lee \(SEC\)](#)

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Sent: Tuesday, April 6, 2021 2:52 PM
To: McClain, Kimberly A. (b)(6) @va.gov>
Cc: Johnson, Glenn (SES) (b)(6) @va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Kim,

As an FYI. He apparently has put something on his website.

(b)(6)
Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs
(b)(6)

From: (b)(6) (009) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 2:21 PM
To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6)
(b)(6) @va.gov> (b)(6) @va.gov> (b)(6)
(b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: 2021-04-02 CEG to VA

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Congressional Relations Officer is working this correspondence from Senator Grassley. (b)(6)
(b)(6) would one of you be able to assist OGC. Thanks. (b)(6)

(b)(6)
Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs
(b)(6) Direct
(b)(6) Mobile
(b)(6) @va.gov

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 12:55 PM

To: (b)(6) (009) (b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>
Subject: 2021-04-02 CEG to VA
Importance: High

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Thank you for your consideration and assistance.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: McVicker, Carrie A.
Sent: Tue, 6 Apr 2021 19:56:28 +0000
To: Jackson, Tahmika R. (OGC); Bradsher, Tanya J.; McClain, Kimberly A.; Hipolit, Richard (OGC)
Cc: Diaz, Chris E.; Farrisee, Gina S.; Johnson, Glenn (SES); Williams, Kayla M.
Subject: RE: 2021-04-02 CEG to VA - Grassley

We did dispatch a generic interim today,

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Jackson, Tahmika R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 3:40 PM
To: Bradsher, Tanya J. (b)(6) @va.gov>; McClain, Kimberly A. (b)(6) @va.gov>; Hipolit, Richard (OGC) (b)(6) @va.gov>
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Subject: RE: 2021-04-02 CEG to VA - Grassley

COS,

Absolutely. I have copied Kayla here. (b)(5)

(b)(5)

V/r,
Tahmika

Tahmika Ruth Jackson
Special Counsel
Office of General Counsel
Department of Veterans Affairs
Cell: (b)(6)

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(b)(6)

Program Specialist, VA History Office, Detailee

U.S. Department of Veterans Affairs

(b)(6)

Direct

Mobile

(b)(6)

@va.gov

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(b)(6)

VA Staff Attorney

Ethics Specialty Team

(b)(6)

(BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: Murphy, Thomas, VBASTL
Sent: Tue, 6 Apr 2021 20:53:26 +0000
To: DRM
Subject: Sen Grassley
Attachments: Grievance decision.pdf, Signed Murphy_Thomas.pdf

Good Afternoon Sir. Here is some of that not good news we get sometimes.

Just recently I became aware that Charmain Bogue, EDU Director, and her husband were accused of an inappropriate business relationship. I had my COS find out what the last administration did about it when they became aware last November. I needed to know if they did an investigation and if so, what was the outcome. They did not. So we contacted OAWP to ask about opening an investigation as is the process when SES's are involved.

Then we received this from Sen Grassley's office.

<https://www.grassley.senate.gov/news/news-releases/grassley-seeks-sweeping-review-into-allegations-of-whistleblower-reprisal-ethics-violations-at-veterans-benefits-administration>

The other part of the allegation involves myself; Rob Reynolds, RO Director in Roanoke, VA; and Jamie Manker, Former VBA SES. At the time, I was the Acting USB, Jamie was the PDUSB, and Rob was the DUSB for Policy. The allegations Senator Grassley mentions here are part of a long list of allegations levied by a fired former employee that claimed to be a whistleblower. I terminated her for multiple violations of VA policies. All well documented in HR files.

This series of events took place over the last two administrations ending shortly after Paul Lawrence was appointed Under Secretary for Benefits. All allegations against all of us were dismissed with the exception of "Accepting Gifts" for attending NASCAR events. The details about my case are attached. Of note, the NASCAR event was part of a long standing VA outreach contract that has since been terminated.

It was determined by Secretary Wilkie that I did NOT accept a gift for (b)(6) because (b)(6) simply accompanied me, in my official VA capacity, to a Veteran's Day Event. But in the future I should contact OGC Ethics in advance of such events.

Rob Reynolds' case was withdrawn by USB Lawrence because the USAF provided evidence that Rob's (b)(6) was in attendance as (b)(6)

Jamie Manker took extreme exception to the accusation and decided he wouldn't work for VA any longer. He opted to retire. The secretaries office called and asked him to stay and that they would clear his record. He declined.

Because of these accusations, VA lost one of the most effective outreach events in the sporting world. This family friendly event was even touted in one of President Obama's speeches for its success in reaching Veterans.

Department of
Veterans Affairs

Memorandum

Date: April 30, 2019
From: Assistant Secretary for Accountability and Whistleblower Protection
Subj: Grievance Decision
To: Secretary, Department of Veterans Affairs

Per the attached memorandum, Assistant Secretary Daniel Sitterly recommends that you grant the grievance filed by Thomas Murphy, Midwest District Office, Veterans Benefits Administration. Specifically, Mr. Sitterly recommends that you set aside Mr. Murphy's 10-day suspension and replace it with an admonishment for failing to seek ethics advice regarding (b)(6) attendance at a NASCAR event. The Proposed Suspension, Mr. Murphy's response, the Initial Decision, Mr. Murphy's grievance, and Mr. Sitterly's recommendation are attached. If you would like to review the underlying evidence, it will be provided to you electronically or in hard copy at your request.

If you agree with Mr. Sitterly's recommendation, please sign the "approve" line below. If you disagree with Mr. Sitterly's recommendation, please sign the "disapprove" line below. If you disapprove, you may also mitigate the penalty in this matter in a different manner by listing the appropriate action below.

DECISION:

Approved:


Robert L. Wilkie

5/7/19

Disapproved:

Robert L. Wilkie

Penalty:

**Department of
Veterans Affairs**

Memorandum

Date: April 16, 2019
From: Assistant Secretary for Human Resources and Administration/
Operations, Security, and Preparedness
Subj: Grievance Recommendation
To: Secretary, Department of Veterans Affairs

Issue

On March 18, 2019, Thomas Murphy, Director, Midwest District Office, Veterans Benefits Administration (VBA), was served an initial notice of the decision to suspend him for 10 days under the authority of 38 U.S.C. § 713. On March 27, 2019, Mr. Murphy submitted a written grievance regarding the initial decision to suspend him for 10 days.

Background

An Administrative Investigation (AI) was convened on June 20, 2018, to investigate allegations made against Mr. Murphy for: financial and administration improprieties relating to the VA's Transition Assistance Program (TAP), Prohibited Personnel Practices (PPP), misusing funds for mandatory overtime in relation to reducing benefits cases backlog, and misusing the VA contract with NASCAR to attend NASCAR events.

The AI took sworn testimony via telephone or taped transcript between July 12 and September 24, 2018. The AIB also followed up several issues with Mr. Murphy via email. The AI did not sustained allegations into financial and administration improprieties relating to the VA's Transition Assistance Program (TAP), Prohibited Personnel Practices (PPP), and misusing funds for mandatory overtime in relation to reducing benefits cases backlog. The AI, however, found that Mr. Murphy inappropriately accepted a gift on behalf of (b)(6)

Mr. Murphy's testimony and emails showed that, consistent with a VA NASCAR contract, Mr. Murphy attended a NASCAR event in his official capacity as Acting Under Secretary of VBA. Mr. Murphy also testified to bringing (b)(6) with him to the NASCAR event as well as receiving a "Hot Pass" into the NASCAR event.

Initial Decision on Suspension

Mr. Murphy replied to the proposed suspension timely, providing a written reply. Mr. Murphy argued that (b)(6) received the same "press pass" that was given to him "in order to access the areas of the racetrack where veteran's events occurred." Mr. Murphy also stated he and (b)(6) only had access to the places he needed to be, and at the times Mr. Murphy needed to be there, in order to participate in VA's outreach event.

GRIEVANCE OFFICIAL RECOMMENDATION
REGARDING INITIAL DECISION TO SUSPEND MR. THOMAS MURPHY FOR 10 DAYS
BY DANIEL R. SITTERLY

PAGE 1 OF 3

Mr. Murphy also makes the argument that he did not accept a gift for (b)(6) as (b)(6) (b)(6) was entitled to attend the event under provision 5 CFR 2635.203 (b)(8)(iii). 5 CFR 2635.203 (b)(8)(iii) states:

“(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term excludes the following:

(8) Free attendance to an event provided by the sponsor of the event to:

(iii) The spouse or one other guest of the presenting employee on any day when the employee is presenting, provided that others in attendance will generally be accompanied by a spouse or other guest, the offer of free attendance for the spouse or other guest is unsolicited, and the agency designee, orally or in writing, has authorized the presenting employee to accept;”

The deciding official, Dr. Paul Lawrence, Under Secretary for Benefits, took all the evidence, including that which was presented during the reply period, into consideration before making his decision. On March 18, 2019, Dr. Lawrence issued Mr. Murphy the Initial Decision to sustain the charge and effect the proposed penalty of a 10-day suspension.

Grievance

Mr. Murphy timely filed his written grievance on March 27, 2019. In his written grievance, Mr. Murphy restated the above arguments, mentioned in his written reply to Dr. Lawrence, in addition to stating that the accepted pass was not worth the assessed value of \$520, as stated to investigators by a Phoenix Raceway Official; but, rather was worth either nothing or the lowest value of ticket offered that day for raceway access (\$35).

Analysis

I have reviewed the grievance of Mr. Thomas Murphy, Director Midwest District Office, VBA, in accordance with CSEMO letter 006-17-1 dated 7 July 2017.

After thoroughly reviewing all evidence presented to me, it is clear to me that pursuant to 5 CFR 2635.202 (1-1-18 Edition), the acceptance of a gift from a prohibited source or any gift given because of the employee’s official position is prohibited. However, it is not clear to me that (b)(6) receipt of a “hot pass” for the Phoenix NASCAR event was for the purpose of entering the NASCAR event as a spectator; or, as a guest to accompany (b)(6) (b)(6) to an official VA function that happens to have been held at the NASCAR event.

All the statements by Mr. Murphy and other witnesses describe (b)(6) activities as that of a part of the official party of VA representatives – Mr. Murphy, (b)(6) and the Executive Assistant. At no time did (b)(6) act as a “public spectator” – there to enjoy the NASCAR event as would be expected of someone who purchased a ticket to such an event.

Senior Executives are often asked to perform official duties on nights and weekends and to be away from their families. In this case, Mr. Murphy purchased (b)(6) airline tickets and, to my knowledge, did nothing to otherwise obligate the government to any expenses regarding (b)(6) travel or accommodation for the Phoenix event. I do not think it reasonable to expect Mr. Murphy to have purchased a “hot pass” for (b)(6) to accompany him to an official VA function – even had such a purchase been available, which it was not.

The fact that the investigation dealt with three separate instances of VA executives at NASCAR events suggests that while this contract appears to have been in place for some time, the rules on participation are not clear, and we should provide additional guidance on what is or is not acceptable attendance to these events. I do not believe Mr. Murphy set out to do “the wrong thing”.

The rules are, however, clear and the VA annual Ethics Training is clear – that officials should seek advice from an agency ethics official when there are any questions on acceptance of gifts.

Recommendation

As Grievance Official for this matter, in providing a fair, impartial, and objective analysis of the charge and its related specifications and known facts involved, I carefully reviewed and considered the written documentary evidence file and the written grievance evidence file. I also considered whether this action was supported by substantial evidence and was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law.

In light of the evidence reviewed, it is my recommendation that the charge, and proposed 10-day suspension, should not be upheld as it not supported by substantial evidence. Instead, it is my recommendation that Mr. Murphy be admonished for not seeking an OGC opinion on his wife’s accompanying him to the NASCAR/VA outreach event.



Daniel R. Sitterly
Grievance Official

GRIEVANCE OFFICIAL RECOMMENDATION
REGARDING INITIAL DECISION TO SUSPEND MR. THOMAS MURPHY FOR 10 DAYS
BY DANIEL R. SITTERLY

PAGE 3 OF 3

From: DRM
Sent: Tue, 6 Apr 2021 20:58:16 +0000
To: Bradsher, Tanya J.
Subject: Re: 2021-04-02 CEG to VA - Grassley

Just tried you. Please call me when you can.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 13:42
To: DRM
Subject: FW: 2021-04-02 CEG to VA - Grassley

Hi Sir,
Grassley sent out a press release and attached the letter. We have looped in Kayla.

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Chief of Staff
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(b)(6)@va.gov
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(b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: RE: 2021-04-02 CEG to VA

Hi (b)(6) With this reply I am forwarding your request to the Directors of OCLA's Outreach (b)(6) (b)(6) Corporate (b)(6) and Benefits (b)(6) Teams as I am not certain which Congressional Relations Officer is working this correspondence from Senator Grassley. (b)(6) (b)(6) would one of you be able to assist OGC. Thanks. (b)(6)

(b)(6)

Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs

(b)(6) Direct

(b)(6) Mobile

(b)(6) @va.gov

From: (b)(6) (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 12:55 PM

To: (b)(6) (009) (b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: 2021-04-02 CEG to VA

Importance: High

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Thank you for your consideration and assistance.

(b)(6)

VA Staff Attorney
Ethics Specialty Team

(b)(6)

(BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: Williams, Kayla M.
Sent: Tue, 6 Apr 2021 21:52:05 +0000
To: Bradsher, Tanya J.
Subject: RE: 2021-04-02 CEG to VA - Grassley

jinx

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 5:52 PM
To: Williams, Kayla M. (b)(6)@va.gov>
Cc: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

Please loop me in with Melissa, I have a tasker

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: Williams, Kayla M. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 5:50 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

No problem at all. I will forward the two earlier emails to Melissa and I request that whenever the planning meeting takes place that she be included instead of me.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 5:39 PM
To: Williams, Kayla M. (b)(6)@va.gov>
Cc: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Subject: Re: 2021-04-02 CEG to VA - Grassley

Talking to Dick, Kayla he agrees that you should recuse yourself.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: Williams, Kayla M. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 5:02:30 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

Chief,

I feel obliged to disclose that while I was at CNAS, I approved a small contract (I believe \$10k) to Barrett Bogue and Dr. Andrew Morse to write this white paper: [Called to Lead | Center for a New American Security \(en-US\) \(cnas.org\)](#)

Given the specific nature of the concerns raised, it seemed appropriate for me to flag that I had a financial interaction with him in his capacity as a consultant.

If it is more appropriate for me to recuse myself from any and all conversations related to this, I have confirmed with Melissa Bryant that she has no known conflicts.

Please let me know if you'd like me to forward the background to Melissa and be removed from the email chain.

Kayla

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:51 PM
To: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>; McClain, Kimberly A. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Diaz, Chris E. (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; Johnson, Glenn (SES) (b)(6)@va.gov>; Williams, Kayla M. (b)(6)@va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

Kayla,

Please read the letter attached for full context.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:40 PM
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Cc: Diaz, Chris E. (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; Johnson, Glenn (SES) (b)(6)@va.gov>; Williams, Kayla M. (b)(6)@va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

COS,

Absolutely. I have copied Kayla here. (b)(5)

(b)(5)

V/r,
Tahmika

Tahmika Ruth Jackson
Special Counsel
Office of General Counsel
Department of Veterans Affairs
Cell (b)(6)

From: Bradsher, Tanya J. (b)(6) @va.gov>
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To: McClain, Kimberly A. (b)(6) @va.gov>; Hipolit, Richard (OGC) (b)(6) @va.gov>; Jackson, Tahmika R. (OGC) (b)(6) @va.gov>
Cc: Díaz, Chris E. (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>; Johnson, Glenn (SES) (b)(6) @va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

OGC – can I loop in Kayla?

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6) @va.gov
Cell (b)(6)

From: McClain, Kimberly A. (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 3:26 PM
To: Bradsher, Tanya J. (b)(6) @va.gov>; Hipolit, Richard (OGC) (b)(6) @va.gov>; Jackson, Tahmika R. (OGC) (b)(6) @va.gov>
Cc: Díaz, Chris E. (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>; Johnson, Glenn (SES) (b)(6) @va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Tanya, Dick and Tahmika,

Please see below for the press release that RM Grassley's office sent out.

Dick – What is your call about accepting the call with RM Grassley's staffer? If we take the call, I would recommend OGC/Special Counsel be on the call since the responses will come from your office.

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone (b)(6)
Cell: (b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:04 PM
To: McClain, Kimberly A. (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

From his website:

Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics Violations at Veterans Benefits Administration

Following review of whistleblower complaints, documents, Grassley pushes VA, Inspector General, and SEC for Transparency

WASHINGTON – Sen. Chuck Grassley (R-Iowa), Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

Grassley is seeking information regarding Charmain Bogue's failure to disclose her husband's income and employment at a firm that directly did business with the VBA. He is also seeking a commitment from the Department of Veterans Affairs (VA) to comply with pending and future FOIA requests on this matter in a timely manner.

The whistleblower allegations revolve around an alleged VA Office of General Counsel memorandum that determined Charmain Bogue should recuse herself from any and all

VA matters involving her husband's firms. The whistleblowers further allege that, after internal warnings about the need to protect market-sensitive information, that information may have been leaked, which was then publicly traded on, potentially affecting stock prices and retail investors.

In seeking a broad set of information and transparency, Grassley wrote to Secretary of Veterans Affairs Denis McDonough, Department of Veterans Affairs Inspector General Michael Missal, and Acting Chairwoman Allison Lee of the Securities and Exchange Commission.

In his letter to the VA, Grassley requests records relating to ethics determinations related to current and former senior officials at the VA, the steps the VA takes to protect retail investors by safeguarding market-sensitive information, any internal investigations of such information leaking, and the VA's attempts to block information released through FOIA requests relating to these matters.

Grassley is seeking a review of these potential ethics violations and disclosures failures from the inspector general, and asking whether the SEC is aware of these allegations and what steps the commissioner takes to distribute guidance to federal agencies on the importance and necessity of protecting sensitive information that could affect financial markets.

Full text of Grassley's letters follow:

[Grassley to Secretary McDonough \(VA\)](#)
[Grassley to Inspector General Missal \(VA OIG\)](#)
[Grassley to Lee \(SEC\)](#)

From: (b)(6)
Sent: Tuesday, April 6, 2021 2:52 PM
To: McClain, Kimberly A. (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Kim,

As an FYI. He apparently has put something on his website.

(b)(6)
Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs
(b)(6)

From: (b)(6) (009) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 2:21 PM

To: (b)(6) (OGC) (b)(6) @va.gov>; (b)(6)

(b)(6) @va.gov>; (b)(6) @va.gov> (b)(6)

(b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: RE: 2021-04-02 CEG to VA

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(b)(6)

Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs

(b)(6) Direct

(b)(6) Mobile

(b)(6) @va.gov

From: (b)(6) (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 12:55 PM

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(b)(6)

VA Staff Attorney
Ethics Specialty Team

(b)(6) (BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: Jackson, Tahmika R. (OGC)
Sent: Tue, 6 Apr 2021 21:55:48 +0000
To: Bradsher, Tanya J.; Williams, Kayla M.
Subject: RE: 2021-04-02 CEG to VA - Grassley

Sorry, COS, catching up from labor issues. I agree with Dick on recusing Kayla.

V/r,
Tahmika

Tahmika Ruth Jackson
Special Counsel
Office of General Counsel
Department of Veterans Affairs
Cell: (b)(6)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 5:14 PM
To: Williams, Kayla M. (b)(6)@va.gov>
Cc: Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Subject: Re: 2021-04-02 CEG to VA - Grassley

Tahmika, please advise

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

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Sent: Tuesday, April 6, 2021 5:02:30 PM
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Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

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Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell: (b)(6)

From: (b)(6)@va.gov
Sent: Tuesday, April 6, 2021 3:04 PM
To: McClain, Kimberly A. <(b)(6)@va.gov>

Cc: Johnson, Glenn (SES) [b)(6)]@va.gov>
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To: McClain, Kimberly A. (b)(6) @va.gov>
Cc: Johnson, Glenn (SES) (b)(6) @va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

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(b)(6)
Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs
(b)(6)

From: (b)(6) (009) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 2:21 PM
To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6)
(b)(6) @va.gov>; (b)(6) @va.gov> (b)(6)
(b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: 2021-04-02 CEG to VA

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(b)(6) would one of you be able to assist OGC. Thanks. (b)(6)

(b)(6)

Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs

(b)(6) Direct
(b)(6) Mobile

(b)(6) @va.gov

From: (b)(6) (OGC) <(b)(6)@va.gov>

Sent: Tuesday, April 6, 2021 12:55 PM

To: (b)(6) (009) (b)(6)@va.gov

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Subject: 2021-04-02 CEG to VA

Importance: High

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(b)(6)

VA Staff Attorney
Ethics Specialty Team

(b)(6) (BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: Bryant, Melissa
Sent: Tue, 6 Apr 2021 22:50:25 +0000
To: Bradsher, Tanya J.
Subject: RE: 2021-04-02 CEG to VA - Grassley
Attachments: 04062021 Grassley Inquiry PR DRAFT_mab.docx
Importance: High

Tanya,

Please see attached. I kept this short and sweet, but I can add more on OAWP, if needed.

V/r,
Melisa

Melissa A. Bryant

Deputy Assistant Secretary for Public Affairs
Department of Veterans Affairs
(m) 202-689-7810

(b)(6)@va.gov

From: Williams, Kayla M. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 5:52 PM
To: Bryant, Melissa (b)(6)@va.gov>
Cc: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Melissa,

Please see thread below and attached letter; I have recused myself from this effort.

V/R,
Kayla

From: Bradsher, Tanya J. (b)(6)@va.gov>
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To: Jackson, Tahmika R. (OGC (b)(6)@va.gov>; McClain, Kimberly A. (b)(6)@va.gov>; Hipolit, Richard (OGC (b)(6)@va.gov>
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Cc: Diaz, Chris E. (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Tanya, Dick and Tahmika,

Please see below for the press release that RM Grassley's office sent out.

Dick – What is your call about accepting the call with RM Grassley's staffer? If we take the call, I would recommend OGC/Special Counsel be on the call since the responses will come from your office.

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell: (b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:04 PM
To: McClain, Kimberly A. (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

From his website:

Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics Violations at Veterans Benefits Administration

Following review of whistleblower complaints, documents, Grassley pushes VA, Inspector General, and SEC for Transparency

WASHINGTON – Sen. Chuck Grassley (R-Iowa), Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

Grassley is seeking information regarding Charmain Bogue's failure to disclose her husband's income and employment at a firm that directly did business with the VBA. He is also seeking a commitment from the Department of Veterans Affairs (VA) to comply with pending and future FOIA requests on this matter in a timely manner.

The whistleblower allegations revolve around an alleged VA Office of General Counsel memorandum that determined Charmain Bogue should recuse herself from any and all VA matters involving her husband's firms. The whistleblowers further allege that, after internal warnings about the need to protect market-sensitive information, that information may have been leaked, which was then publicly traded on, potentially affecting stock prices and retail investors.

In seeking a broad set of information and transparency, Grassley wrote to Secretary of Veterans Affairs Denis McDonough, Department of Veterans Affairs Inspector General Michael Missal, and Acting Chairwoman Allison Lee of the Securities and Exchange Commission.

In his letter to the VA, Grassley requests records relating to ethics determinations related to current and former senior officials at the VA, the steps the VA takes to protect retail investors by safeguarding market-sensitive information, any internal investigations of such information leaking, and the VA's attempts to block information released through FOIA requests relating to these matters.

Grassley is seeking a review of these potential ethics violations and disclosures failures from the inspector general, and asking whether the SEC is aware of these allegations and what steps the commissioner takes to distribute guidance to federal agencies on the importance and necessity of protecting sensitive information that could affect financial markets.

Full text of Grassley's letters follow:

[Grassley to Secretary McDonough \(VA\)](#)
[Grassley to Inspector General Missal \(VA OIG\)](#)
[Grassley to Lee \(SEC\)](#)

From: (b)(6)
Sent: Tuesday, April 6, 2021 2:52 PM
To: McClain, Kimberly A. (b)(6) <(b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6) <(b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Kim,

As an FYI. He apparently has put something on his website.

(b)(6)

Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs

(b)(6)

From: (b)(6) (009) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 2:21 PM

To: (b)(6) (OGC) (b)(6) @va.gov>; (b)(6)

(b)(6) @va.gov>; (b)(6) @va.gov> (b)(6)

(b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: RE: 2021-04-02 CEG to VA

Hi (b)(6) With this reply I am forwarding your request to the Directors of OCLA's Outreach (b)(6)

(b)(6) Corporate (b)(6) and Benefits (b)(6) Teams as I am not certain which

Congressional Relations Officer is working this correspondence from Senator Grassley. (b)(6)

Dennis, would one of you be able to assist OGC. Thanks. (b)(6)

(b)(6)

Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs

(b)(6) Direct

(b)(6) Mobile

(b)(6) @va.gov

From: (b)(6) (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 12:55 PM

To: (b)(6) (009) (b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: 2021-04-02 CEG to VA

Importance: High

I am an attorney with the OGC Ethics Specialty Team. Our office is preparing responses to the above congressional request for information. It is my understanding that OCLA spoke with Senator Grassley's office regarding this request. After speaking with (b)(6) this morning, we propose to seek clarification concerning the scope of #4: "Please provide all records, communications, and memorandums related to the suspensions, or proposed

suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds” which proposed actions were related to their acceptance of free attendance at NASCAR events at which VBA was conducting outreach.

Could there be follow-up with the Senator’s office to confirm that the scope of #4 is limited to the suspension/proposed suspensions and need not include all OGC guidance related to attendance at the NASCAR events. If our office was to include all such guidance, it could include a significant amount information that is irrelevant and extraneous.

Thank you for your consideration and assistance.

(b)(6)

VA Staff Attorney
Ethics Specialty Team

(b)(6)

(BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: Hipolit, Richard (OGC)
Sent: Tue, 6 Apr 2021 23:21:05 +0000
To: Bradsher, Tanya J.;DRM
Subject: RE: Draft
Attachments: 04062021 Grassley Inquiry PR DRAFT_mab.docx

I have tracked a few suggested edits on the attached copy. (b)(5)

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 6:58 PM
To: DRM (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: Draft

Gentlemen,

This is Melissa's draft. I don't think we need to do a press statement and instead have this as a response to query. I did not ask to be on the record but I'm fine if attributing the quote to me is helpful.

V/R

Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: McClain, Kimberly A.
Sent: Tue, 6 Apr 2021 23:32:46 +0000
To: Hipolit, Richard (OGC); Bradsher, Tanya J.; Jackson, Tahmika R. (OGC)
Cc: Diaz, Chris E.; Farrisee, Gina S.; McVicker, Carrie A.; Johnson, Glenn (SES)
Subject: RE: 2021-04-02 CEG to VA - Grassley

That works for me.

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell: (b)(6)


From: Hipolit, Richard (OGC) (b)(6)@va.gov
Sent: Tuesday, April 6, 2021 7:27 PM
To: McClain, Kimberly A. (b)(6)@va.gov; Bradsher, Tanya J. (b)(6)@va.gov; Jackson, Tahmika R. (OGC) (b)(6)@va.gov
Cc: Diaz, Chris E. (b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov; Johnson, Glenn (SES) (b)(6)@va.gov
Subject: RE: 2021-04-02 CEG to VA - Grassley

(b)(5)



From: McClain, Kimberly A. (b)(6)@va.gov
Sent: Tuesday, April 6, 2021 4:11 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov; Bradsher, Tanya J. (b)(6)@va.gov; Jackson, Tahmika R. (OGC) (b)(6)@va.gov
Cc: Diaz, Chris E. (b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov; Johnson, Glenn (SES) (b)(6)@va.gov
Subject: RE: 2021-04-02 CEG to VA - Grassley

Dick - Here is the note from the staffer. (b)(5)



From: (b)(6) (Judiciary-Rep) (b)(6) @judiciary-rep.senate.gov
Sent: Monday, April 5, 2021 9:57:24 AM
To: (b)(6) @va.gov>
Cc: (b)(6) (Judiciary-Rep) (b)(6) @judiciary-rep.senate.gov>; CEG (Judiciary-Rep) <CEG@judiciary-rep.senate.gov>
Subject: [EXTERNAL] RE: 2021-04-02 CEG to VA

Thanks, (b)(6)

If you've got a quick minute to chat today about the letters, it'd be very much appreciated. I want to make sure there aren't any questions regarding the letters.

(b)(6)

Best Regards,

(b)(6)

Investigative Counsel
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

From: Hipolit, Richard (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 3:53 PM
To: McClain, Kimberly A. (b)(6) @va.gov>; Bradsher, Tanya J. (b)(6) @va.gov>; Jackson, Tahmika R. (OGC) (b)(6) @va.gov>
Cc: Diaz, Chris E. (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>; Johnson, Glenn (SES) (b)(6) @va.gov>
Subject: RE: 2021-04-02 CEG to VA - Grassley

Kim, I may have missed a message on this. What is the purpose of the requested call with Senator Grassley's staffer? (b)(5)

(b)(5)

From: McClain, Kimberly A. (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 3:26 PM
To: Bradsher, Tanya J. (b)(6) @va.gov>; Hipolit, Richard (OGC) (b)(6) @va.gov>; Jackson, Tahmika R. (OGC) (b)(6) @va.gov>
Cc: Diaz, Chris E. (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>; Johnson, Glenn (SES) (b)(6) @va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Tanya, Dick and Tahmika,

Please see below for the press release that RM Grassley's office sent out.

Dick – What is your call about accepting the call with RM Grassley's staffer? If we take the call, I would recommend OGC/Special Counsel be on the call since the responses will come from your office.

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell: (b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:04 PM
To: McClain, Kimberly A (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

From his website:

Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics Violations at Veterans Benefits Administration

Following review of whistleblower complaints, documents, Grassley pushes VA, Inspector General, and SEC for Transparency

WASHINGTON – Sen. Chuck Grassley (R-Iowa), Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

Grassley is seeking information regarding Charmain Bogue's failure to disclose her husband's income and employment at a firm that directly did business with the VBA. He

is also seeking a commitment from the Department of Veterans Affairs (VA) to comply with pending and future FOIA requests on this matter in a timely manner.

The whistleblower allegations revolve around an alleged VA Office of General Counsel memorandum that determined Charmain Bogue should recuse herself from any and all VA matters involving her husband's firms. The whistleblowers further allege that, after internal warnings about the need to protect market-sensitive information, that information may have been leaked, which was then publicly traded on, potentially affecting stock prices and retail investors.

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Full text of Grassley's letters follow:

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[Grassley to Inspector General Missal \(VA OIG\)](#)
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Sent: Tuesday, April 6, 2021 2:52 PM
To: McClain, Kimberly A. <(b)(6)@va.gov>
Cc: Johnson, Glenn (SES) <(b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Kim,

As an FYI. He apparently has put something on his website.

(b)(6)
Director, Congressional Liaison Service and Outreach Team

Office of Congressional and Legislative Affairs

(b)(6)

From: (b)(6) (009) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 2:21 PM

To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6)
(b)(6) @va.gov>; (b)(6) @va.gov> (b)(6)
(b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: RE: 2021-04-02 CEG to VA

H (b)(6) With this reply I am forwarding your request to the Directors of OCLA's Outreach (b)(6)
(b)(6) Corporate (b)(6) and Benefits (b)(6) Teams as I am not certain which
Congressional Relations Officer is working this correspondence from Senator Grassley. (b)(6)
(b)(6) would one of you be able to assist OGC. Thanks. (b)(6)

(b)(6)

Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs

(b)(6) Direct
(b)(6) Mobile

(b)(6) @va.gov

From: (b)(6) (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 12:55 PM

To: (b)(6) (009) (b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: 2021-04-02 CEG to VA

Importance: High

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attendance at the NASCAR events. If our office was to include all such guidance, it could include a significant amount information that is irrelevant and extraneous.

Thank you for your consideration and assistance.

(b)(6)

VA Staff Attorney
Ethics Specialty Team

(b)(6) (BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 14:13:42 +0000
To: DRM;Hipolit, Richard (OGC)
Subject: RE: Draft

Good morning Gentlemen,
Quick update, Terrence wasn't involved so he will be in the quote and will take any media queries (none received so far). Here are the local stories from Iowa based on the Grassley letter:

Mix 107.3 KLOW: [Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics Violations at Veterans Benefits Administration](#) (6 April, AJ Taylor, Forest City, Iowa)

Senator Chuck Grassley, a Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

VA Official Charmain Bogue Did Not Disclose Links to Outside Group **November 2020**

<https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>

Sen. Grassley pushes for 'information and transparency' into alleged whistleblowers claims – no date indicated

<https://americasvoice.news/justthenews/sen-grassley-pushes-information-and-transparency-alleged/>

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Bradsher, Tanya J.

Sent: Tuesday, April 6, 2021 7:41 PM

To: DRM (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>

Subject: RE: Draft

Yes Sir, only issue is that we are also seeing if Terrance needs to recuse as well since all VSO's were heavily involved. I will keep you posted.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: DRM (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 7:38 PM
To: Bradsher, Tanya J. (b)(6) @va.gov>; Hipolit, Richard (OGC) (b)(6) @va.gov>
Subject: Re: Draft

Thanks. Let's have it as response to query and let's have it be in Terrence's name.

From: Bradsher, Tanya J. (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 5:36:03 PM
To: Hipolit, Richard (OGC) (b)(6) @va.gov>; DRM (b)(6) @va.gov>
Subject: RE: Draft

These are good edits. Also flagging that Melissa consulted Tahmika after reading the letter and will need to recuse herself as well.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6) @va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 7:21 PM
To: Bradsher, Tanya J. (b)(6) @va.gov>; DRM (b)(6) @va.gov>
Subject: RE: Draft

I have tracked a few suggested edits on the attached copy. (b)(5)

From: Bradsher, Tanya J. (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 6:58 PM
To: DRM (b)(6) @va.gov>; Hipolit, Richard (OGC) (b)(6) @va.gov>
Subject: Draft

Gentlemen,
This is Melissa's draft. I don't think we need to do a press statement and instead have this as a response to query. I did not ask to be on the record but I'm fine if attributing the quote to me is helpful.
V/R
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6) @va.gov

Cell

(b)(6)

From: McVicker, Carrie A.
Sent: Wed, 7 Apr 2021 14:38:44 +0000
To: Bradsher, Tanya J.
Cc: McClain, Kimberly A.
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

Please see below from OGC regarding the Grassley letter on VBA. It appears there is a requirement for information from VBA. OGC's recommendation is to (b)(5)

(b)(5)

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6) @va.gov>
Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

From: McVicker, Carrie A.
Sent: Wed, 7 Apr 2021 17:12:04 +0000
To: Bradsher, Tanya J.
Cc: McClain, Kimberly A.
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Yes – I will do so.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 1:12 PM
To: McVicker, Carrie A. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: Re: Follow-up for VIEWS 4890714/Grassley

She is the commission today. Maybe tomorrow? (b)(6) can schedule

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:58:54 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great. I recommend next step is to discuss with Gina. Do you want me to work on something with (b)(6) to set up a call?

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: Bradsher, Tanya J. <(b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:43 PM
To: McVicker, Carrie A. <(b)(6)@va.gov>
Cc: McClain, Kimberly A. <(b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you Carrie, I concur with your recommendations.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McVicker, Carrie A. <(b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. <(b)(6)@va.gov>
Cc: McClain, Kimberly A. <(b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

We received below guidance from OGC yesterday on a short-term next step to begin gathering the data to address the attached letter. Based on OGC's email, I recommend setting up a triangle of leadership to manage the VBA part of the requirements:

Mike Frueh – as the #2 person at VBA and newest to VBA – only for the last ~8 weeks – he is in the best position to not have a long history stake in the issue

Gina Farrisee – keeps OSVA in the mix and her background in HR will be crucial to help guide Mike in data gathering and her role as DCOS demands neutrality and the provision of guidance to VBA

Mike Hogan – as a lead Ethics attorney at OGC he would be able to provide advice and recommendations on documents required and also provide OGC view on their quality and appropriateness

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary

Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6)@va.gov>
Cc: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Hipolit, Richard (OGC)
Sent: Wed, 7 Apr 2021 18:54:33 +0000
To: Bradsher, Tanya J.
Subject: RE: Follow-up for VIEWS 4890714/Grassley
Attachments: 156227_ Bogue, Charmain Note.pdf, 131618_ Bogue, Charmain Note.pdf, VBA - Vet Tech issue - Ethics timeline.docx

Tanya, I am forwarding copies of ethics advice provided by OGC to Charmain Bogue regarding the need to recuse herself from certain matters. This could benefit from some explanation. If you'd like to discuss this further today, I am free between 3:30 and 4:30 and anytime after 5:00. There is no problem sharing this with the Secretary.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:48 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great, thank you so much.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:45 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Tanya, I'm meeting with Mike Hogan and his ethics team at 2:00 today to further review the situation concerning OGC's ethics advice.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:42 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you so much for reviewing.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:41 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Tanya, Carrie's recommendations look good to us. I note that Mike Frueh was a long-time VBA official before moving to OEI in 2019. He served as Chief of Staff in VBA from 2016-2018. Nonetheless, we believe he is an individual with high integrity and could give unbiased consideration to the inquiry.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:09 AM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Dick,
I concur with Carrie's recommendation but I wanted to run the names by you before approving. Please let me know your thoughts.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

We received below guidance from OGC yesterday on a short-term next step to begin gathering the data to address the attached letter. Based on OGC's email, I recommend setting up a triangle of leadership to manage the VBA part of the requirements:

Mike Frueh – as the #2 person at VBA and newest to VBA – only for the last ~8 weeks – he is in the best position to not have a long history stake in the issue

Gina Farrissee – keeps OSVA in the mix and her background in HR will be crucial to help guide Mike in data gathering and her role as DCOS demands neutrality and the provision of guidance to VBA

Mike Hogan – as a lead Ethics attorney at OGC he would be able to provide advice and recommendations on documents required and also provide OGC view on their quality and appropriateness

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6) @va.gov>

Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

Notified Victor

From: (b)(6) (OGC)
Sent: Wednesday, July 29, 2020 7:30 AM
To: Bogue, Charmain, VBAVACO
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Good morning. Thank you for updating the report. Your review is now complete. I certified that your report complies with disclosure laws and regulations and there are no apparent conflicts of interest.

As a reminder, the Standards of Conduct provide that an employee should not participate in any VA matter where someone with whom he has a "covered relationship" is a party or represents a party, if a reasonable person would question the employee's impartiality if participating. 5 C.F.R. § 2635.502. For your information, an employee has a covered relationship with his spouse's employer for purposes of applying this prohibition, so these restrictions would apply to any VA matters involving your spouse's business or consulting firm.

In addition, you reported holding stock, including for companies that do business with the VA. Please be aware that pursuant to a criminal statute, 18 U.S.C. § 208, you are disqualified from personally and substantially participating in a particular VA matter that has a direct and predictable effect on a company in which you own stock. You may, however, participate in such a matter if the affected publicly-traded stock or stocks that you, your spouse or minor children own in the aggregate does not exceed \$15,000. Note that this \$15,000 de minimis exception does not apply to non-publicly-traded stock.

Please remember to fulfill your annual live ethics training requirement by December 31, 2020 and feel free to let me know if you have any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information
<https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: (b)(6) (OGC)
Sent: Monday, July 20, 2020 5:57 AM
To: Bogue, Charmain, VBAVACO (b)(6)@va.gov
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Thank you for the additional information.

I have returned the report to you to be updated. Both the assets in the sold IRA and new stock purchases need to be included in Transactions (section #7).

Once you have updated the information, please let me know so I can pull the report back in my queue for review and approval.

Thank you. Please reach out with any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information
<https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: Bogue, Charmain, VBAVACO (b)(6)@va.gov <mailto:(b)(6)@va.gov>
Sent: Friday, July 17, 2020 11:22 AM
To: (b)(6) (OGC) (b)(6)@va.gov <mailto:(b)(6)@va.gov>
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Hello,

IRA- sold

Stocks line 8-12, only of the stocks is new

I am unable to edit so not sure if there is something you need to do so I can make the changes.

Charmain Bogue
Executive Director
Education Service
Veterans Benefits Administration

(b)(6)@va.gov <mailto:(b)(6)@va.gov>

From: (b)(6) (OGC) (b)(6)@va.gov <mailto:(b)(6)@va.gov> >
Sent: Tuesday, June 30, 2020 7:13 PM
To: Bogue, Charmain, VBAVACO <(b)(6)@va.gov <mailto:(b)(6)@va.gov> >
Subject: INITIAL REVIEW: Public Financial Disclosure Report
Importance: High

Good afternoon. I have been assigned review of your Annual Public Financial Disclosure report (278) and that review is now complete. I've completed my initial review; however, before I can certify the report I need to confirm inform or seek amendments. Please provide this information by July 10. I will be out of the office until July 8 but can respond to non-encrypted emails.

New And Deleted Assets

When comparing this year's report to 2019's, I noticed there was no longer an employment-related asset in section two. Did you sell off the assets in the IRA, or was it no longer reportable due to value?

In addition, several new stocks were reported in Section 6 (nos. 8-12). Were these newly purchased, or were they under the reporting threshold in 2019? If these are new purchases, the stocks also need to be identified in section 7.

Thank you for the additional information. Once I have this, I can advise if the report needs to be amended, or I can make the changes. Please reach out with any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vawww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information
<https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: (b)(6) (OGC)
Sent: Monday, September 09, 2019 8:04 AM
To: Bogue, Charmain (b)(6)@va.gov>
Subject: RE: PFD 2019

Thanks for making that change. I certified that your report complies with disclosure laws and that there are no apparent conflicts of interest. I offer the following guidance going forward.

A criminal statute prohibits you from participating in a particular VA matter that will directly affect not only your own financial interests but also those interests that are imputed to you, such as those of your husband and by extension his consulting firm. 18 USC 208. You should recuse yourself from any VA matters directly affecting these financial interests.

You reported holding stock. This same statute prohibits you from participating in a particular VA matter that has a direct and predictable effect on a company in which you own stock. You may, however, participate in such a matter if the affected stock that you, your spouse and minor children own in the aggregate does not exceed \$15,000. Note that this \$15,000 *de minimis* exception does not apply to non-publicly-traded stock.

If you haven't done so already, please remember to fulfill your annual live ethics training requirement by December 31, 2019. Please let me know if you have any questions and thanks again for making that change.

(b)(6)

Staff Attorney and Deputy Ethics Official
Office of General Counsel
Ethics Specialty Team

(b)(6)

Please visit our Government Ethics website
<<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> for more
information on ethics topics

From: Bogue, Charmain
Sent: Friday, September 06, 2019 3:23 PM
To: (b)(6) (OGC) (b)(6)@va.gov <mailto:(b)(6)@va.gov>
Subject: RE: PFD 2019

Hi (b)(6)

Sorry for the delay I was out last week. I amended the document.

Charmain Bogue

Executive Director

Education Service

Veterans Benefits Administration

(b)(6) @va.gov <mailto:(b)(6)@va.gov>

From: (b)(6) (OGC)

Sent: Friday, August 30, 2019 10:20 AM

To: Bogue, Charmain (b)(6) @va.gov <mailto:(b)(6)@va.gov>

Subject: PFD 2019

Good morning. I have been assigned review of your New Entrant Public Financial Disclosure report (278). Before I can certify the report I need you to make one minor amendment.

In Part 6, Item 6, you disclosed your spouse's interest in "Rental Property." Please amend your report by describing the type of real estate (e.g., "residential," "commercial," "industrial," or "undeveloped") and the city and state in which it is located. Providing the county and state is also acceptable. But do not provide a street address. Here's an example: *Commercial property, Sullivan County, NY.*

Here's the Integrity login link for your convenience:

<<<https://www.integrity.gov/efeds-login/>>>. Please let me know when you've made these amendments or if you have any questions. You can reach me at the telephone number listed below.

(b)(6)

Staff Attorney and Deputy Ethics Official

Office of General Counsel

Ethics Specialty Team

(b)(6)

Please visit our Government Ethics website

<<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> for more information on ethics topics

Ethics advice timeline

December 2017

VBA contacted (b)(6) Senior Ethics Attorney

From: (b)(6), VBAVACO
Sent: Thursday, December 07, 2017 1:20 PM
To: (b)(6) (OGC)
Cc: (b)(6) VBAVACO
Subject: Vet Tech / Student Veterans of America

(b)(6)

The new GI Bill law has directed an IT pilot called Vet Tech. This pilot allocates \$75 million ((\$15 million per year for 5 years).

The law calls for the to enter into contracts with vendors to provide training and support. Likewise the VA Education team will assist by issuing a GI Bill living stipend.

Long story short, we are getting ready to engage in design and stand up of the pilot in early Jan 2018.

(b)(6) is the GS 15 assigned to oversee the entire implementation of the Comery Act. This includes the Vet Tech pilot. I'm assigned as the pilot lead.

(b)(6) out of an abundance of caution mentioned to me that her spouse works for Student Veterans is America and that this organization has a partnership with VA and may decide to compete for the Vet Tech pilot. I suggested she connect with you to determine if a disclosure/recusal is needed. I want to make sure we kick off the pilot properly and don't inadvertently create a negative perception.

(b)(6)

(b)(6) agrees Ms. Bogue should recuse from the Vet Tech procurement

From: (b)(6) (OGC)
Sent: Thursday, December 07, 2017 6:05 PM
To: (b)(6) VBAVACO; (b)(6) VBAVACO
Subject: RE: Vet Tech / Student Veterans of America

(b)(6)

Good catch. You have disclosed, and (b)(6) recusing from any involvement in source selection for the Vet Tech pilot is the way forward. If Student Veterans of America (SVA) is one of the contractors then the recusal would continue. Specifically, the Standards of Ethical

Conduct prohibit employees from participating in specific party matters where a person with whom they have a "covered relationship" is or represents a party where a reasonable person with knowledge of all the relevant facts would question the employee's impartiality. An employee has a covered relationship with his or her spouse's employer. 5 C.F.R. § 2635.502. If SVA is going to bid on the Vet Tech pilot, then Charmain's participation in the source selection would create the appearance of a conflict. If her spouse's job is contingent on the VA contract award then her participation in the source selection would run afoul of criminal conflict of interest law prohibiting participation in official matters affecting one's outside financial interest, or that of his or her spouse. 18 U.S.C. § 208.

(b)(6)

Have you been involved in the preparation of the contract documents?

Thanks for the follow up.

(b)(6)

Senior Ethics Attorney/
Deputy Ethics Official
Ethics Specialty Team

(b)(6)
Fax (202) 273-4601

February 2018

VBA seeks clarification from the Ethics Team

From: (b)(6) VBAVACO
Sent: Wednesday, February 28, 2018 2:08 PM
To: (b)(6) (OGC)
Cc: (b)(6) (OGC)
Subject: Vet Tech / Student Veterans of America
Importance: High

(b)(6)

I have a few follow-up questions regarding the coordination of the acquisition below.

After raising the need for recusal of Ms. (b)(6) her leadership suggested we not go through an acquisition process and instead pursue a provisional approval of each vendor as a GI Bill school. That course of action has now been deemed as not feasible by our contracting office.

Originally - Mr. Coy had removed the entire acquisition process from Ms. (b)(6) organization to OEO due to a perceived risk that the SVA is actively engaged in conversations with vendors of Vet Tec and also planned to bid. It was unclear to us at the time if SVA would partners with vendors for the acquisition or bid independently.

We are quickly going to be conducting market research (with SVA in attendance) an RFI, and also prepare a statement of work for competition.

What are the rules of engagement for Ms. (b)(6) Staff she supervises? As it pertains to establishing the selection criteria, statement of work, and source selection board?

I am concerned about both perceptions of COIs and actual COIs. Some of the potential vendors are currently suing the VA for what they perceive as a bias against for profit schools. Both SVA and VBA EDU are under scrutiny in that allegation. When the task was assigned to me by Mr. Coy, I discovered that no NDAs were in place for contractors supporting the acquisition and that Ms. (b)(6) was not aware of the need to recuse formally. This lack of acumen raises concerns as there seems to be regular coordination with SVA officials and EDU staff. We requested guidance from VBA contracting and received the below as it pertains to recusals.

Contracting provided us the guidance below:

Personnel with covered conflicts of interest should declare them and be recused from source selection. Recusals are generally not needed for non-acquisition operations, or other phases of the acquisition life cycle (i.e. planning/market research). OGC guidance should be obtained as necessary

I would like to take their input, your guidance, and provide a recommendation to VBA leadership on best way ahead.

(b)(6) responds

From: (b)(6) (OGC)
Sent: Wednesday, February 28, 2018 3:11 PM
To: (b)(6) VBAVACO
Cc: (b)(6) (OGC)
Subject: RE: Vet Tech / Student Veterans of America

(b)(6)

Has (b)(6) been working with SVA, amongst others, as part of the market research, or is it contemplated that SVA will be involved in the market research, Given that the market research assists us in shaping the procurement, if it is anticipated that SVA will be a bidder then (b)(6) should recuse from the Vet Tech procurement.

(b)(6)

Specifically, the Standards of Ethical Conduct prohibit employees from participating in specific party matters where a person with whom they have a "covered relationship" is or represents a party where a reasonable person with knowledge of all the relevant facts would question the employee's impartiality. An employee has a covered relationship with his or her spouse's employer. 5 C.F.R. § 2635.502. If SVA is going to bid on the Vet Tech pilot, then Charmain's participation in the source selection would create the appearance of a conflict. If her spouse's job is contingent on the VA contract award then her participation in the source selection would run afoul of criminal conflict of interest law prohibiting participation in official matters affecting one's outside financial interest, or that of his or her spouse. 18 U.S.C. § 208

(b)(6) provides additional guidance

From: (b)(6) (OGC)
Sent: Wednesday, February 28, 2018 3:20 PM
To: (b)(6) (OGC); (b)(6) VBAVACO
Subject: RE: Vet Tech / Student Veterans of America

In addition to what (b)(6) wrote, if we foreclose the possibility of an 18 USC 208 issue, meaning that we're left with a recusal obligation under 502, please note that 502 contains a process for the employee to obtain a "502 authorization" from an "agency designee" (likely Mr. Coy in this situation). This authorization allows the employee to participate in the matter despite the appearance of a conflict of interest. However, because you are concerned about the appearance of a conflict, allowing her to work on the contract under a 502 authorization would do little to alter that appearance, at least in the minds of non-Federal entities that are prone to litigate. Plus, for the EST to approve a 502 authorization, you would need to show, among other things, that no one else besides Charmain is capable of doing this job, and I imagine that there are others who can perform her work.

It's fine for (b)(6) employees to work on this matter, even while (b)(6) is recused. But it must be clear to everyone involved that (b)(6) is not to be consulted on this matter at all.

March 2018

VBA responds with additional information

From: (b)(6) VBAVACO
Sent: Wednesday, March 07, 2018 11:22 AM
To: (b)(6) (OGC); (b)(6) (OGC)
Subject: Vet Tech / Student Veterans of America

Closing the loop.

I connected with (b)(6) and Rob Worley who both stated they have connected with SVA and do not believe there is a conflict of interest and that they are not going to be bidding directly on the work.

This is counter to my understanding from my boss Curt Coy and (b)(6) herself a few months ago. They also assured me they were not going to engage in market research or support other bidders.

I shared my concerns, Rob Worley as the project sponsor doesn't understand the notion of recusal versus COI so I will send him the below guidance so he's fully aware.

My concern remains ... scrutiny by for-profit schools, entities that do not compete or do not win an award, and the likelihood of media /social media scrutiny etc. The VA has a very strong relationship with SVA and they have shown to be strong supporters of the GI Bill. I stressed to both (b)(6) and Rob Worley that this is not in any way a negative view of SVA as an organization it's an effort to proactively protect all entities and the propriety of the pilot.

(b)(6) responds

From: (b)(6) (OGC)
Sent: Wednesday, March 07, 2018 12:50 PM
To: (b)(6) VBAVACO; (b)(6) (OGC)
Subject: RE: Vet Tech / Student Veterans of America

Thanks for the follow up.

(b)(6)

From: Hipolit, Richard (OGC)
Sent: Wed, 7 Apr 2021 21:45:00 +0000
To: Bradsher, Tanya J.
Subject: Draft Message
Attachments: Congressional Inquiry

Tanya, this is what I propose to send to Mike Missal and Hansel Cordeiro. Let me know if you think it does not reflect the Secretary's intent.



Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(6)
Cell: (b)(6)

Sent: Tue, 24 Aug 2021 13:32:15 +0000
To: Missal, Michael J. (OIG);Cordeiro, Hansel (OAWP)
Subject: Congressional Inquiry
Attachments: 2021-04-02 CEG to VA.pdf

(b)(5)



Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(5)
Cell: (b)(5)

From: Hipolit, Richard (OGC)
Sent: Thu, 8 Apr 2021 15:30:48 +0000
To: Bradsher, Tanya J.
Subject: Grassley Letter Follow Up
Attachments: RE: Congressional Inquiry, RE: Congressional Inquiry

Tanya, per our conversation, this is my advice to the Secretary regarding matters addressed in Senator Grassley's letter to the Secretary of April 2, 2021.

(b)(5)



(b)(5)



I am forwarding for your reference the messages I received from Mike Missal and Hansel Cordeiro in response to my forwarding the Grassley letter to them.



Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(6)
Cell: (b)(6)

From: Missal, Michael J. (OIG)
Sent: Thu, 8 Apr 2021 13:31:30 +0000
To: Cordeiro, Hansel (OAWP); Hipolit, Richard (OGC)
Subject: RE: Congressional Inquiry

Dick, we appreciate your making us aware of this letter. We have been advised of these allegations and are coordinating with OAWP. The letter requests information from VA and we are not aware of any limitation on VA's response to Congress. We would appreciate receiving a copy of the response to Senator Grassley as it will help inform us further on this matter.

Thanks as always for your consideration.

Michael J. Missal
Inspector General
Department of Veterans Affairs
810 Vermont Avenue, NW (50)
Washington, DC 20420

E-mail: (b)(6)@va.gov
Phone: (b)(6)
Fax: (b)(6)
Webpage: www.va.gov/oig



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From: Cordeiro, Hansel (OAWP) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 7:04 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Missal, Michael J. (OIG) (b)(6)@va.gov>
Subject: RE: Congressional Inquiry

Hi Dick,

Thank you for sending us this letter. VBA referred these allegations to OAWP today. We are reviewing them and will work with the OIG to avoid an overlap of our investigation, if the OIG also decides to investigate some of these allegations. Before 2019, OAWP provided HR advice and services on senior leader misconduct that it investigated. With regard to the responses for questions 1-4, we have some responsive documents, which

should also be in the possession of CSEMO. If you need our assistance with those documents, please let me know.

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

To make a disclosure: Complete the optional form found at

<https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 6:39 PM

To: Missal, Michael J. (OIG) (b)(6)@va.gov>; Cordeiro, Hansel (OAWP) (b)(6)@va.gov>

Subject: Congressional Inquiry

In order to ensure you are informed of a matter of potential significance to the Department, the Secretary asked that I forward to you the attached letter from Senator Charles Grassley requesting information about allegations of ethical violations and other misconduct involving the Veterans Benefits Administration. The Secretary indicated to me that he would be interested in any advice you may have regarding this matter.

<< File: 2021-04-02 CEG to VA.pdf >>

Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(6)
Cell: (b)(6)

From: Cordeiro, Hansel (OAWP)
Sent: Wed, 7 Apr 2021 23:03:59 +0000
To: Hipolit, Richard (OGC)
Cc: Missal, Michael J. (OIG)
Subject: RE: Congressional Inquiry
Attachments: 2021-04-02 CEG to VA.pdf

Hi Dick,

Thank you for sending us this letter. VBA referred these allegations to OAWP today. We are reviewing them and will work with the OIG to avoid an overlap of our investigation, if the OIG also decides to investigate some of these allegations. Before 2019, OAWP provided HR advice and services on senior leader misconduct that it investigated. With regard to the responses for questions 1-4, we have some responsive documents, which should also be in the possession of CSEMO. If you need our assistance with those documents, please let me know.

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

To make a disclosure: Complete the optional form found at <https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 6:39 PM
To: Missal, Michael J. (OIG) (b)(6)@va.gov>; Cordeiro, Hansel (OAWP) <Hansel.Cordeiro@va.gov>
Subject: Congressional Inquiry

In order to ensure you are informed of a matter of potential significance to the Department, the Secretary asked that I forward to you the attached letter from Senator

Charles Grassley requesting information about allegations of ethical violations and other misconduct involving the Veterans Benefits Administration. The Secretary indicated to me that he would be interested in any advice you may have regarding this matter.

<< File: 2021-04-02 CEG to VA.pdf >>

Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(6)
Cell: (b)(6)

From: Hipolit, Richard (OGC)
Sent: Thu, 8 Apr 2021 20:25:17 +0000
To: Bradsher, Tanya J.
Subject: RE: Grassley Letter Follow Up

I'll come up with something.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 3:40 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Grassley Letter Follow Up

I concur on Laura, I would give the Secretary verbiage that he could send to Tom.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 3:30 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Grassley Letter Follow Up

(b)(5)



From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 1:56 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Grassley Letter Follow Up

(b)(5)

A large rectangular area of the document is redacted with a solid black fill.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 11:31 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: Grassley Letter Follow Up

Tanya, per our conversation, this is my advice to the Secretary regarding matters addressed in Senator Grassley's letter to the Secretary of April 2, 2021.

(b)(5)

A large rectangular area of the document is redacted with a solid black fill.

(b)(5)



I am forwarding for your reference the messages I received from Mike Missal and Hansel Cordeiro in response to my forwarding the Grassley letter to them.

<< Message: RE: Congressional Inquiry >> << Message: RE: Congressional Inquiry >>

Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(6)
Cell: (b)(6)

From: Bradsher, Tanya J.
Sent: Thu, 8 Apr 2021 22:05:35 +0000
To: DRM;Hipolit, Richard (OGC)
Subject: RE: From Denis

Sir and Dick,
Is this softer while still getting the point across?

Tom,

(b)(5)

Denis

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: DRM (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:01 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>
Subject: Re: From Denis

Thanks, Dick. I will use this language as my reply to Tom. It is stark, but I trust you have given this close consideration.

Thanks again,
DM

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 16:49
To: DRM; Bradsher, Tanya J.
Subject: RE: From Denis

I am forwarding draft language for your use in responding to Tom Murphy's email of April 6th concerning the issues raised by Senator Grassley.

Tom,

(b)(5)



Denis

From: DRM (b)(6) <(b)(6)@va.gov>
Sent: Thursday, April 8, 2021 4:36 PM
To: Hipolit, Richard (OGC) (b)(6) <(b)(6)@va.gov>
Cc: Bradsher, Tanya J. (b)(6) <(b)(6)@va.gov>
Subject: From Denis

Dick,

Can you please propose some language that I can use to respond to Tom Murphy's email of earlier this week?

Thanks,
DM

From: Bradsher, Tanya J.
Sent: Thu, 8 Apr 2021 22:12:02 +0000
To: Hipolit, Richard (OGC);DRM
Subject: RE: From Denis

Fixed so that you cut and paste

Tom,

(b)(5)

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:10 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>; DRM (b)(6)@va.gov>
Subject: RE: From Denis

This revised version looks good to me. I have corrected one typo, as noted in red below.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:06 PM
To: DRM (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: From Denis

Sir and Dick,
Is this softer while still getting the point across?

Tom,

(b)(5)

Denis

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: DRM (b)(6)@va.gov>

Sent: Thursday, April 8, 2021 6:01 PM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>

Subject: Re: From Denis

Thanks, Dick. I will use this language as my reply to Tom. It is stark, but I trust you have given this close consideration.

Thanks again,
DM

From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Thursday, April 8, 2021 16:49

To: DRM; Bradsher, Tanya J.

Subject: RE: From Denis

I am forwarding draft language for your use in responding to Tom Murphy's email of April 6th concerning the issues raised by Senator Grassley.

Tom,

(b)(5)

(b)(5)

Denis

From: DRM (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 4:36 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: From Denis

Dick,

Can you please propose some language that I can use to respond to Tom Murphy's email of earlier this week?

Thanks,
DM

From: Hipolit, Richard (OGC)
Sent: Thu, 8 Apr 2021 22:53:05 +0000
To: DRM; Bradsher, Tanya J.
Subject: RE: Further as to the Grassley Letter

Sir, your understanding is correct on all counts.

From: DRM (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:51 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>
Subject: Re: Further as to the Grassley Letter

Thanks you, Dick. This is helpful.

I understand you to be recommending the following:

(b)(5)

A large rectangular area of the email body is completely redacted with a solid black fill. The text "(b)(5)" is visible in the top-left corner of this redacted area.

Please confirm that I have understood your recommendations.

Thanks again
DM

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 17:30
To: DRM; Bradsher, Tanya J.
Subject: Further as to the Grassley Letter

(b)(5)

A rectangular area at the bottom of the email body is redacted with a solid black fill. The text "(b)(5)" is visible in the top-left corner of this redacted area.

(b)(5)



I am forwarding for your reference the messages I received from Mike Missal and Hansel Cordeiro in response to my forwarding the Grassley letter to them.

[RE: Congressional Inquiry](#) [RE: Congressional Inquiry](#)

Richard J. Hipolit

Deputy General Counsel, Veterans Programs

Office: (b)(6)

Cell: (b)(6)

From: Hipolit, Richard (OGC)
Sent: Thu, 8 Apr 2021 22:57:44 +0000
To: DRM;Bradsher, Tanya J.
Subject: RE: From Denis

I agree with that edit.

From: DRM (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:56 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: Re: From Denis

Thanks. I think one further edit makes sense since Gina is working with Mike Frueh and OGC.

Please see edit below.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 17:12
To: Hipolit, Richard (OGC); DRM
Subject: RE: From Denis

Fixed so that you cut and paste

Tom,

(b)(5)



Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:10 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>; DRM (b)(6)@va.gov>
Subject: RE: From Denis

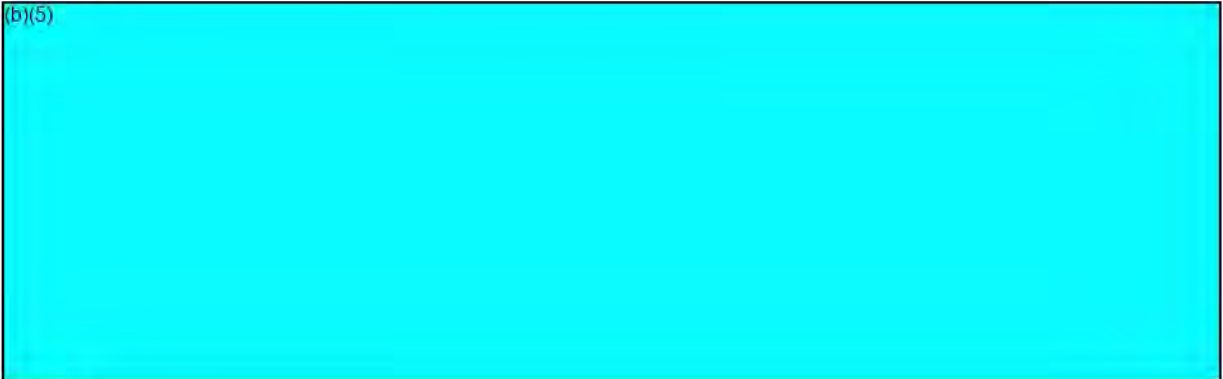
This revised version looks good to me. I have corrected one typo, as noted in red below.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:06 PM
To: DRM (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: From Denis

Sir and Dick,
Is this softer while still getting the point across?

Tom,

(b)(5)



Denis

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: DRM (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:01 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>
Subject: Re: From Denis

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Thanks again,

DM

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Sent: Thursday, April 8, 2021 16:49
To: DRM; Bradsher, Tanya J.
Subject: RE: From Denis

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Tom,

(b)(5)



Denis

From: DRM (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 4:36 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: From Denis

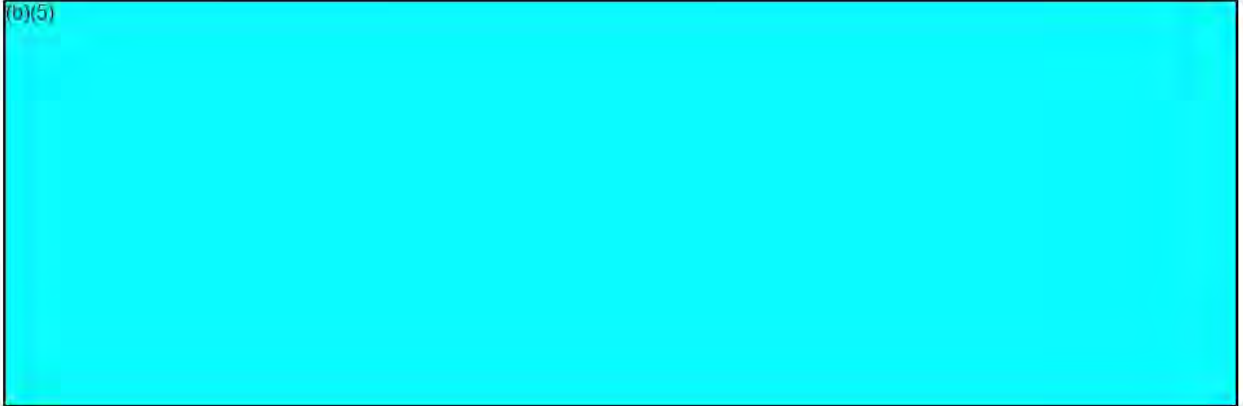
Dick,

Can you please propose some language that I can use to respond to Tom Murphy's email of earlier this week?

Thanks,
DM

From: Bradsher, Tanya J.
Sent: Thu, 8 Apr 2021 23:11:07 +0000
To: DRM
Subject: Sir, here's a clean version of the email for you to cut and paste

Tom,



Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: DRM (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:56 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: Re: From Denis

Thanks. I think one further edit makes sense since Gina is working with Mike Frueh and OGC.

Please see edit below.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 17:12
To: Hipolit, Richard (OGC); DRM
Subject: RE: From Denis

Fixed so that you cut and paste

Tom,

(b)(5)



Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Thursday, April 8, 2021 6:10 PM

To: Bradsher, Tanya J. (b)(6)@va.gov>; DRM (b)(6)@va.gov>

Subject: RE: From Denis

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From: Bradsher, Tanya J. (b)(6)@va.gov>

Sent: Thursday, April 8, 2021 6:06 PM

To: DRM (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>

Subject: RE: From Denis

Sir and Dick,

Is this softer while still getting the point across?

Tom,

(b)(5)



(b)(5)

Denis

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell (b)(6)

From: DRM (b)(6)@va.gov>

Sent: Thursday, April 8, 2021 6:01 PM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>

Subject: Re: From Denis

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Thanks again,
DM

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To: DRM; Bradsher, Tanya J.

Subject: RE: From Denis

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Tom,

(b)(5)

Denis

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Sent: Thursday, April 8, 2021 4:36 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: From Denis

Dick,

Can you please propose some language that I can use to respond to Tom Murphy's email of earlier this week?

Thanks,
DM

From: Hipolit, Richard (OGC)
Sent: Thu, 8 Apr 2021 22:29:28 +0000
To: DRM;Bradsher, Tanya J.
Subject: Further as to the Grassley Letter
Attachments: RE: Congressional Inquiry, RE: Congressional Inquiry

(b)(5)



(b)(5)



I am forwarding for your reference the messages I received from Mike Missal and Hansel Cordeiro in response to my forwarding the Grassley letter to them.



Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(6)
Cell: (b)(6)

From: Cordeiro, Hansel (OAWP)
Sent: Wed, 7 Apr 2021 23:03:59 +0000
To: Hipolit, Richard (OGC)
Cc: Missal, Michael J. (OIG)
Subject: RE: Congressional Inquiry
Attachments: 2021-04-02 CEG to VA.pdf

Hi Dick,

Thank you for sending us this letter. VBA referred these allegations to OAWP today. We are reviewing them and will work with the OIG to avoid an overlap of our investigation, if the OIG also decides to investigate some of these allegations. Before 2019, OAWP provided HR advice and services on senior leader misconduct that it investigated. With regard to the responses for questions 1-4, we have some responsive documents, which should also be in the possession of CSEMO. If you need our assistance with those documents, please let me know.

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

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From: Hipolit, Richard (OGC) <(b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 6:39 PM
To: Missal, Michael J. (OIG) <(b)(6)@va.gov>; Cordeiro, Hansel (OAWP) <Hansel.Cordeiro@va.gov>
Subject: Congressional Inquiry

In order to ensure you are informed of a matter of potential significance to the Department, the Secretary asked that I forward to you the attached letter from Senator

Charles Grassley requesting information about allegations of ethical violations and other misconduct involving the Veterans Benefits Administration. The Secretary indicated to me that he would be interested in any advice you may have regarding this matter.

<< File: 2021-04-02 CEG to VA.pdf >>

Richard J. Hipolit
Deputy General Counsel, Veterans Programs

Office: (b)(6)

Cell: (b)(6)

From: Missal, Michael J. (OIG)
Sent: Thu, 8 Apr 2021 13:31:30 +0000
To: Cordeiro, Hansel (OAWP); Hipolit, Richard (OGC)
Subject: RE: Congressional Inquiry

Dick, we appreciate your making us aware of this letter. We have been advised of these allegations and are coordinating with OAWP. The letter requests information from VA and we are not aware of any limitation on VA's response to Congress. We would appreciate receiving a copy of the response to Senator Grassley as it will help inform us further on this matter.

Thanks as always for your consideration.

Michael J. Missal
Inspector General
Department of Veterans Affairs
810 Vermont Avenue, NW (50)
Washington, DC 20420

E-mail: (b)(6)@va.gov
Phone: (b)(6)
Fax: (202) 565-8667
Webpage: www.va.gov/oig



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From: Cordeiro, Hansel (OAWP) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 7:04 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Missal, Michael J. (OIG) (b)(6)@va.gov>
Subject: RE: Congressional Inquiry

Hi Dick,

Thank you for sending us this letter. VBA referred these allegations to OAWP today. We are reviewing them and will work with the OIG to avoid an overlap of our investigation, if the OIG also decides to investigate some of these allegations. Before 2019, OAWP provided HR advice and services on senior leader misconduct that it investigated. With regard to the responses for questions 1-4, we have some responsive documents, which

should also be in the possession of CSEMO. If you need our assistance with those documents, please let me know.

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

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<https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 6:39 PM

To: Missal, Michael J. (OIG) (b)(6)@va.gov>; Cordeiro, Hansel (OAWP) (b)(6)@va.gov>

Subject: Congressional Inquiry

In order to ensure you are informed of a matter of potential significance to the Department, the Secretary asked that I forward to you the attached letter from Senator Charles Grassley requesting information about allegations of ethical violations and other misconduct involving the Veterans Benefits Administration. The Secretary indicated to me that he would be interested in any advice you may have regarding this matter.

<< File: 2021-04-02 CEG to VA.pdf >>

Richard J. Hipolit
Deputy General Counsel, Veterans Programs
Office: (b)(6)
Cell: (b)(6)

From: Farrisee, Gina S.
Sent: Fri, 30 Apr 2021 16:59:58 +0000
To: Farrisee, Gina S.;Bradsher, Tanya J.;McVicker, Carrie A.;Hogan, Michael R. (OGC)
Subject: Grassley Letter

Please utilize below MS Teams information for this important meeting. Thank you!

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Phone Conference ID: (b)(6)

[Find a local number](#) | [Reset PIN](#)



[Learn More](#) | [Meeting options](#)

From: Hogan, Michael R. (OGC)
Sent: Wed, 5 May 2021 12:41:32 +0000
To: Bradsher, Tanya J.
Cc: Farrisee, Gina S.;McVicker, Carrie A.
Subject: RE: Grassley Packet

Yes ma'am.

V/r,

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, May 5, 2021 8:41 AM
To: Hogan, Michael R. (OGC)(b)(6)@va.gov>
Cc: Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: Grassley Packet

Mike,
Please make sure that Dick Sauber sees the packet before it comes to the Secretary.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: DRM
Sent: Thu, 27 May 2021 11:28:56 +0000
To: DRM
Subject: Grassley letter

Microsoft Teams meeting

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Phone Conference ID: (b)(6)

[Find a local number](#) | [Reset PIN](#)



[Learn More](#) | [Meeting options](#)

From: (b)(6)
Sent: Thu, 27 May 2021 12:17:01 +0000
To: Bradsher, Tanya J.

For the Grassley discussion at 8:30am, would you like me to ask for you to be dialed in? It's also in person

From: (b)(6)
Sent: Thu, 27 May 2021 13:58:44 +0000
To: Bradsher, Tanya J.
Cc: Farrisee, Gina S.;McVicker, Carrie A.
Subject: RE: Grassley

Hi Tanya, I believe they try not to be too specific in the letters. I can reach out to Hansel since he also reviewed this letter to confirm.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 9:49 AM
To: Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov> (b)(6)
(b)(6)@va.gov>
Subject: Grassley

Hi Ladies,
Have we traditionally stated if someone was under investigation by the IG and OAWP in letters? The Secretary is asking. Thank you

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov
Cell: (b)(6)

From: Sauber, Richard A. (OGC)
Sent: Thu, 27 May 2021 14:40:51 +0000
To: DRM
Cc: Bradsher, Tanya J.
Subject: Sen Grassley Letter- Privileged

(b)(5)



Happy to discuss but will get this back to your office today in any event.

Dick

From: (b)(6)
Sent: Thu, 27 May 2021 14:07:33 +0000
To: Bradsher, Tanya J.
Cc: Farrisee, Gina S.;McVicker, Carrie A.
Subject: RE: Grassley
Attachments: RE: Grassley

Tanya, see Hansel's response attached. Happy to follow-up further with OGC.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 9:49 AM
To: Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov> (b)(6)
(b)(6)@va.gov>
Subject: Grassley

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Have we traditionally stated if someone was under investigation by the IG and OAWP in letters? The Secretary is asking. Thank you

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: Cordeiro, Hansel (OAWP)
Sent: Thu, 27 May 2021 14:05:25 +0000
To: (b)(6)
Cc: (b)(6) (OAWP) (b)(6) (OAWP)
Subject: RE: Grassley

Hi (b)(6)

I've seen it done both ways. I'll defer to OGC on the legal implications, but from what I understand it's a policy call.

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

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From: (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 10:01 AM
To: Cordeiro, Hansel (OAWP) <(b)(6)@va.gov>
Cc: Spiegel, Richard W. (OAWP) (b)(6)@va.gov>
Subject: FW: Grassley

GM Hansel, please see question being asked by SECVA. Thanks

From: Bradsher, Tanya J. <(b)(6)@va.gov>
Sent: Thursday, May 27, 2021 9:49 AM
To: Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: Grassley

Hi Ladies,
Have we traditionally stated if someone was under investigation by the IG and OAWP in letters? The Secretary is asking. Thank you

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Sauber, Richard A. (OGC)
Sent: Thu, 27 May 2021 21:03:21 +0000
To: Bradsher, Tanya J.
Subject: RE: Grassley

My suggestion in future is try to have it before lunch so you can have more free time.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 5:02 PM
To: Sauber, Richard A. (OGC) (b)(6)@va.gov>
Subject: RE: Grassley

I have one good idea a day. So I can pretty much go home now...

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Sauber, Richard A. (OGC) (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 4:53 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Grassley

I spoke with him about it and he offered that as a solution. I spoke to the boss who seemed to be leaning to your solution of letting it sit for a while...that was a good call!

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 4:36 PM
To: Sauber, Richard A. (OGC) (b)(6)@va.gov>
Subject: FW: Grassley

(b)(5) Please see the attachment

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 3:54 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>

Cc: McVicker, Carrie A. <(b)(6)@va.gov>; Farrisee, Gina S. <(b)(6)@va.gov>
Subject: RE: Grassley

Tanya, please see response from Mike Hogan in GC attached.

Thanks

Pre

From: Bradsher, Tanya J. <(b)(6)@va.gov>
Sent: Thursday, May 27, 2021 11:29 AM
To: (b)(6)@va.gov
Cc: McVicker, Carrie A. <(b)(6)@va.gov>; Farrisee, Gina S. <(b)(6)@va.gov>
Subject: RE: Grassley

Great, thank you

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: (b)(6)@va.gov
Sent: Thursday, May 27, 2021 11:24 AM
To: Bradsher, Tanya J. <(b)(6)@va.gov>
Cc: McVicker, Carrie A. <(b)(6)@va.gov>; Farrisee, Gina S. <(b)(6)@va.gov>
Subject: RE: Grassley

Tanya, **Status Update:** Mike Hogan is speaking with Mr. Sauber and is awaiting a call back from OIG.

From: Farrisee, Gina S. <(b)(6)@va.gov>
Sent: Thursday, May 27, 2021 10:16 AM
To: (b)(6)@va.gov; Bradsher, Tanya J. <(b)(6)@va.gov>
Cc: McVicker, Carrie A. <(b)(6)@va.gov>
Subject: RE: Grassley

(b)(6)

Please reach out to Mike Hogan, he worked this letter with your team.
Thank you,
Gina

From: (b)(6)@va.gov
Sent: Thursday, May 27, 2021 10:08 AM
To: Bradsher, Tanya J. <(b)(6)@va.gov>
Cc: Farrisee, Gina S. <(b)(6)@va.gov>; McVicker, Carrie A. <(b)(6)@va.gov>
Subject: RE: Grassley

Tanya, see Hansel's response attached. Happy to follow-up further with OGC.

From: Bradsher, Tanya J. <(b)(6)@va.gov>

Sent: Thursday, May 27, 2021 9:49 AM

To: Farrisee, Gina S. <(b)(6)@va.gov>; McVicker, Carrie A. <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>

Subject: Grassley

Hi Ladies,

Have we traditionally stated if someone was under investigation by the IG and OAWP in letters? The Secretary is asking. Thank you

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Farrisee, Gina S.
Sent: Tue, 20 Jul 2021 18:24:23 +0000
To: Bradsher, Tanya J.
Subject: INCOMING LETTER 2021-07-20 CEG to VA- Grassley Letter
Attachments: 2021-07-20 CEG to VA.pdf

Chief,

I know you are on the cc line for this letter from Chairman Grassley. Exec Sec has the letter and will wait for instructions on how to work a response. Just wanted to know if you need me to do anything?

VR,

Gina

From: McClain, Kimberly A. (b)(6) @va.gov>
Sent: Tuesday, July 20, 2021 11:19 AM
To: (b)(6) @va.gov; (b)(6) @hna3xapaaw0o9hl7ydg2la2w17p2l88voy2ctr6jho58lv3dr.t-4x38eae.na21.apex.salesforce.com>; VA Executive Correspondence (b)(6) @va.gov>
Cc: McVicker, Carrie A. (b)(6) @va.gov>; (b)(6) @va.gov>; Jackson, Tahmika R. (OGC) (b)(6) @va.gov>; Sauber, Richard A. (OGC) (b)(6) @va.gov>; (b)(6) @va.gov>; Ross, Patricia L. (b)(6) @va.gov>; Johnson, Glenn (SES) (b)(6) @va.gov>; (b)(6) @va.gov>; (b)(6) @va.gov>
(b)(6) @va.gov>; Bradsher, Tanya J. (b)(6) @va.gov>; Diaz, Chris E. (b)(6) @va.gov>; (b)(6) @va.gov>; (b)(6) @va.gov>
Subject: INCOMING LETTER 2021-07-20 CEG to VA- Grassley Letter

Ma'am/ Sir,

Attached is an incoming letter from Chairman Grassley regarding VA OIG investigation of VA Executive Director of the Veterans Benefits Administrations Education Service.

V/R

Kimberly McClain, PhD
Deputy Assistant Secretary for Congressional & Legislative Affairs
Department of Veterans Affairs
Email: (b)(6) @va.gov
Office: (b)(6)
Cell: (b)(6)

From: (b)(6) (Judiciary-Rep) (b)(6) @judiciary-rep.senate.gov>
Sent: Tuesday, July 20, 2021 11:02 AM
To: McClain, Kimberly A. (b)(6) @va.gov>
Cc: (b)(6) (Judiciary-Rep) (b)(6) @judiciary-rep.senate.gov>; CEG (Judiciary-Rep)

(b)(6)@judiciary-rep.senate.gov>

Subject: [EXTERNAL] 2021-07-20 CEG to VA

Ms. McClain,

Please find the attached letter from Senator Grassley to Secretary McDonough.

Please confirm receipt.

Thank you.

--

Best Regards,

(b)(6)

Investigative Counsel

Ranking Member Charles E. Grassley

U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KENNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 20, 2021

VIA ELECTRONIC TRANSMISSION

Denis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

I write to you again today to express my disappointment in the U.S. Department of Veterans Affairs' (VA) failure to timely respond to my April 2, 2021 letter, which raised several concerns about ongoing issues at your department. As you'll recall, these issues include, but are not limited to, potential whistleblower reprisal, conflicts of interest among senior-level employees, and potential leaking of market-sensitive information that may have affected retail investors and financial markets.¹

Upon receiving the very same documents that I provided to your office, the VA Inspector General (VA OIG) has initiated an investigation into whether the VA Executive Director of the Veterans Benefits Administrations Education Service, Charmain Bogue, violated conflicts of interest or ethics law and regulation by failing to conflict herself off of dealings with her husband's companies.² Further, VA OIG is investigating whether any potential legal opinion existed at VA that recommended her recusal from doing business with her husband's companies. In my April 2, 2021 letter, I requested any legal opinions, should any exist, surrounding Mrs. Bogue's involvement with her spouses businesses.³ Unfortunately your office has not provided the requested records or answered whether Mrs. Bogue engaged in these alleged activities.

The Securities and Exchange Commissions (SEC) also responded to my inquiry. In a July 1, 2021 letter to my office, the SEC stated that it is carefully considering the information provided to their office to ensure that there is compliance with both statute and regulation.⁴ As you'll recall, my April 2, 2021 letter sought information as to what VA does to protect market-sensitive information from improper disclosure by VA personnel. Your office has yet to respond as to whether your employees adequately adhere to applicable law and regulation. Certainly the

¹ See Letter from Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to Mr. Denis McDonough, Sec'y U.S. Dep't of Veterans Affairs (Apr. 2, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_dept.ofveteransaffairsvbaethicsmarketinfoleaks.pdf.

² Attached as Exhibit A.

³ See Letter from Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to Mr. Denis McDonough, Sec'y U.S. Dep't of Veterans Affairs (Apr. 2, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_dept.ofveteransaffairsvbaethicsmarketinfoleaks.pdf.

⁴ Attached as Exhibit B.

Congress has a sufficient interest in whether government employees are potentially monetizing non-public information for their own financial benefit or that of their cronies.

It is deeply troubling that VA is the sole agency to not respond to my inquiry, especially given the seriousness of the allegations. My staff has attempted, on several occasions, to work with your office to find a mutually agreeable solution– including accepting answers to my questions on a rolling basis – to no avail.⁵

To that end, I request that you respond to my initial inquiry, and answer the additional follow-up questions based on information received from other entities, no later than July 30, 2021.

1. Has VA sought guidance from the Office of Government Ethics with respect to educating the VA workforce on the importance of safeguarding potentially market-sensitive information? If not, why not?
2. Does VA have a policy regarding the necessity for employee's to protect potentially market-sensitive, nonpublic information from being released? If so, please provide this policy. If not, why not?

I trust that VA is not seeking to obstruct a congressional investigation in any way by intentionally being unresponsive to my questions. Contact my Committee staff at (b)(6)

(b)(6) should you have any questions. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

⁵ Email communications on file with Committee.

Exhibit A



U.S. Department
of Veterans Affairs

Inspector General
Washington DC 20420

May 26, 2021

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senator Grassley:

I am writing in response to your April 2, 2021 letter regarding allegations related to the Veterans Benefits Administration (VBA) and specifically allegations of ethical violations and other misconduct by VBA leadership.

We have considered your requests and discussed our analysis with your staff. The Office of Inspector General (OIG) has opened an administrative investigation to evaluate the allegations that Ms. Charmain Bogue, Executive Director of VBA's Education Service, may have violated applicable conflict of interest laws or regulations concerning her official duties and her spouse's business interests. The scope of this administrative investigation will also include reviewing any legal opinions that were provided to Ms. Bogue regarding the need for her recusal from decisions based on her spouse's business and reviewing Ms. Bogue's financial disclosures. The OIG's work is in progress, and we will notify your office when we have concluded our work.

For the reasons summarized below, at this time we will not be reviewing the other matters raised in your letter:

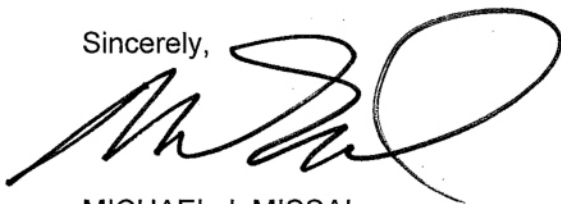
- ***Mitigation of Disciplinary Penalties for Certain Senior VA Officials.*** Your letter requested that the OIG review and report on the reasons why VA allegedly mitigated penalties recommended in disciplinary actions of specific senior-level VBA employees. VA's Office of Accountability and Whistleblower Protection (OAWP) investigated the matters referenced by your letter. The OAWP makes recommendations relating to discipline and it tracks the information that your letter requests. The OIG will defer to OAWP's response to the corresponding request in your letter to VA Secretary McDonough.
- ***Potential Disclosure of Material Non-Public Information Concerning Certain Education Institutions.*** Since you have separately requested the U.S. Securities and Exchange Commission (SEC) to investigate this matter and the VA OIG has limited authority to compel testimony, we will defer to the SEC. If we uncover information relevant to this potential violation during our review, we will refer that information to the SEC for review.

The Honorable Charles Grassley

- ***Financial Disclosures of VA Employees.*** Your letter asked the OIG to review VA employees' compliance with financial disclosure requirements. The allegations presented relate to one individual's disclosures and, even if true, do not appear to suggest the existence of a broad process failure affecting the nearly 700 VA employees who file public financial disclosures every year. Although the OIG may reconsider initiating a broader review at a future time, we note that the Office of Government Ethics has primary authority in this area and is better positioned to evaluate VA's financial disclosure process, especially as it pertains to an individual's compliance with disclosure requirements.
- ***Compliance with Freedom of Information Act (FOIA) Requests.*** The specific FOIA requests mentioned in your letter are the subject of pending litigation. The OIG generally does not investigate matters under litigation if the issue can be resolved by the decision-maker. In this instance, the court's determination will provide the requestor with any appropriate relief and address your question as to whether VA is failing to comply with FOIA requests.
- ***Anonymous Allegations of Reprisal.*** Your letter raises non-specific allegations of reprisal by individuals who provided unspecified information to your office. The OIG lacks the authority to provide redress for reprisals. For current and former VA employees seeking relief from instances of reprisal, VA's OAWP or the U.S. Office of Special Counsel are the most appropriate offices to review those allegations.

We appreciate the opportunity to consider these matters and thank you for your interest in the OIG.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael J. Missal', with a large, stylized loop at the end.

MICHAEL J. MISSAL

Exhibit B



OFFICE OF THE CHAIR

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 1, 2021

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

Thank you for your April 2, 2021, letter to Acting Chair Lee concerning the alleged disclosure of market-sensitive information by individuals at the Department of Veterans Affairs and the potential impact of such alleged disclosure on the stock price of a U.S. publicly traded company. I appreciate the information and the thoughtful questions you have raised. We take every allegation of abusive trading based on nonpublic information very seriously.

Please find below my responses to your specific questions.

Question 1: Has the SEC received complaints regarding the above fact pattern? Is the SEC otherwise aware of the above fact pattern?

- a. Has the SEC opened an investigation into the above claims?***
- b. If not, why not? Does the SEC plan to open an investigation into these claims?***

As a matter of policy, the SEC conducts investigations on a confidential basis and generally does not acknowledge the existence or non-existence of any investigation unless and until charges are filed. We do so in order to protect the integrity of our investigations, safeguard the privacy of witnesses, and avoid damaging the reputation of persons who may not be charged. Accordingly, I cannot comment specifically on the matter raised in your letter, but I assure you that the Commission's staff will consider carefully the information included in your correspondence in connection with our statutory and regulatory responsibilities.

Question 2: What policies and procedures does the SEC have in place to identify and investigate potentially improper trading by government employees, and their potential access to information that could shift financial markets?

Insider trading has long been a core component of the Commission's Enforcement agenda, and the Commission is committed to building and maintaining the resources necessary to protect the market from this harmful practice. Enforcement staff, including market and trading

specialists with industry experience, have developed proprietary tools to conduct market surveillance and gather and analyze trading data to uncover suspicious market activity.¹ These tools enable the staff to detect abusive trading practices, including insider trading, by both entities and individuals.²

Question 3: Does the SEC take a proactive stance on briefing and distributing guidance to federal agencies on the importance and necessity of protecting information that could affect financial markets? If so, what does the SEC do with respect to proactive measures?

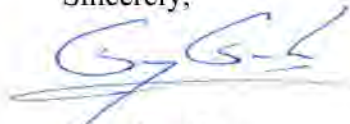
The Office of Government Ethics (OGE) provides guidance and leadership to all federal agencies in order to prevent conflicts of interest by government employees, including conflicts related to the misuse of nonpublic information and the misuse of position. The SEC does not provide guidance to other federal agencies regarding the protection of nonpublic information.

Question 4: What tools does the SEC employ to educate and inform the federal workforce on the necessity to protect information that may have effects on financial markets? Has the SEC ever briefed the VA on the necessity to protect this type of information?

OGE directs that each federal agency establish its own ethics program, including an ethics office responsible for educating, training, and informing its workforce about Executive branch ethics rules and regulations, including the prohibition on the misuse of nonpublic information. As such, the SEC has not briefed the VA on these requirements.

Thank you again for your letter. Please do not hesitate to contact me at (b)(6) or have a member of your staff contact (b)(6) Director of the Office of Legislative and Intergovernmental Affairs, at (b)(6) if you have any additional concerns or comments.

Sincerely,



Gary Gensler
Chair

¹ Division of Enforcement, 2018 Annual Report at 3, available at <https://www.sec.gov/files/enforcement-annual-report-2018.pdf>.

² Division of Enforcement, 2020 Annual Report at 14, available at <https://www.sec.gov/files/enforcement-annual-report-2020.pdf>.

From: Bradsher, Tanya J.
Sent: Sat, 3 Apr 2021 12:03:43 +0000
To: Hipolit, Richard (OGC)
Subject: Fwd: HOT - letter from Senator Grassley to SECVA
Attachments: 2021-04-02 CEG to VA.pdf

I sent this letter to the Secretary in case Grassley releases it to the press

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6) @va.gov

Cell: (b)(6)

From: McClain, Kimberly A. (b)(6) @va.gov>
Sent: Saturday, April 3, 2021 7:34:32 AM
To: Bradsher, Tanya J. (b)(6) @va.gov>; Hipolit, Richard (OGC) (b)(6) @va.gov>; Jackson, Tahmika R. (OGC) (b)(6) @va.gov>
Cc: Johnson, Glenn (SES) (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

Get [Outlook for iOS](#)

From: Neumann, Amanda (b)(6) @va.gov>
Sent: Friday, April 2, 2021 6:51 PM
To: VIEWS-001B@va.gov
Cc: McVicker, Carrie A. (b)(6) Johnson, Glenn (SES) (b)(6) McClain, Kimberly A. (b)(6)
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs

2026 Rayburn House Ofc. Bldg., Washington, DC 20515

Desk: (b)(6) Mobile: (b)(6)

<https://www.va.gov/OCA/docs/VA-Casework-Guide-2019-Aug-16-Update.pdf>

From: (b)(6) (Judiciary-Rep) (b)(6) @judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6) @va.gov>
Cc: (b)(6) (Judiciary-Rep) (b)(6) @judiciary-rep.senate.gov>; CEG (Judiciary-Rep) (b)(6) @judiciary-rep.senate.gov>
Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--
Best Regards,

(b)(6)
Investigative Counsel
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINOIS, SENIOR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARIZONA
JOHN KENNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

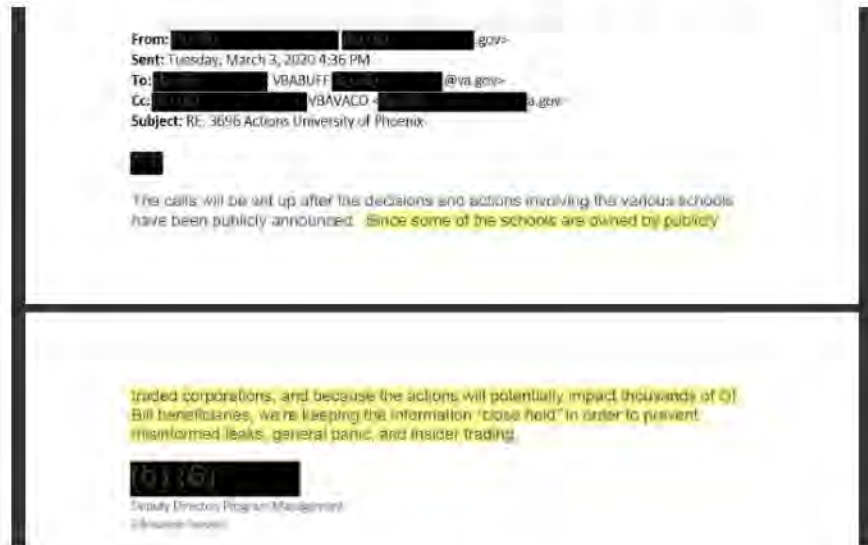
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
5. What steps does the VA take to protect retail investors by safeguarding market sensitive information regarding potential enforcement announcements related to publicly-traded companies?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
6. If the VA is aware that market sensitive information was potentially leaked, has the VA investigated this leak of information? Please provide the report of investigation.
7. Did the VA Office of General Counsel ever provide a legal opinion with respect to Mrs. Bogue and her involvement with any of her husband's companies?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
10. Under current law and regulation, is Mrs. Bogue required to report financial information of her spouse via a public financial disclosure report? If so, did Ms. Bogue list her husband?
 - a. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's employer(s)? If not, why not?
 - b. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's salary with respect to his work? If not, why not?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
11. If Mrs. Bogue did not report where Mr. Bogue currently works, and if she participated in VA business related to VES, would that constitute a conflict of interest as described by applicable law or regulation?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (b)(6) Thank
you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawapc.com
Attorney for Plaintiff Maria A. Pomares

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Case No.: '21CV84 H MSB

MARIA A. POMARES,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,
Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).’’⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar language to the VES letter and citing the same federal statute.⁷

14. In particular, on March 9, the VA “notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁸ In particular, the VA took the following actions:

A. “The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁹

B. “After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law.”¹⁰

///

⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at University of Phoenix, Career Education Corporation, Bellevue University and Temple University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>, last visited Jan. 15, 2021.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

15. The VA issued its press release almost two hours after the markets had closed, but the press release was not news to those who sold CEC stock short that day.¹¹ During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC stock, roughly 370 percent of its daily average volume since the beginning of the year. Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale volume since the beginning of the year. The price of CEC stock fell from \$18.83 on January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

16. The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had “notified military and veterans service organizations today” of its impending enforcement action.¹²

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¹¹ The Securities and Exchange Commission provides this concise description of a short sale:

A short sale is generally the sale of a stock you do not own (or that you will borrow for delivery). Short sellers believe the price of the stock will fall, or are seeking to hedge against potential price volatility in securities that they own.

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss.


Short sales must be done in compliance with SEC Regulation SHO.

<https://www.sec.gov/investor/pubs/regsho.htm>, last visited Jan. 14, 2021.

¹² Press Release, VES, Veterans Education Success Praises Decision by the Department of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),


<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



Veterans Education Success 
@GIBillRights

 **BREAKING**  @DeptVetAffairs announced their intent to stop new #GIBill enrollments at the University of Phoenix, Colorado Technical University, American InterContinental University, Bellevue University, and Temple University.  Read our reaction:

**VETE
EDUCATION**

Press Release: Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838-...
 vetsedsuccess.org

11:26 AM · Mar 9, 2020 · Twitter Web App

17. The VA's selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA's press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA's selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College 'Critics' Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to implement VES's January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES's efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue's Public Financial Disclosure Report does not disclose her husband's financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

disclosed that he is paid a salary and receives an unspecified amount in “consulting fees.”¹⁶ The public interest in the release of information and its implications are growing, as a recent series of posts by a national ethics watchdog confirms.¹⁷

21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.

22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.

23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in which it asserted a “Glomar” response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:

1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
2. Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

///

¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, Nov. 12, 2020, <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>, last visited Jan. 15, 2021.

¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020, <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>, last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
 2 the subject matter of this complaint also sought records which Defendant VA is
 3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
 4 “Glomar” response in any of its communications with Plaintiff in relation to the records
 5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
 8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
 9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
 10 FOIA requests with separate tracking numbers, separate processing by different offices
 11 and administrations within the VA, separate appeal processes, and separate dates for
 12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
 13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
 14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
 15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
 16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
 19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
 20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
 22 the following email addresses between December 15, 2019, and March 15,
 23 2020:

24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
 26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
 and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in
carrie.wofford@veteranseducationsuccess.org would make this
email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

36. On December 11, 2020, Plaintiff's counsel confirmed with his email the conference call he held the day before with the VBA FOIA specialist. During the conversation, Plaintiff's counsel was informed the FOIA request had been transferred to "tier 3... because it involves upper or senior management, which will delay the release of these records." Plaintiff's counsel stated his position as follows:

As you know, I disagreed with any extension of time for this request, since it involves an electronic search of records that did not appear to be subject to any exemption. I also understand you have nearly completed your review, so there should be little justification for delay, absent the late decision to transfer this matter to Tier 3.

Plaintiff's counsel requested further information. Specifically:

1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new tier?
3. What is the definition and rule or regulation applied in determining that Ms. Bogue is at a sufficient high level of management within the VBA that this request should now be transferred to Tier 3?

A true and correct copy of this email is attached hereto and incorporated by reference as Exhibit 9, at 34.

37. On December 15, 2020, since the VBA FOIA specialist had not responded, Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA FOIA specialist informed Plaintiff's counsel the request was being reviewed by the Office of General Counsel (OGC). The email continued:

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made this week. Secondly, I have reviewed your questions below concerning IT processes. I have contacted the Chief of VBACO Desktop Support Services for question #1.... This request is being reviewed by OGC because the subject matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
25 a) University of Phoenix,
26 b) Perdoceo,
27 c) Bellevue University,
28 d) Temple University,
e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
 2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
 3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
 5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
 6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
 8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
 9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
 10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
 15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
 16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
 20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
 21 paragraphs 25 and 39 above;

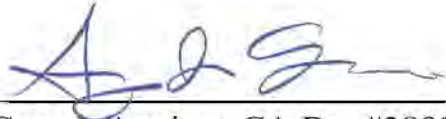
22 B. Order Defendant VA to immediately search for and release all records
 23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
 24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
 26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:

(b) (5)

Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Bradsher, Tanya J.
Sent: Sat, 3 Apr 2021 12:10:29 +0000
To: McClain, Kimberly A.; Hipolit, Richard (OGC); Jackson, Tahmika R. (OGC)
Cc: Johnson, Glenn (SES); McVicker, Carrie A.
Subject: Re: HOT - letter from Senator Grassley to SECVA

Has Grassley release this letter to

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McClain, Kimberly A. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 7:34:32 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

Get [Outlook for iOS](#)

From: (b)(6)@va.gov>
Sent: Friday, April 2, 2021 6:51 PM
To: VIEWS-001B@va.gov
Cc: McVicker, Carrie A.; (b)(6) Johnson, Glenn (SES) (b)(6) McClain, Kimberly A.; (b)(6)
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs

2026 Rayburn House Ofc. Bldg., Washington, DC 20515

Desk: (b)(6) | Mobile: (b)(6)

<https://www.va.gov/OCA/docs/VA-Casework-Guide-2019-Aug-16-Update.pdf>

From: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6)@va.gov>
Cc: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov> (b)(6) (Judiciary-Rep)
(b)(6)@judiciary-rep.senate.gov>
Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)
Investigative Counsel
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

From: DRM
Sent: Tue, 6 Apr 2021 20:58:16 +0000
To: Bradsher, Tanya J.
Subject: Re: 2021-04-02 CEG to VA - Grassley

Just tried you. Please call me when you can.

From: Bradsher, Tanya J. <(b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 13:42
To: DRM
Subject: FW: 2021-04-02 CEG to VA - Grassley

Hi Sir,
Grassley sent out a press release and attached the letter. We have looped in Kayla.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 3:04 PM
To: McClain, Kimberly A. <(b)(6)@va.gov>
Cc: Johnson, Glenn (SES) <(b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

From his website:

Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics Violations at Veterans Benefits Administration

Following review of whistleblower complaints, documents, Grassley pushes VA, Inspector General, and SEC for Transparency

WASHINGTON – Sen. Chuck Grassley (R-Iowa), Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

Grassley is seeking information regarding Charmain Bogue's failure to disclose her husband's income and employment at a firm that directly did business with the VBA. He is also seeking a commitment from the Department of Veterans Affairs (VA) to comply with pending and future FOIA requests on this matter in a timely manner.

The whistleblower allegations revolve around an alleged VA Office of General Counsel memorandum that determined Charmain Bogue should recuse herself from any and all VA matters involving her husband's firms. The whistleblowers further allege that, after internal warnings about the need to protect market-sensitive information, that information may have been leaked, which was then publicly traded on, potentially affecting stock prices and retail investors.

In seeking a broad set of information and transparency, Grassley wrote to Secretary of Veterans Affairs Denis McDonough, Department of Veterans Affairs Inspector General Michael Missal, and Acting Chairwoman Allison Lee of the Securities and Exchange Commission.

In his letter to the VA, Grassley requests records relating to ethics determinations related to current and former senior officials at the VA, the steps the VA takes to protect retail investors by safeguarding market-sensitive information, any internal investigations of such information leaking, and the VA's attempts to block information released through FOIA requests relating to these matters.

Grassley is seeking a review of these potential ethics violations and disclosures failures from the inspector general, and asking whether the SEC is aware of these allegations and what steps the commissioner takes to distribute guidance to federal agencies on the importance and necessity of protecting sensitive information that could affect financial markets.

Full text of Grassley's letters follow:

[Grassley to Secretary McDonough \(VA\)](#)
[Grassley to Inspector General Missal \(VA OIG\)](#)
[Grassley to Lee \(SEC\)](#)

From: (b)(6)
Sent: Tuesday, April 6, 2021 2:52 PM
To: McClain, Kimberly A. (b)(6) <(b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6) <(b)(6)@va.gov>
Subject: FW: 2021-04-02 CEG to VA - Grassley

Kim,

As an FYI. He apparently has put something on his website.

(b)(6)

Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs

(b)(6)

From: (b)(6) (009) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 2:21 PM

To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6)

(b)(6) @va.gov> (b)(6) @va.gov> (b)(6)

(b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: RE: 2021-04-02 CEG to VA

Hi (b)(6) With this reply I am forwarding your request to the Directors of OCLA's Outreach (b)(6)
(b)(6) Corporate (b)(6) and Benefit (b)(6) Teams as I am not certain which
Congressional Relations Officer is working this correspondence from Senator Grassley. (b)(6)
(b)(6) would one of you be able to assist OGC. Thanks. (b)(6)

(b)(6)

Program Specialist, VA History Office, Detailee
U.S. Department of Veterans Affairs

(b)(6) Direct
(b)(6) Mobile

(b)(6) @va.gov

From: (b)(6) (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 12:55 PM

To: (b)(6) (009) (b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: 2021-04-02 CEG to VA

Importance: High

I am an attorney with the OGC Ethics Specialty Team. Our office is preparing responses to the above congressional request for information. It is my understanding that OCLA spoke with Senator Grassley's office regarding this request. After speaking with (b)(6) this morning, we propose to seek clarification concerning the scope of #4: "Please provide all records, communications, and memorandums related to the suspensions, or proposed

suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds” which proposed actions were related to their acceptance of free attendance at NASCAR events at which VBA was conducting outreach.

Could there be follow-up with the Senator’s office to confirm that the scope of #4 is limited to the suspension/proposed suspensions and need not include all OGC guidance related to attendance at the NASCAR events. If our office was to include all such guidance, it could include a significant amount information that is irrelevant and extraneous.

Thank you for your consideration and assistance.

(b)(6)

VA Staff Attorney

Ethics Specialty Team

(b)(6) (BB)

Monday – Thursday only

[OGC Ethics Website](#) | [Ethics contact information](#)

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 00:12:11 +0000
To: Hayes, Terrence L.
Subject: Response to Query - Grassley Letter
Attachments: 2021-04-02 CEG to VA.pdf

Terrence,

I hope you are doing well. Can you please take a look at the letter from Senator Grassley and let me know if you were involved at all at your previous employer. Kayla and Melissa have had to recuse themselves. Thank you so much.

V/R

Tanya

Below is the Secretary approved response to query:

(b)(5)



Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6) [@va.gov](mailto:(b)(6)@va.gov)
Cell: (b)(6)

RICHARD J. DURBIN, ILLINOIS, SENIOR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JOHN OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARIZONA
JOHN KEMMIDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

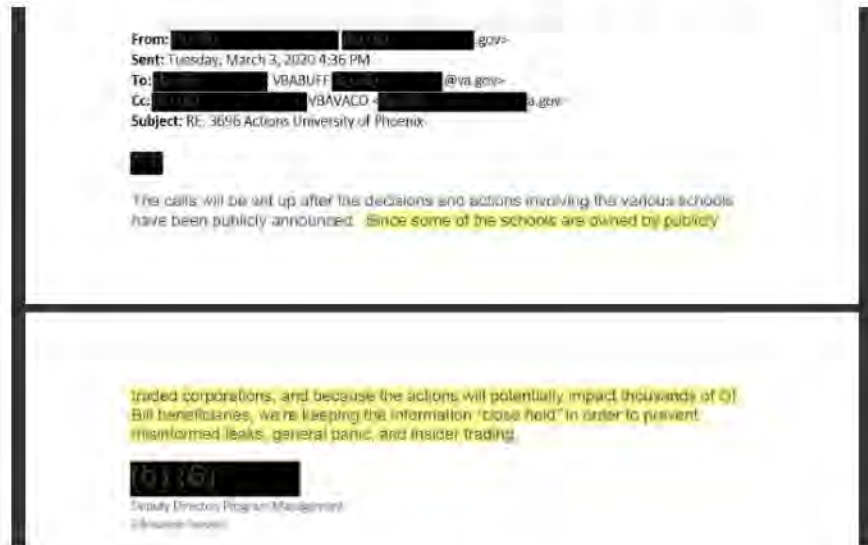
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
5. What steps does the VA take to protect retail investors by safeguarding market sensitive information regarding potential enforcement announcements related to publicly-traded companies?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
6. If the VA is aware that market sensitive information was potentially leaked, has the VA investigated this leak of information? Please provide the report of investigation.
7. Did the VA Office of General Counsel ever provide a legal opinion with respect to Mrs. Bogue and her involvement with any of her husband's companies?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
10. Under current law and regulation, is Mrs. Bogue required to report financial information of her spouse via a public financial disclosure report? If so, did Ms. Bogue list her husband?
 - a. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's employer(s)? If not, why not?
 - b. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's salary with respect to his work? If not, why not?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
11. If Mrs. Bogue did not report where Mr. Bogue currently works, and if she participated in VA business related to VES, would that constitute a conflict of interest as described by applicable law or regulation?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (b)(6) Thank
you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawapc.com
Attorney for Plaintiff Maria A. Pomares

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Case No.: '21CV84 H MSB

MARIA A. POMARES,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,
Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 1. This action is brought under the Freedom of Information Act (“FOIA”). 5
 2 U.S.C. § 552, as amended, for an order compelling Defendant United States Department
 3 of Veterans Affairs (“VA”) to produce, provide access to, and make available certain
 4 records specified below that were requested by Plaintiff Maria Pomares.

5 **JURISDICTION AND VENUE**

6 2. This Court has jurisdiction and venue over this action pursuant to 5 U.S.C. §
 7 552(a)(4)(B).

8 **PARTIES**

9 3. Plaintiff is a citizen of the United States and a resident of the County of San
 10 Diego.

11 4. Defendant is an agency of the United States Government and has possession
 12 and control of the records that are the subject of this action.

13 **THE RELEASE OF THE RECORDS SOUGHT** 14 **WOULD SERVE THE HIGHEST PUBLIC INTEREST**

15 5. Plaintiff seeks records from the Department of Veterans Affairs (“VA”) 5
 16 relating to the VA’s selective release of nonpublic information during the period from
 17 January through March 2020 that adversely affected the stock price of Career Education
 18 Corporation (“CEC”),¹ a U.S. publicly traded company. During this period, the stock
 19 price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price
 20 and over \$800 million in market capitalization. By July 2020, the VA had decided it
 21 would take no action against CEC,² but for many investors who sold during the near
 22

23
 24 ¹ The name of the company was changed from Career Education Corporation to Perdoceo
 25 Education Corporation effective January 1, 2020. The company’s former name is used in
 26 this complaint, because the records requests and released records primarily use that name.

27 ² Danielle Douglas-Gabriel, *VA Backs down from Plan to Suspend University of Phoenix*
 28 *and Other Colleges from Accessing GI Bill Benefits*, WASH. POST, July 2, 2020,
<https://www.washingtonpost.com/education/2020/07/02/va-backs-down-plan-suspend-university-phoenix-other-colleges-accessing-gi-bill-benefits/>, last visited Jan. 13, 2021.

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;

17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;

20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and

23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar language to the VES letter and citing the same federal statute.⁷

14. In particular, on March 9, the VA “notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁸ In particular, the VA took the following actions:

A. “The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁹

B. “After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law.”¹⁰

///

⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at University of Phoenix, Career Education Corporation, Bellevue University and Temple University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>, last visited Jan. 15, 2021.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

15. The VA issued its press release almost two hours after the markets had closed, but the press release was not news to those who sold CEC stock short that day.¹¹ During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC stock, roughly 370 percent of its daily average volume since the beginning of the year. Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale volume since the beginning of the year. The price of CEC stock fell from \$18.83 on January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

16. The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had “notified military and veterans service organizations today” of its impending enforcement action.¹²

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¹¹ The Securities and Exchange Commission provides this concise description of a short sale:

A short sale is generally the sale of a stock you do not own (or that you will borrow for delivery). Short sellers believe the price of the stock will fall, or are seeking to hedge against potential price volatility in securities that they own.


If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss.

Short sales must be done in compliance with SEC Regulation SHO.

<https://www.sec.gov/investor/pubs/regsho.htm>, last visited Jan. 14, 2021.


¹² Press Release, VES, Veterans Education Success Praises Decision by the Department of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple University (March 9, 2020), <https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



Veterans Education Success 
@GIBillRights

 **BREAKING**  @DeptVetAffairs announced their intent to stop new #GIBill enrollments at the University of Phoenix, Colorado Technical University, American InterContinental University, Bellevue University, and Temple University.  Read our reaction:

**VETE
EDUCATION**

Press Release: Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838-...
 vetsedsuccess.org

11:26 AM · Mar 9, 2020 · Twitter Web App

17. The VA's selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA's press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA's selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

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¹³ National Legal and Policy Center, *Are For-Profit College 'Critics' Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to implement VES's January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES's efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue's Public Financial Disclosure Report does not disclose her husband's financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

disclosed that he is paid a salary and receives an unspecified amount in “consulting fees.”¹⁶ The public interest in the release of information and its implications are growing, as a recent series of posts by a national ethics watchdog confirms.¹⁷

21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.

22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.

23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in which it asserted a “Glomar” response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:

1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
2. Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

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¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, Nov. 12, 2020, <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>, last visited Jan. 15, 2021.

¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020, <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>, last visited Jan. 15, 2021.

Plaintiff is informed and believes, and thereon alleges, that the records requests that are the subject matter of this complaint also sought records which Defendant VA is withholding on the basis of its “Glomar” response. Defendant VA failed to assert a “Glomar” response in any of its communications with Plaintiff in relation to the records sought by this complaint and therefore waived it.

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA’s restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:

- 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of the following email addresses between December 15, 2019, and March 15, 2020:

- a. Any email address ending with this domain: @eangus.org;

¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in
carrie.wofford@veteranseducationsuccess.org would make this
email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

36. On December 11, 2020, Plaintiff's counsel confirmed with his email the conference call he held the day before with the VBA FOIA specialist. During the conversation, Plaintiff's counsel was informed the FOIA request had been transferred to "tier 3... because it involves upper or senior management, which will delay the release of these records." Plaintiff's counsel stated his position as follows:

As you know, I disagreed with any extension of time for this request, since it involves an electronic search of records that did not appear to be subject to any exemption. I also understand you have nearly completed your review, so there should be little justification for delay, absent the late decision to transfer this matter to Tier 3.

Plaintiff's counsel requested further information. Specifically:

1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new tier?
3. What is the definition and rule or regulation applied in determining that Ms. Bogue is at a sufficient high level of management within the VBA that this request should now be transferred to Tier 3?

A true and correct copy of this email is attached hereto and incorporated by reference as Exhibit 9, at 34.

37. On December 15, 2020, since the VBA FOIA specialist had not responded, Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA FOIA specialist informed Plaintiff's counsel the request was being reviewed by the Office of General Counsel (OGC). The email continued:

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made this week. Secondly, I have reviewed your questions below concerning IT processes. I have contacted the Chief of VBACO Desktop Support Services for question #1.... This request is being reviewed by OGC because the subject matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
25 a) University of Phoenix,
26 b) Perdoceo,
27 c) Bellevue University,
28 d) Temple University,
e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
 2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
 3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
 5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
 6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
 8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
 9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
 10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
 15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
 16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
 20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
 21 paragraphs 25 and 39 above;

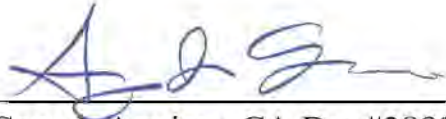
22 B. Order Defendant VA to immediately search for and release all records
 23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
 24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
 26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:

(b) (5)

Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 14:10:12 +0000
To: Hayes, Terrence L.
Subject: RE: Response to Query - Grassley Letter

Thank you so much for the update. Please continue to keep me posted.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: Hayes, Terrence L. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 10:09 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Response to Query - Grassley Letter
Importance: High

Hi Tanya!

Please see the below initial media hits on the aforementioned topic:

Mix 107.3 KIOW: [Grassley Seeks Sweeping Review into Allegations of Whistleblower Reprisal, Ethics Violations at Veterans Benefits Administration](#) (6 April, AJ Taylor, Forest City, Iowa)

Senator Chuck Grassley, a Ranking Member of the Senate Judiciary Committee, is pushing for information and transparency after whistleblowers allege significant ethics lapses and potential leaks of market-sensitive information at the Veterans Benefits Administration, a division of the Department of Veterans Affairs.

VA Official Charmain Bogue Did Not Disclose Links to Outside Group **November 2020**
<https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>

Sen. Grassley pushes for 'information and transparency' into alleged whistleblowers claims – no date indicated
<https://americasvoice.news/justthenews/sen-grassley-pushes-information-and-transparency-alleged/>

I have not received any media queries at this moment but VBA is directed to forward ALL queries on this subject to my desk for response. Please advise if you have any questions of me. Thank you for your continued support, Tanya.

Terrence

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 7:57 AM

To: Hayes, Terrence L. (b)(6)@va.gov>
Subject: RE: Response to Query - Grassley Letter

Wonderful, please make the quote from you and take care of any incoming. Have you seen any media questions yet?

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: Hayes, Terrence L. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 7:37 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Response to Query - Grassley Letter

Hi Tanya!

Good morning! I was not involved in bringing any of these allegations to light while serving at the VFW. Much of this is news to me, to be quite honest.

Terrence

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 8:12 PM
To: Hayes, Terrence L. (b)(6)@va.gov>
Subject: Response to Query - Grassley Letter

Terrence,
I hope you are doing well. Can you please take a look at the letter from Senator Grassley and let me know if you were involved at all at your previous employer. Kayla and Melissa have had to recuse themselves. Thank you so much.

V/R
Tanya

Below is the Secretary approved response to query:

(b)(5)

(b)(5)



Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 15:09:11 +0000
To: Hipolit, Richard (OGC)
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Attachments: Tab1 4890714 Incoming Letter.pdf
Importance: High

Dick,
I concur with Carrie's recommendation but I wanted to run the names by you before approving. Please let me know your thoughts.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

We received below guidance from OGC yesterday on a short-term next step to begin gathering the data to address the attached letter. Based on OGC's email, I recommend setting up a triangle of leadership to manage the VBA part of the requirements:

Mike Frueh – as the #2 person at VBA and newest to VBA – only for the last ~8 weeks – he is in the best position to not have a long history stake in the issue

Gina Farrisee – keeps OSVA in the mix and her background in HR will be crucial to help guide Mike in data gathering and her role as DCOS demands neutrality and the provision of guidance to VBA

Mike Hogan – as a lead Ethics attorney at OGC he would be able to provide advice and recommendations on documents required and also provide OGC view on their quality and appropriateness

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 10:13 PM
To: Ladipo, Kathy (b)(6) @va.gov>
Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

RICHARD J. DURBIN, ILLINOIS, SENIOR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JOE OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARIZONA
JOHN KENNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

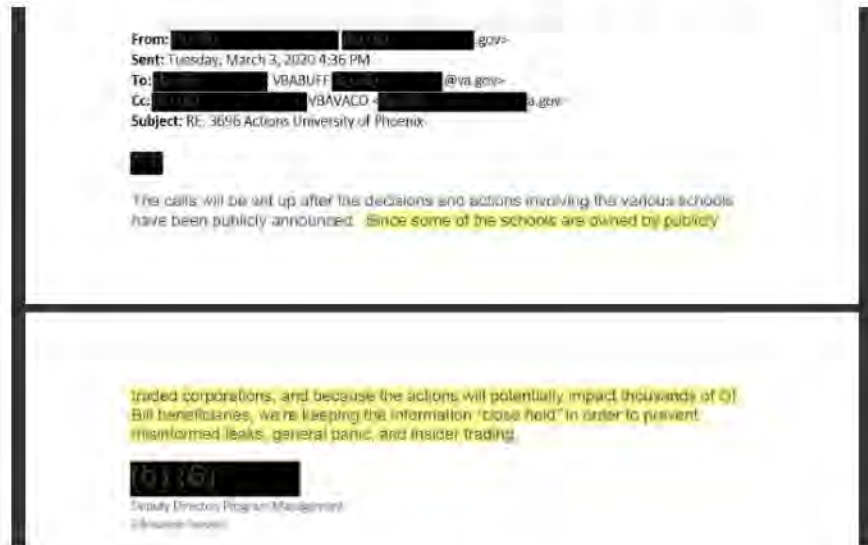
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
5. What steps does the VA take to protect retail investors by safeguarding market sensitive information regarding potential enforcement announcements related to publicly-traded companies?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
6. If the VA is aware that market sensitive information was potentially leaked, has the VA investigated this leak of information? Please provide the report of investigation.
7. Did the VA Office of General Counsel ever provide a legal opinion with respect to Mrs. Bogue and her involvement with any of her husband's companies?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
10. Under current law and regulation, is Mrs. Bogue required to report financial information of her spouse via a public financial disclosure report? If so, did Ms. Bogue list her husband?
 - a. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's employer(s)? If not, why not?
 - b. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's salary with respect to his work? If not, why not?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
11. If Mrs. Bogue did not report where Mr. Bogue currently works, and if she participated in VA business related to VES, would that constitute a conflict of interest as described by applicable law or regulation?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (b)(6) Thank
you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares
9

10
11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

Case No.: '21CV84 H MSB

15 MARIA A. POMARES,
16 Plaintiff,

17 v.

18 UNITED STATES DEPARTMENT OF
19 VETERANS AFFAIRS,
20 Defendant.
21
22
23
24
25
26
27
28

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;

17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;

20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and

23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar language to the VES letter and citing the same federal statute.⁷

14. In particular, on March 9, the VA “notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁸ In particular, the VA took the following actions:

A. “The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency’s intent to disapprove the enrollment of new GI Bill students at these institutions.”⁹

B. “After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law.”¹⁰

///

⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at University of Phoenix, Career Education Corporation, Bellevue University and Temple University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>, last visited Jan. 15, 2021.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

15. The VA issued its press release almost two hours after the markets had closed, but the press release was not news to those who sold CEC stock short that day.¹¹ During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC stock, roughly 370 percent of its daily average volume since the beginning of the year. Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale volume since the beginning of the year. The price of CEC stock fell from \$18.83 on January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

16. The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had “notified military and veterans service organizations today” of its impending enforcement action.¹²

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¹¹ The Securities and Exchange Commission provides this concise description of a short sale:

A short sale is generally the sale of a stock you do not own (or that you will borrow for delivery). Short sellers believe the price of the stock will fall, or are seeking to hedge against potential price volatility in securities that they own.

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss.


Short sales must be done in compliance with SEC Regulation SHO.

<https://www.sec.gov/investor/pubs/regsho.htm>, last visited Jan. 14, 2021.

¹² Press Release, VES, Veterans Education Success Praises Decision by the Department of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),


<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



Veterans Education Success 
@GIBillRights

 **BREAKING**  @DeptVetAffairs announced their intent to stop new #GIBill enrollments at the University of Phoenix, Colorado Technical University, American InterContinental University, Bellevue University, and Temple University.  Read our reaction:

**VETE
EDUCATION**

Press Release: Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838-...
 vetsedsuccess.org

11:26 AM · Mar 9, 2020 · Twitter Web App

17. The VA's selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA's press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA's selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College 'Critics' Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to implement VES's January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES's efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue's Public Financial Disclosure Report does not disclose her husband's financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

disclosed that he is paid a salary and receives an unspecified amount in “consulting fees.”¹⁶ The public interest in the release of information and its implications are growing, as a recent series of posts by a national ethics watchdog confirms.¹⁷

21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.

22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.

23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in which it asserted a “Glomar” response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:

1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
2. Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

///

¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, Nov. 12, 2020, <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>, last visited Jan. 15, 2021.

¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020, <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/>, last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
 2 the subject matter of this complaint also sought records which Defendant VA is
 3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
 4 “Glomar” response in any of its communications with Plaintiff in relation to the records
 5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
 8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
 9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
 10 FOIA requests with separate tracking numbers, separate processing by different offices
 11 and administrations within the VA, separate appeal processes, and separate dates for
 12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
 13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
 14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
 15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
 16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
 19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
 20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
 22 the following email addresses between December 15, 2019, and March 15,
 23 2020:

24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
 26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
 and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in
carrie.wofford@veteranseducationsuccess.org would make this
email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

36. On December 11, 2020, Plaintiff's counsel confirmed with his email the conference call he held the day before with the VBA FOIA specialist. During the conversation, Plaintiff's counsel was informed the FOIA request had been transferred to "tier 3... because it involves upper or senior management, which will delay the release of these records." Plaintiff's counsel stated his position as follows:

As you know, I disagreed with any extension of time for this request, since it involves an electronic search of records that did not appear to be subject to any exemption. I also understand you have nearly completed your review, so there should be little justification for delay, absent the late decision to transfer this matter to Tier 3.

Plaintiff's counsel requested further information. Specifically:

1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new tier?
3. What is the definition and rule or regulation applied in determining that Ms. Bogue is at a sufficient high level of management within the VBA that this request should now be transferred to Tier 3?

A true and correct copy of this email is attached hereto and incorporated by reference as Exhibit 9, at 34.

37. On December 15, 2020, since the VBA FOIA specialist had not responded, Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA FOIA specialist informed Plaintiff's counsel the request was being reviewed by the Office of General Counsel (OGC). The email continued:

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made this week. Secondly, I have reviewed your questions below concerning IT processes. I have contacted the Chief of VBACO Desktop Support Services for question #1.... This request is being reviewed by OGC because the subject matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
 2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
 3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
 5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
 6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
 8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
 9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
 10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
 15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
 16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
 20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
 21 paragraphs 25 and 39 above;

22 B. Order Defendant VA to immediately search for and release all records
 23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
 24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
 26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:

(b) (5)

Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 19:30:13 +0000
To: Hipolit, Richard (OGC)
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Wonderful, thank you so much

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:21 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Good for me. I'll call you on Teams at 4:00.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:20 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Is Teams okay?

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:19 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Yes. Phone or Teams?

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:17 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great, can we please chat at 4 pm?

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6) @va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6) @va.gov>

Sent: Wednesday, April 7, 2021 2:55 PM

To: Bradsher, Tanya J. (b)(6) @va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

Tanya, I am forwarding copies of ethics advice provided by OGC to Charmain Bogue regarding the need to recuse herself from certain matters. This could benefit from some explanation. If you'd like to discuss this further today, I am free between 3:30 and 4:30 and anytime after 5:00. There is no problem sharing this with the Secretary.

From: Bradsher, Tanya J. (b)(6) @va.gov>

Sent: Wednesday, April 7, 2021 12:48 PM

To: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great, thank you so much.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6) @va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6) @va.gov>

Sent: Wednesday, April 7, 2021 12:45 PM

To: Bradsher, Tanya J. (b)(6) @va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

Tanya, I'm meeting with Mike Hogan and his ethics team at 2:00 today to further review the situation concerning OGC's ethics advice.

From: Bradsher, Tanya J. (b)(6) @va.gov>

Sent: Wednesday, April 7, 2021 12:42 PM

To: Hipolit, Richard (OGC) (b)(6) @va.gov>

Cc: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you so much for reviewing.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 12:41 PM

To: Bradsher, Tanya J. (b)(6)@va.gov>

Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

Tanya, Carrie's recommendations look good to us. I note that Mike Frueh was a long-time VBA official before moving to OEI in 2019. He served as Chief of Staff in VBA from 2016-2018. Nonetheless, we believe he is an individual with high integrity and could give unbiased consideration to the inquiry.

From: Bradsher, Tanya J. (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 11:09 AM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Dick,

I concur with Carrie's recommendation but I wanted to run the names by you before approving. Please let me know your thoughts.

Thank you so much,

Tanya

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 11:01 AM

To: Bradsher, Tanya J. (b)(6)@va.gov>

Cc: McClain, Kimberly A. (b)(6)@va.gov>

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Tanya.

We received below guidance from OGC yesterday on a short-term next step to begin gathering the data to address the attached letter. Based on OGC's email, I recommend setting up a triangle of leadership to manage the VBA part of the requirements:

Mike Frueh – as the #2 person at VBA and newest to VBA – only for the last ~8 weeks – he is in the best position to not have a long history stake in the issue

Gina Farrisee – keeps OSVA in the mix and her background in HR will be crucial to help guide Mike in data gathering and her role as DCOS demands neutrality and the provision of guidance to VBA

Mike Hogan – as a lead Ethics attorney at OGC he would be able to provide advice and recommendations on documents required and also provide OGC view on their quality and appropriateness

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6) @va.gov>

Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law

Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

From: Bradsher, Tanya J.
Sent: Thu, 8 Apr 2021 12:34:32 +0000
To: Farrisee, Gina S.;McVicker, Carrie A.
Cc: Hipolit, Richard (OGC)
Subject: Follow-up for VIEWS 4890714/Grassley

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From: DRM
Sent: Thu, 8 Apr 2021 22:04:00 +0000
To: Murphy, Thomas, VBASTL
Subject: Re: Sen Grassley

Tom,

Thank you for the background. As our team works to gather information responsive to the Senator's request, I need you to sit this one out. I've asked Gina Farrisee to take the lead, and she will be contacting individuals in VBA who may have that information.

Don't discuss this matter with your subordinates, and if anyone on your team contacts you about this, simply ask them to fully comply with any information request from Gina. Also copy Gina on any emails you send or receive related to this matter from this point forward.

DM

From: Murphy, Thomas, VBASTL (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 15:53
To: DRM
Subject: Sen Grassley

Good Afternoon Sir. Here is some of that not good news we get sometimes.

Just recently I became aware that Charmain Bogue, EDU Director, and (b)(6) were accused of an inappropriate business relationship. I had my COS find out what the last administration did about it when they became aware last November. I needed to know if they did an investigation and if so, what was the outcome. They did not. So we contacted OAWP to ask about opening an investigation as is the process when SES's are involved.

Then we received this from Sen Grassley's office.

<https://www.grassley.senate.gov/news/news-releases/grassley-seeks-sweeping-review-into-allegations-of-whistleblower-reprisal-ethics-violations-at-veterans-benefits-administration>

The other part of the allegation involves myself; Rob Reynolds, RO Director in Roanoke, VA; and Jamie Manker, Former VBA SES. At the time, I was the Acting USB, Jamie was the PDUSB, and Rob was the

DUSB for Policy. The allegations Senator Grassley mentions here are part of a long list of allegations levied by a fired former employee that claimed to be a whistleblower. I terminated her for multiple violations of VA policies. All well documented in HR files.

This series of events took place over the last two administrations ending shortly after Paul Lawrence was appointed Under Secretary for Benefits. All allegations against all of us were dismissed with the exception of "Accepting Gifts" for attending NASCAR events. The details about my case are attached. Of note, the NASCAR event was part of a long standing VA outreach contract that has since been terminated.

It was determined by Secretary Wilkie that I did NOT accept a gift for (b)(6) because (b)(6) simply accompanied me, in my official VA capacity, to a Veteran's Day Event. But in the future I should contact OGC Ethics in advance of such events.

Rob Reynolds' case was withdrawn by USB Lawrence because the USAF provided evidence that (b)(6) (b)(6) was in attendance as a (b)(6)

Jamie Manker took extreme exception to the accusation and decided he wouldn't work for VA any longer. He opted to retire. The secretaries office called and asked him to stay and that they would clear his record. He declined.

Because of these accusations, VA lost one of the most effective outreach events in the sporting world. This family friendly event was even touted in one of President Obama's speeches for its success in reaching Veterans.

From: Bradsher, Tanya J.
Sent: Thu, 8 Apr 2021 22:28:43 +0000
To: Hipolit, Richard (OGC)
Subject: RE: Grassley Matter

Thanks, hopefully together we'll get him what he wants.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:15 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Grassley Matter

I'll do that now. Thanks, Tanya.

Your revised message for the Secretary was right on track.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:13 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Grassley Matter

I did not send him the email. I recommend that you send it to him.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Thursday, April 8, 2021 6:11 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: Grassley Matter

Tanya, I'm not sure whether you have shared my earlier, more extensive advice concerning this matter with the Secretary. If not, would this be a good time for me to forward that?

From: DRM <(b)(6)@va.gov>

Sent: Thursday, April 8, 2021 6:01 PM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>

Subject: Re: From Denis

Thanks, Dick. I will use this language as my reply to Tom. It is stark, but I trust you have given this close consideration.

Thanks again,
DM

From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Thursday, April 8, 2021 16:49

To: DRM; Bradsher, Tanya J.

Subject: RE: From Denis

I am forwarding draft language for your use in responding to Tom Murphy's email of April 6th concerning the issues raised by Senator Grassley.

Tom,

(b)(5)



Denis

From: DRM (b)(6)@va.gov>

Sent: Thursday, April 8, 2021 4:36 PM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>

Cc: Bradsher, Tanya J. (b)(6)@va.gov>

Subject: From Denis

Dick,

Can you please propose some language that I can use to respond to Tom Murphy's email of earlier this week?

Thanks,
DM

From: Bradsher, Tanya J.
Sent: Fri, 16 Apr 2021 14:38:35 +0000
To: Farrisee, Gina S.
Subject: Re: For Consideration - PRA

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Farrisee, Gina S. (b)(6)@va.gov>
Sent: Friday, April 16, 2021 10:38:06 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: For Consideration - PRA

Chief,

Not finding anything more than we knew. Tom originally was given suspension, he grieved and proved the original punishment was unjust, but think we might still see an admonishment, but we don't have all the documents yet. I will see if I can get the exact "admonishment" document.

VR,

Gina

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Friday, April 16, 2021 10:33 AM
To: Farrisee, Gina S. (b)(6)@va.gov>
Subject: Re: For Consideration - PRA

Are you finding concerning information on Tom that we should consider?

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Farrisee, Gina S. (b)(6)@va.gov>
Sent: Friday, April 16, 2021 10:29:49 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: For Consideration - PRA

Morning Chief,

Mike Hogan, Carrie and I met to discuss information gathering on Grassley letter late yesterday. It is coming along with information needed from OAWP, VBA, OGC & possibly HR&A. Some information has

been compiled but more to collect today

(b)(5)

(b)(5)

VR,

Gina

From: DRM
Sent: Thu, 27 May 2021 11:28:56 +0000
To: DRM
Subject: Grassley letter

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From: Bradsher, Tanya J.
Sent: Thu, 27 May 2021 20:35:31 +0000
To: Sauber, Richard A. (OGC)
Subject: FW: Grassley
Attachments: RE: Tab 1 4890714 Grassley Transmittal Letter Aa (004)

(b)(5) Please see the attachment

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6) @va.gov
Cell (b)(6)

From: (b)(6) @va.gov>
Sent: Thursday, May 27, 2021 3:54 PM
To: Bradsher, Tanya J. (b)(6) @va.gov>
Cc: McVicker, Carrie (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>
Subject: RE: Grassley

Tanya, please see response from Mike Hogan in GC attached.

Thanks

Pre

From: Bradsher, Tanya J. (b)(6) @va.gov>
Sent: Thursday, May 27, 2021 11:29 AM
To: (b)(6) @va.gov>
Cc: McVicker, Carrie A. (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>
Subject: RE: Grassley

Great, thank you

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6) @va.gov
Cell (b)(6)

From: (b)(6) @va.gov>
Sent: Thursday, May 27, 2021 11:24 AM
To: Bradsher, Tanya J. (b)(6) @va.gov>
Cc: McVicker, Carrie A. (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>
Subject: RE: Grassley

Tanya, **Status Update:** Mike Hogan is speaking with Mr. Sauber and is awaiting a call back from OIG.

From: Farrisee, Gina S. (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 10:16 AM
To: (b)(6)@va.gov>; Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>
Subject: RE: Grassley

(b)(6)

Please reach out to Mike Hogan, he worked this letter with your team.
Thank you,
Gina

From: (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 10:08 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: RE: Grassley

Tanya, see Hansel's response attached. Happy to follow-up further with OGC.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 9:49 AM
To: Farrisee, Gina S. (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov> (b)(6)
(b)(6)@va.gov>
Subject: Grassley

Hi Ladies,
Have we traditionally stated if someone was under investigation by the IG and OAWP in letters? The Secretary is asking. Thank you

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: Hogan, Michael R. (OGC)
Sent: Thu, 27 May 2021 19:12:10 +0000
To: Harper, Prevolia
Subject: RE: Tab 1 4890714 Grassley Transmittal Letter Aa (004)

(b)(6)

The third paragraph of VA's draft *transmittal* letter (which will accompany the written answers and responsive documents to Senator Grassley (b)(5)

(b)(5)

Please contact me with any questions about this matter.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

From: (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 1:23 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: Tab 1 4890714 Grassley Transmittal Letter Aa (004)

From: (b)(6) (OGC)
Sent: Wednesday, March 07, 2018 12:50 PM
To: (b)(6) VBAVACO; (b)(6) (OGC)
Subject: RE: Vet Tech / Student Veterans of America

Thanks for the follow up.

(b)(6)

From: (b)(6), VBAVACO
Sent: Wednesday, March 07, 2018 11:22 AM
To: (b)(6) (OGC); (b)(6) (OGC)
Subject: Vet Tech / Student Veterans of America

Closing the loop.

I connected with (b)(6) and Rob Worley who both stated they have connected with SVA and do not believe there is a conflict of interest and that they are not going to be bidding directly on the work.

This is counter to my understanding from my boss Curt Coy and (b)(6) herself a few months ago. They also assured me they were not going to engage in market research or support other bidders.

I shared my concerns, Rob Worley as the project sponsor doesn't understand the notion of recusal versus COI so I will send him the below guidance so he's fully aware.

My concern remains ... scrutiny by for-profit schools, entities that do not compete or do not win an award, and the likelihood of media /social media scrutiny etc. The VA has a very strong relationship with SVA and they have shown to be strong supporters of the GI Bill. I stressed to both (b)(6) and Rob Worley that this is not in any way a negative view of SVA as an organization it's an effort to proactively protect all entities and the propriety of the pilot.

From: (b)(6) (OGC)
Sent: Wednesday, February 28, 2018 3:21 PM
To: (b)(6) (OGC); (b)(6) VBAVACO
Subject: RE: Vet Tech / Student Veterans of America

(b)(6)

Thanks for the additional guidance (GCLaws 101281).

(b)(6)

From: (b)(6) (OGC)
Sent: Wednesday, February 28, 2018 3:20 PM
To: (b)(6) (OGC); (b)(6) VBAVACO

Subject: RE: Vet Tech / Student Veterans of America

In addition to what (b)(6) wrote, if we foreclose the possibility of an 18 USC 208 issue, meaning that we're left with a recusal obligation under 502, please note that 502 contains a process for the employee to obtain a "502 authorization" from an "agency designee" (likely Mr. Coy in this situation). This authorization allows the employee to participate in the matter despite the appearance of a conflict of interest. However, because you are concerned about the appearance of a conflict, allowing her to work on the contract under a 502 authorization would do little to alter that appearance, at least in the minds of non-Federal entities that are prone to litigate. Plus, for the EST to approve a 502 authorization, you would need to show, among other things, that no one else besides (b)(6) is capable of doing this job, and I imagine that there are others who can perform her work.

It's fine for (b)(6) employees to work on this matter, even while (b)(6) is recused. But it must be clear to everyone involved that (b)(6) is not to be consulted on this matter at all.

From: (b)(6) (OGC)
Sent: Wednesday, February 28, 2018 3:11 PM
To: (b)(6) VBAVACO
Cc: (b)(6) (OGC)
Subject: RE: Vet Tech / Student Veterans of America

(b)(6)

Has (b)(6) been working with SVA, amongst others, as part of the market research, or is it contemplated that SVA will be involved in the market research. Given that the market research assists us in shaping the procurement, if it is anticipated that SVA will be a bidder then (b)(6) should recuse from the Vet Tech procurement.

(b)(6)

Specifically, the Standards of Ethical Conduct prohibit employees from participating in specific party matters where a person with whom they have a "covered relationship" is or represents a party where a reasonable person with knowledge of all the relevant facts would question the employee's impartiality. An employee has a covered relationship with his or her spouse's employer. 5 C.F.R. § 2635.502. If SVA is going to bid on the Vet Tech pilot, then (b)(6) participation in the source selection would create the appearance of a conflict. If her spouse's job is contingent on the VA contract award then her participation in the source selection would run afoul of criminal conflict of interest law prohibiting participation in official matters affecting one's outside financial interest, or that of his or her spouse. 18 U.S.C. § 208

From: (b)(6) VBAVACO
Sent: Wednesday, February 28, 2018 2:08 PM
To: (b)(6) (OGC)
Cc: (b)(6) (OGC)
Subject: Vet Tech / Student Veterans of America
Importance: High

(b)(6)

I have a few follow-up questions regarding the coordination of the acquisition below.

After raising the need for recusal of Ms. (b)(6) her leadership suggested we not go through an acquisition process and instead pursue a provisional approval of each vendor as a GI Bill school. That course of action has now been deemed as not feasible by our contracting office.

Originally - Mr. Coy had removed the entire acquisition process from Ms. (b)(6) organization to OEO due to a perceived risk that the SVA is actively engaged in conversations with vendors of Vet Tec and also planned to bid. It was unclear to us at the time if SVA would partner with vendors for the acquisition or bid independently.

We are quickly going to be conducting market research (with SVA in attendance) an RFI, and also prepare a statement of work for competition.

What are the rules of engagement for Ms. (b)(6) Staff she supervises? As it pertains to establishing the selection criteria, statement of work, and source selection board?

I am concerned about both perceptions of COIs and actual COIs. Some of the potential vendors are currently suing the VA for what they perceive as a bias against for profit schools. Both SVA and VBA EDU are under scrutiny in that allegation. When the task was assigned to me by Mr. Coy, I discovered that no NDAs were in place for contractors supporting the acquisition and that Ms. (b)(6) was not aware of the need to recuse formally. This lack of acumen raises concerns as there seems to be regular coordination with SVA officials and EDU staff. We requested guidance from VBA contracting and received the below as it pertains to recusals.

Contracting provided us the guidance below:

Personnel with covered conflicts of interest should declare them and be recused from source selection. Recusals are generally not needed for non-acquisition operations, or other phases of the acquisition life cycle (i.e. planning/market research). OGC guidance should be obtained as necessary

I would like to take their input, your guidance, and provide a recommendation to VBA leadership on best way ahead.

From: (b)(6) (OGC)

Sent: Thursday, December 07, 2017 6:05 PM

To: (b)(6) VBAVACO; (b)(6) VBAVACO

Subject: RE: Vet Tech / Student Veterans of America

(b)(6)

Good catch. You have disclosed, and (b)(6) recusing from any involvement in source selection for the Vet Tech pilot is the way forward. If Student Veterans of America (SVA) is one of the contractors then the recusal would continue. Specifically, the Standards of Ethical Conduct prohibit employees from participating in specific party

matters where a person with whom they have a "covered relationship" is or represents a party where a reasonable person with knowledge of all the relevant facts would question the employee's impartiality. An employee has a covered relationship with his or her spouse's employer. 5 C.F.R. § 2635.502. If SVA is going to bid on the Vet Tech pilot, then (b)(6) participation in the source selection would create the appearance of a conflict. If her spouse's job is contingent on the VA contract award then her participation in the source selection would run afoul of criminal conflict of interest law prohibiting participation in official matters affecting one's outside financial interest, or that of his or her spouse. 18 U.S.C. § 208.

(b)(6)

Have you been involved in the preparation of the contract documents?

Thanks for the follow up.

(b)(6)

Senior Ethics Attorney/
Deputy Ethics Official
Ethics Specialty Team

(b)(6)

Fax (202) 273-4601

From: (b)(6), VBAVACO
Sent: Thursday, December 07, 2017 1:20 PM
To: Gurland, Jonathan I. (OGC)
Cc: (b)(6) VBAVACO
Subject: Vet Tech / Student Veterans of America

(b)(6)

The new GI Bill law has directed an IT pilot called Vet Tech. This pilot allocates \$75 million ((\$15 million per year for 5 years).

The law calls for the to enter into contracts with vendors to provide training and support. Likewise the VA Education team will assist by issuing a GI Bill living stipend.

Long story short, we are getting ready to engage in design and stand up of the pilot in early Jan 2018.

(b)(6) is the GS 15 assigned to oversee the entire implementation of the Comery Act. This includes the Vet Tech pilot. I'm assigned as the pilot lead.

(b)(6) out of an abundance of caution mentioned to me that her spouse works for Student Veterans is America and that this organization has a partnership with VA and may decide to compete for the Vet Tech pilot. I suggested she connect with you to determine if a disclosure/recusal is needed. I want to make sure we kick off the pilot properly and don't inadvertently create a negative perception.

(b)(6)

Sent with Good (www.good.com <<http://www.good.com>>)

From: (b)(6) (OGC)
Sent: Monday, September 09, 2019 8:04 AM
To: (b)(6) @va.gov>
Subject: RE: PFD 2019

Thanks for making that change. I certified that your report complies with disclosure laws and that there are no apparent conflicts of interest. I offer the following guidance going forward.

A criminal statute prohibits you from participating in a particular VA matter that will directly affect not only your own financial interests but also those interests that are imputed to you, such as those of your husband and by extension his consulting firm. 18 USC 208. You should recuse yourself from any VA matters directly affecting these financial interests.

You reported holding stock. This same statute prohibits you from participating in a particular VA matter that has a direct and predictable effect on a company in which you own stock. You may, however, participate in such a matter if the affected stock that you, your spouse and minor children own in the aggregate does not exceed \$15,000. Note that this \$15,000 *de minimis* exception does not apply to non-publicly-traded stock.

If you haven't done so already, please remember to fulfill your annual live ethics training requirement by December 31, 2019. Please let me know if you have any questions and thanks again for making that change.

(b)(6)

Staff Attorney and Deputy Ethics Official
Office of General Counsel
Ethics Specialty Team

(b)(6)

Please visit our Government Ethics website
<<https://vawww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> for more
information on ethics topics

From: (b)(6)
Sent: Friday, September 06, 2019 3:23 PM
To: (b)(6) (OGC) (b)(6) @va.gov <mailto:(b)(6)@va.gov>
Subject: RE: PFD 2019

Hi (b)(6)

Sorry for the delay I was out last week. I amended the document.

(b)(6)

Executive Director
Education Service
Veterans Benefits Administration

(b)(6)@va.gov <mailto:(b)(6)@va.gov>

From: (b)(6) (OGC)

Sent: Friday, August 30, 2019 10:20 AM

To: (b)(6)@va.gov <mailto:(b)(6)@va.gov>

Subject: PFD 2019

Good morning. I have been assigned review of your New Entrant Public Financial Disclosure report (278). Before I can certify the report I need you to make one minor amendment.

In Part 6, Item 6, you disclosed your spouse's interest in "Rental Property." Please amend your report by describing the type of real estate (e.g., "residential," "commercial," "industrial," or "undeveloped") and the city and state in which it is located. Providing the county and state is also acceptable. But do not provide a street address. Here's an example: *Commercial property, Sullivan County, NY.*

Here's the Integrity login link for your convenience:

<<<https://www.integrity.gov/efeds-login/>>>. Please let me know when you've made these amendments or if you have any questions. You can reach me at the telephone number listed below.

(b)(6)

Staff Attorney and Deputy Ethics Official
Office of General Counsel
Ethics Specialty Team

(b)(6)

Please visit our Government Ethics website
<<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> for more information on ethics topics

Notified Victor

From: (b)(6) (OGC)
Sent: Wednesday, July 29, 2020 7:30 AM
To: Bogue, Charmain, VBAVACO
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Good morning. Thank you for updating the report. Your review is now complete. I certified that your report complies with disclosure laws and regulations and there are no apparent conflicts of interest.

As a reminder, the Standards of Conduct provide that an employee should not participate in any VA matter where someone with whom he has a "covered relationship" is a party or represents a party, if a reasonable person would question the employee's impartiality if participating. 5 C.F.R. § 2635.502. For your information, an employee has a covered relationship with his spouse's employer for purposes of applying this prohibition, so these restrictions would apply to any VA matters involving your spouse's business or consulting firm.

In addition, you reported holding stock, including for companies that do business with the VA. Please be aware that pursuant to a criminal statute, 18 U.S.C. § 208, you are disqualified from personally and substantially participating in a particular VA matter that has a direct and predictable effect on a company in which you own stock. You may, however, participate in such a matter if the affected publicly-traded stock or stocks that you, your spouse or minor children own in the aggregate does not exceed \$15,000. Note that this \$15,000 de minimis exception does not apply to non-publicly-traded stock.

Please remember to fulfill your annual live ethics training requirement by December 31, 2020 and feel free to let me know if you have any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information
<https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: (b)(6) (OGC)
Sent: Monday, July 20, 2020 5:57 AM
To: Bogue, Charmain, VBAVACO (b)(6) @va.gov
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Thank you for the additional information.

I have returned the report to you to be updated. Both the assets in the sold IRA and new stock purchases need to be included in Transactions (section #7).

Once you have updated the information, please let me know so I can pull the report back in my queue for review and approval.

Thank you. Please reach out with any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information
<https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: Bogue, Charmain, VBAVACO (b)(6) @va.gov <mailto:(b)(6)@va.gov>
Sent: Friday, July 17, 2020 11:22 AM
To: (b)(6) (OGC) (b)(6) @va.gov <mailto:(b)(6)@va.gov>
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Hello,

IRA- sold

Stocks line 8-12, only of the stocks is new

I am unable to edit so not sure if there is something you need to do so I can make the changes.

Charmain Bogue
Executive Director
Education Service
Veterans Benefits Administration

(b)(6)@va.gov <mailto:(b)(6)@va.gov>

From: (b)(6)@va.gov (OGC) (b)(6)@va.gov <mailto:(b)(6)@va.gov> >
Sent: Tuesday, June 30, 2020 7:13 PM
To: Bogue, Charmain, VBAVACO (b)(6)@va.gov <mailto:(b)(6)@va.gov> >
Subject: INITIAL REVIEW: Public Financial Disclosure Report
Importance: High

Good afternoon. I have been assigned review of your Annual Public Financial Disclosure report (278) and that review is now complete. I've completed my initial review; however, before I can certify the report I need to confirm inform or seek amendments. Please provide this information by July 10. I will be out of the office until July 8 but can respond to non-encrypted emails.

New And Deleted Assets

When comparing this year's report to 2019's, I noticed there was no longer an employment-related asset in section two. Did you sell off the assets in the IRA, or was it no longer reportable due to value?

In addition, several new stocks were reported in Section 6 (nos. 8-12). Were these newly purchased, or were they under the reporting threshold in 2019? If these are new purchases, the stocks also need to be identified in section 7.

Thank you for the additional information. Once I have this, I can advise if the report needs to be amended, or I can make the changes. Please reach out with any questions.

(b)(6)

VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vawww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information
<https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

**Department of
Veterans Affairs**

Memorandum

Date: November 14, 2018

From: Executive Director, Office of Accountability and Whistleblower Protection (OAWP)

Subj: Accountability Notification

To: Secretary, U.S. Department of Veterans Affairs

Pursuant to 38 U.S.C. § 323(c)(1)(I), the Office of Accountability and Whistleblower Protection is informing you that it is recommending that disciplinary action be proposed against the following individuals. Section 323(f)(2) requires that action be initiated within 60 days of your receipt of this recommendation.

1. (b)(6) Office of Small and Disadvantaged Business Utilization
2. Thomas Murphy, Director, Midwest District, VBA
3. Jamie Manker, Chief Financial Officer, VBA
4. Robert Reynolds, Director, Roanoke Regional Office, VBA
5. (b)(6) VA Central Western Massachusetts Health Care System
6. (b)(6) VISN 7
7. (b)(6) Augusta VA Medical Center
8. (b)(6) VA Puget Sound Health Care System

(b)(6), (b)(7)(C)

Kirk M. Nicholas



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

February 25, 2019

Thomas Murphy
Director
Midwest District Office
Veterans Benefits Administration
9700 Page Avenue, Suite 301
St. Louis, MO 63132

In accordance with 38 U.S.C. § 713, I am proposing to suspend you for 10 days from your position as Director of the Midwest District Office, Veterans Benefits Administration, Department of Veterans Affairs, based on the following reasons:
Violation of 5 CFR 2635.202: General Prohibition on Solicitation or Acceptance of Gifts.

BACKGROUND

The following information is being provided for purposes of background only, and not for purposes of setting forth any charge

You are the Director of the Midwest District Office, Veterans Benefits Administration (VBA). Attachment A. You were reassigned to this position on May 13, 2018. Attachment A. Your previous position was as the Acting Under Secretary of VBA from June 26, 2016, until your reassignment on May 13, 2018, to your current position. Attachment B. You have been a Senior Executive Service member for over 9 years since your appointment on August 2, 2009. Attachment C. You have been a federal civilian employee for 29 years since your first Excepted Service Appointment on September 24, 1989. Attachment E.

On June 20, 2018, the Office of Accountability and Whistleblower Protection (OAWP) opened an investigation into allegations of contracting improprieties. Attachment D.

The ethics violations allegations were related to 5 CFR 2635.202(b)(2): General Prohibition on Solicitation or Acceptance of Gifts. Attachment F. Section 2635.202(b) states that:

"(b) *Prohibition on accepting gifts.* Except as provided in this subpart, an employee may not, directly or indirectly:
(1) Accept a gift from a prohibited source; (2) Accept a gift given because of the employee's official position."

5 CFR 2635.203 (f) defines indirect gift acceptance as:

"(f) A gift which is solicited or accepted indirectly includes a gift: (1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee"

Attachment Q.

CHARGE ONE: VIOLATION OF 5 CFR 2635.202: GENERAL PROHIBITION ON SOLICITATION OR ACCEPTANCE OF GIFTS.

VBA has an ongoing contract with NASCAR. Attachment G, Attachment H, Attachment I, page 39, and Attachment N. NASCAR events are attended by VBA officials and employees in a mobile outreach center. Attachment I, Page 40 and Attachment N.

When questioned regarding whether (b)(6) attended the any NASCAR events with you, your attorney responded for you stating that (b)(6) did attend the Phoenix, Arizona, NASCAR event with you, which was confirmed by Ms. (b)(6) (b)(6) Attachment J, Attachment K, Attachment L, and Attachment M.

The Ethics regulations state that a gift can be accepted if it is *de minimus*, meaning less than \$20 per 5 CFR 2635.204(a). Attachment F. The Investigation team contacted (b)(6) contact point for the Phoenix Raceway, regarding the price of the access passes given to (b)(6) Attachment O. Mr. (b)(6) stated that the passes were worth \$520.00. Attachment O. Therefore, the gift given to (b)(6) does not fall within the *de minimus* limits.

You accepted a gift for (b)(6) which was given based on your official position a violation of 5 CFR 2635.202(b)(2).

PENALTY AND RATIONALE

I considered many factors when proposing your suspension. First and foremost was the fact that you have had yearly training in Ethics. Attachment P. You have ethical training on the acceptance of gifts for yourself or your family members as well as what would be considered an improper source in the acceptance of gifts. Attachment P. I also considered the fact that you assumed without contacting the OGC Ethics team that (b)(6) attendance at the NASCAR event, while you were conducting official duties, would not present any ethical issues. You stated, through your attorney, that

there was no cost to the government for (b)(6) travel and accommodation to attend the NASCAR event; however, you failed to consider how (b)(6) attendance, and use of a "hot pass", would be perceived. Cost is not the only ethical consideration in the attendance of an event by a government employee acting in their official capacity. Through your actions, (b)(6) accepted a gift from an entity with which VBA does business on a regular basis.

You have damaged my confidence in your abilities to act ethically while representing the VBA. A fundamental competency for members of the SES is integrity/honesty and the ability to act in an ethical manner. You have failed the employees you lead by example and you have failed the VBA.

You have 9 years as a member of the SES; and, 29 years as a federal employee. I should be able to expect trustworthiness and diligence in performance of your duties, especially from an employee with 9 years of experience as a Senior Leader, who has become a member of the SES. I find this unacceptable behavior, especially in a senior member of my staff, whose own conduct should set the standards for his subordinates. I find that suspending you from your position as Director and from federal service for 10 days is the appropriate penalty warranted in this situation.

YOUR RIGHTS

If you choose to do so, you have until close of business 7 business days from the date of receipt of this notice to reply to this notice in writing, and to submit affidavits and other documentary evidence in support of your reply, showing why the charge(s) is (are) unfounded and any other reasons why your [removal/demotion/suspension] should not be effected. Business days are defined as Monday through Friday, in Washington, DC, excluding Federal holidays. If you elect to submit a written reply, it must be submitted through (b)(6)@va.gov and received no later than 11:59 pm, 7 business days from receipt of this notice.

Your written reply should be submitted to:

Paul Lawrence
Under Secretary for Benefits
c/o (b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Avenue, NW
Washington, DC
20420

The evidence on which this notice of proposed action is based will be provided to you. You will be allowed 8 hours of official duty time for reviewing the evidence relied on to support the reason(s) in this notice, preparing a written reply, and for securing affidavits. Arrangements for the use of official time or requests for additional time should be made with me.

You may be represented by an attorney or other representative of your choice at all stages of this matter, up to and including the issuance of the decision. Please advise me in writing of any representative designated.

The decision to effect the action proposed has not been made. The Deciding Official, who will make the decision, will give full and impartial consideration to your reply, if submitted, and the evidence upon which this notice of proposed action is based. You will be given a written decision within 15 business days of the date you receive the notice of proposed action.

You will be retained in a pay and duty status during the advance notice period.

If you have any questions or do not understand the above reason(s) why your removal is proposed, contact me, or (b)(6) HR Specialist, at

(b)(6) @va.gov or (b)(6)

(b)(6)

Margarita Devlin
Principal Deputy Under Secretary for Benefits

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) MURPHY, THOMAS J						2. Social Security Number (b)(6)		3. Date of Birth		4. Effective Date 05/13/2018	
FIRST ACTION						SECOND ACTION					
5-A. Code 721		5-B. Nature of Action REASSIGNMENT				6-A. Code		6-B. Nature of Action			
5-C. Code V5M		5-D. Legal Authority 5 U.S.C. 3395(A)(1)(A) REASSIGN--SES CAREER.				6-C. Code		6-D. Legal Authority			
5-E. Code		5-F. Legal Authority				6-E. Code		6-F. Legal Authority			
7. FROM: Position Title and Number PRINCIPAL DEPUTY UNDER SECRETARY FOR BENEFITS PD: 000550						15. TO: Position Title and Number DIRECTOR PD: 007570 POSITION: 90037688					
8. Pay Plan ES		9. Occ. Code 0301		10. Grade or Level 00		11. Step or Rate 00		12. Total Salary \$185,100.00		13. Pay Basis PA	
16. Pay Plan ES		17. Occ. Code 0340		18. Grade or Level 00		19. Step or Rate 00		20. Total Salary/Award \$189,600.00		21. Pay Basis PA	
12A. Basic Pay \$185,100.00		12B. Locality Adj. \$0		12C. Adj. Basic Pay \$185,100.00		12D. Other Pay \$0		20A. Basic Pay \$189,600.00		20B. Locality Adj. \$0	
								20C. Adj. Basic Pay \$189,600.00		20D. Other Pay \$0	
14. Name and Location of Position's Organization VETERANS BENEFITS ADMINISTRATION VBA OFC/UNDER SECRETARY WASHINGTON DC USA						22. Name and Location of Position's Organization VETERANS BENEFITS ADMINISTRATION VBA OFFICE OF DIRECTOR DETROIT MI USA					
EMPLOYEE DATA											
23. Veterans Preference (b)(6) 1 - None 2 - 5-Point 3 - 10-Point/Disability 4 - 10-Point/Compensable 5 - 10-Point/Other 6 - 10-Point/Compensable/50%						24. Tenure (b)(6) 0 - None 1 - Permanent 2 - Conditional 3 - Indefinite		25. Agency Use		26. Veterans Preference for RIF <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
27. FEGLI Z5 BASIC + OPTION B (5X) + OPTION A + OPTION C (5X)						28. Annuitant Indicator 9 NOT APPLICABLE		29. Pay Rate Determinant 0 REGULAR RATE			
30. Retirement Plan K FERS AND FICA				31. Service Comp. Date (Leave) 04/29/1998		32. Work Schedule F FULL TIME		33. Part-Time Hours Per Biweekly Pay Period			
POSITION DATA											
34. Position Occupied 1 - Competitive Service 2 - Excepted Service 3 - SES General 4 - SES Career Reserved 3				35. FLSA Category E - Exempt N - Nonexempt E		36. Appropriation Code 3010-2100		37. Bargaining Unit Status 8888			
38. Duty Station Code 29-7080-510				39. Duty Station (City - County - State or Overseas Location) ST LOUIS-CSEMO MO							
40. Agency Data 394VB		41.		42.		43.		44.			
45. Remarks PAYABLE SALARY LIMITED TO \$188968 BY 5 U.S.C. 5305 (F) (OR OTHER STATUTORY AUTHORITY)											
46. Employing Department or Agency DEPARTMENT OF VETERANS AFFAIRS						50. Signature/Authentication and Title of Approving Official ELECTRONICALLY SIGNED BY: TRACEY THERIT ACTING EXECUTIVE DIRECTOR					
47. Agency Code VALA		48. Personnel Office ID 1007		49. Approval Date 05/24/2018							

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) MURPHY, THOMAS J				2. Social Security Number (b)(6)		3. Date of Birth		4. Effective Date 05/13/2018			
FIRST ACTION				SECOND ACTION							
5-A. Code 721		5-B. Nature of Action REASSIGNMENT		6-A. Code		6-B. Nature of Action					
5-C. Code V5M		5-D. Legal Authority 5 U.S.C. 3395 (A) (1) (A) REASSIGN--SES C		6-C. Code		6-D. Legal Authority					
5-E. Code		5-F. Legal Authority		6-E. Code		6-F. Legal Authority					
7. FROM: Position Title and Number PRINCIPAL DEPUTY UNDER SECRETARY FOR BENEFITS PD: 000550				15. TO: Position Title and Number DIRECTOR PD: 007570 POSITION: 90037688							
8. Pay Plan ES		9. Occ. Code 0301		10. Grade or Level 00		11. Step or Rate 00		12. Total Salary \$185,100.00		13. Pay Basis PA	
16. Pay Plan ES		17. Occ. Code 0340		18. Grade or Level 00		19. Step or Rate 00		20. Total Salary/Award \$189,600.00		21. Pay Basis PA	
12A. Basic Pay \$185,100.00		12B. Locality Adj. \$0		12C. Adj. Basic Pay \$185,100.00		12D. Other Pay \$0		20A. Basic Pay \$189,600.00		20B. Locality Adj. \$0	
				20C. Adj. Basic Pay \$189,600.00		20D. Other Pay \$0					
14. Name and Location of Position's Organization VETERANS BENEFITS ADMINISTRATION VBA OFC/UNDER SECRETARY WASHINGTON DC USA				22. Name and Location of Position's Organization VETERANS BENEFITS ADMINISTRATION VBA OFFICE OF DIRECTOR DETROIT MI USA							
EMPLOYEE DATA											
23. Veterans Preference (b)(6) 1 - None 3 - 10-Point/Disability 5 - 10-Point/Other 2 - 5-Point 4 - 10-Point/Compensable 6 - 10-Point/Compensable/30%				24. Tenure (b)(6) 0 - None 2 - Conditional 1 - Permanent 3 - Indefinite				25. Agency Use		26. Veterans Preference for RIF X YES NO	
27. FEGLI Z5 BASIC + OPTION B (5X) + OPTION A + OPTION C (28. Annuitant Indicator 9 NOT APPLICABLE				29. Pay Rate Determinant 0 REGULAR RATE			
30. Retirement Plan K FERS AND FICA				31. Service Comp. Date (Leave) 04/29/1998				32. Work Schedule F FULL TIME		33. Part-Time Hours Per Biweekly Pay Period	
POSITION DATA											
34. Position Occupied 3 1 - Competitive Service 3 - SES General 2 - Excepted Service 4 - SES Career Reserved				35. FLSA Category E E - Exempt N - Nonexempt		36. Appropriation Code 3010-2100				37. Bargaining Unit Status 8888	
38. Duty Station Code 29-7080-510				39. Duty Station (City - County - State or Overseas Location) ST LOUIS-CSEMO MO							
40. Agency Data 394VB		41.		42.		43.		44.			
45. Remarks PAYABLE SALARY LIMITED TO \$188968 BY 5 U.S.C. 5305 (F) (OR OTHER STATUTORY AUTHORITY)											
46. Employing Department or Agency DEPARTMENT OF VETERANS AFFAIRS						50. Signature/Authentication and Title of Approving Official ELECTRONICALLY SIGNED BY: TRACEY THERIT ACTING EXECUTIVE DIRECTOR					
47. Agency Code VALA		48. Personnel Office ID 1007		49. Approval Date 05/24/2018							

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) MURPHY, THOMAS J				2. Social Security Number (b)(6)		3. Date of Birth		4. Effective Date 8/2/2009			
FIRST ACTION				SECOND ACTION							
5-A. Code 142		5-B. Nature of Action SES CAREER APPOINTMENT		6-A. Code		6-B. Nature of Action					
5-C. Code V2M		5-D. Legal Authority 5 U.S.C. 3393		6-C. Code		6-D. Legal Authority					
5-E. Code		5-F. Legal Authority		6-E. Code		6-F. Legal Authority					
7. FROM: Position Title and Number				15. TO: Position Title and Number DIRECTOR DVES0429							
8. Pay Plan		9. Occ. Code		10. Grade or Level		11. Step or Rate		12. Total Salary		13. Pay Basis	
12A. Basic Pay		12B. Locality Adj.		12C. Adj. Basic Pay		12D. Other Pay		16. Pay Plan ES		17. Occ. Code 0340	
								18. Grade or Level 00		19. Step or Rate 00	
								20. Total Salary/Award \$138,075		21. Pay Basis PA	
14. Name and Location of Position's Organization				22. Name and Location of Position's Organization VA REGIONAL OFFICE OFFICE OF DIRECTOR SAN JUAN PR							
EMPLOYEE DATA											
23. Veterans Preference (b)(6) 1 - None 2 - 5-Point 3 - 10-Point/Disability 4 - 10-Point/Compensable 5 - 10-Point/Other 6 - 10-Point/Compensable/50%				24. Tenure (b)(6) 0 - None 1 - Permanent 2 - Conditional 3 - Indefinite				25. Agency Use		26. Veterans Preference for RIF X YES NO	
27. FEGLI Z5 BASIC + OPTION B (5X) + OPTION A + OPTION C (5X)				28. Annuitant Indicator 9 NOT APPLICABLE				29. Pay Rate Determinant 0 REGULAR RATE			
30. Retirement Plan K FERS & FICA				31. Service Comp. Date (Leave) 4/29/1998				32. Work Schedule F FULL-TIME		33. Part-Time Hours Per Biweekly Pay Period	
POSITION DATA											
34. Position Occupied 1 - Competitive Service 2 - Excepted Service 3 - SES General 4 - SES Career Reserved 3				35. FLSA Category E - Exempt N - Nonexempt E				36. Appropriation Code 3010.2100		37. Bargaining Unit Status 8888	
38. Duty Station Code RQ-0480-072				39. Duty Station (City - County - State or Overseas Location) SAN JUAN PR							
40. Agency Data 355		41.		42.		43.		44.			
45. Remarks +14.00% COLA SELECTED FROM * VBA-09-03 DATED * 03/26/2009 OPF MAINTAINED BY CO WASHINGTON DC 20420. VETERAN'S PREFERENCE IS NOT APPLICABLE TO THE SENIOR EXECUTIVE SERVICE. TENURE AS USED FOR 5 USC 3502 IS NOT APPLICABLE TO THE SENIOR EXECUTIVE SERVICE. SUBJECT TO SATISFACTORY COMPLETION OF 1-YEAR SES PROBATIONARY PERIOD BEGINNING * 08/02/2009 FROZEN SERVICE: NONE. CREDITABLE MILITARY SERVICE: *01 YRS, 01 MONTHS. PREVIOUS RETIREMENT COVERAGE: * FERS & FICA EMPLOYEE IS AUTOMATICALLY COVERED UNDER FERS CONTINUED EMPLOYMENT IN THIS POSITION IS CONDITIONED UPON FAVORABLE ADJUDICATION OF APPLICABLE BACKGROUND INVESTIGATION OR NATIONAL AGENCY CHECK WITH WRITTEN INQUIRIES (NACI)											
46. Employing Department or Agency DEPARTMENT OF VETERANS AFFAIRS						50. Signature/Authentication and Title of Approving Official MICHELLE CAMPBELL HUMAN RESOURCES OFFICER ELECTRONICALLY SIGNED					
47. Agency Code VA LA		48. Personnel Office ID 1738		49. Approval Date 8/2/2009							

**Department of
Veterans Affairs**

Memorandum

Date: June 20, 2018

From: Director, Investigations Division, Office of Accountability and Whistleblower Protection (OAWP)

Subj: Administrative Investigation – *Washington, DC-2018-2463*

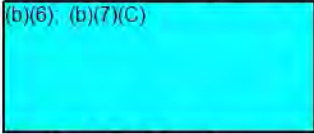
To: (b)(6); (b)(7)(C) Investigator, OAWP
(b)(6); (b)(7)(C) Investigator, OAWP

1. You are hereby appointed to investigate the following claims pursuant to OIG Hotline Non-Case Referral 2018-15474 and letter from Whistleblowers of America (WoA):

- a. Whether Thomas Murphy, Acting Under Secretary for Benefits, and/or Jamie Manker, Acting Principal Deputy Under Secretary for Benefits, have manipulated or inappropriately used funds allocated to the VA's Transition Assistance Program (TAP);
 - b. Whether Mr. Murphy was inappropriately involved in the drafting and/or editing of the TAP contract in order to favor his own personal needs;
 - c. Whether Mr. Murphy or any other senior leader made inappropriate or unprofessional remarks during a 2017 offsite leadership meeting in McLean, VA;
 - d. Whether Mr. Murphy committed a Prohibited Personnel Practice when Mr. Rob Reynolds was promoted to a Deputy Under Secretary position;
 - e. Whether VBA senior leaders have attended VIP NASCAR events in their official capacity using VBA funds or through vendor contracts; and/or
 - f. Whether Mr. Murphy has wasted taxpayer money through the use of mandatory overtime to reduce disability claims backlog.
2. This memorandum authorizes you to determine the type of investigation necessary to inquire into all aspects of this matter as well as any other related and unrelated issues of performance or misconduct; to require VA employees to cooperate with you; to require all employees having any knowledge of the identified issues to furnish testimony under oath or affirmation without a pledge of confidentiality; to obtain voluntary sworn testimony from other individuals; to administer oaths and affirmations; and to gather any evidence that you determine is necessary and relevant. In accordance with VA Handbook 0700, I authorize you to tailor this investigation to effectively meet the requirements related to the matter being investigated, including but not limited to exercising discretion to seek the assistance of subject matter experts and preparing a summary report, as you deem reasonable and appropriate. These authorities are delegated for the purpose and duration of this investigation only.

3. Please initiate preparations immediately and submit your completed report and investigative file to me no later than forty-five (45) days from the commencement of your investigation. Extensions of time will be rare and only granted for just cause.
4. I appreciate your willingness to review these issues.

(b)(6), (b)(7)(C)



Kurt P. Martin

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) JOSEPH, THOMAS, JOSEPH				2. Social Security Number (b)(6)		3. Date of Birth 09/24/89		4. Effective Date 09/24/89			
FIRST ACTION				SECOND ACTION							
5-A. Code 170		5-B. Nature of Action EXCEPTED APPT		5-A. Code		5-B. Nature of Action					
5-C. Code VRK		5-D. Legal Authority 32 USC 709		5-C. Code		5-D. Legal Authority					
5-E. Code		5-F. Legal Authority		5-E. Code		5-F. Legal Authority					
7. FROM: Position Title and Number				15. TO: Position Title and Number SUPERVISORY PERSONNEL MANAGEMENT SPEC R7704100							
8. Pay Plan		9. Occ. Code		10. Grade or Level		11. Step or Rate		12. Salary \$0.00		13. Pay Basis	
15. Pay Plan GS		17. Occ. Code 0201		18. Grade or Level 09		19. Step or Rate 01		20. Salary/Award \$23846.00		21. Pay Basis PA	
14. Name and Location of Position's Organization				22. Name and Location of Position's Organization Department of the Army, TAG-CO 300 Logan Street Denver, Colorado 80203-4072							
EMPLOYEE DATA											
23. Veterans Preference (b)(6) 1—None 3—10 Pt. Disab. 5—10 Pt. Other 2—5 Pt. 4—10 Pt. Comp. 6—10 Pt/30% Comp.				24. Tenure (b)(6) 0—None 2—Conditional 1—Permanent 3—Indefinite		25. Agency Use 00		26. Veterans Preference for RUF <input type="checkbox"/> YES <input type="checkbox"/> NO			
27. FEQU B WAIVED				28. Annuitant Indicator 9 1—Resmt. Ann-CS 3—RETM 5—RETM & CS 2—RETO 4—RETO & CS 6—Not Applicable		29. Pay Rate Determinant 0					
30. Retirement Plan N				31. Service Comp. Data (Leave) 08/17/88		32. Work Schedule F F—Full-time 1—Intermittent J—INT Seasonal P—Part-time 6—FT Seasonal M—FT On Call Q—PT Seasonal R—PT On Call		33. Part-Time Hours Per Biweekly Pay Period			
POSITION DATA											
34. Position Occupied 2 1—Competitive Service 3—SES General 2—Excepted Service 4—SES Career Reserved				35. FLSA Category E E—Exempt N—Nonexempt		36. Appropriation Code 539892.11 Md: 3344 Lin: 50 S Lin				37. Bargaining Unit Status 8888	
38. Duty Station Code 08 0600 031				39. Duty Station (City—County—State or Overseas Location) DENVER, CO 80203-4072							
40. Agency Data SEX M		41. TPMIS: ED LVL: 10		42. SUPV CODE: 1		43. UNIT: SPMO		44.			

45. Remarks

APPOINTMENT AFFIDAVIT EXECUTED 09 24 89.
APPOINTMENT SUBJECT TO COMPLETION OF ONE YEAR TRIAL PERIOD BEGINNING 09 24 89.
CREDITABLE MILITARY SERVICE: 01 YEARS 01 MONTHS.
PREVIOUS RETIREMENT COVERAGE: 00 YEARS 00 MONTHS.
AUTOMATICALLY COVERED UNDER FERS.
TSP-SCD: 09 24 89.
SCD FOR RETIREMENT: 09 24 89; SUBJECT TO CHANGE UPON COMPLETION OF MILITARY DEPOSIT.

Supervisors Name: (b)(6)			(b)(6)		
Health Benefits Code: 00ZZZ					
DIC: WBAZAA					
48. Employing Department or Agency Department of the Army, TAG-CO					
47. Agency Code AR NG		48. Personnel Office ID 3340		49. Approval Date 27 Sep 89	

any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

Subpart B— Gifts From Outside Sources

SOURCE: 81 FR 81648, Nov. 18, 2016, unless otherwise noted.

§ 2635.201 Overview and considerations for declining otherwise permissible gifts.

(a) *Overview.* This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or any gift given because of the employee's official position, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

(b) *Considerations for declining otherwise permissible gifts.* (1) Every employee has a fundamental responsibility to the United States and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. An employee's actions should promote the public's trust that this responsibility is being met. For this reason, employees should consider declining otherwise permissible gifts if they be-

lieve that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift.

(2) An employee who is considering whether acceptance of a gift would lead a reasonable person with knowledge of the relevant facts to question his or her integrity or impartiality may consider, among other relevant factors, whether:

(i) The gift has a high market value;

(ii) The timing of the gift creates the appearance that the donor is seeking to influence an official action;

(iii) The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and

(iv) Acceptance of the gift would provide the donor with significantly disproportionate access.

(3) Notwithstanding paragraph (b)(1) of this section, an employee who accepts a gift that qualifies for an exception under § 2635.204 does not violate this subpart or the Principles of Ethical Conduct set forth in § 2635.101(b).

(4) Employees who have questions regarding this subpart, including whether the employee should decline a gift that would otherwise be permitted under an exception found in § 2635.204, should seek advice from an agency ethics official.

Example 1 to paragraph (b): An employee of the Peace Corps is in charge of making routine purchases of office supplies. After a promotional presentation to highlight several new products, a vendor offers to buy the employee lunch, which costs less than \$20. The employee is concerned that a reasonable person may question her impartiality in accepting the free lunch, as the timing of the offer indicates that the donor may be seeking to influence an official action and the company has interests that may be substantially affected by the performance or nonperformance of the employee's duties. As such, although acceptance of the gift may be permissible under § 2635.204(a), the employee decides to decline the gift.

§ 2635.202 General prohibition on solicitation or acceptance of gifts.

(a) *Prohibition on soliciting gifts.* Except as provided in this subpart, an employee may not, directly or indirectly:

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(1) Solicit a gift from a prohibited source; or

(2) Solicit a gift to be given because of the employee's official position.

(b) *Prohibition on accepting gifts.* Except as provided in this subpart, an employee may not, directly or indirectly:

(1) Accept a gift from a prohibited source; or

(2) Accept a gift given because of the employee's official position.

(c) *Relationship to illegal gratuities statute.* A gift accepted pursuant to an exception found in this subpart will not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B), unless it is accepted in return for being influenced in the performance of an official act. As more fully described in § 2635.205(d)(1), an employee may not solicit or accept a gift if to do so would be prohibited by the Federal bribery statute, 18 U.S.C. 201(b).

Example 1 to paragraph (c): A Government contractor who specializes in information technology software has offered an employee of the Department of Energy's information technology acquisition division a \$15 gift card to a local restaurant if the employee will recommend to the agency's contracting officer that she select the contractor's products during the next acquisition. Even though the gift card is less than \$20, the employee may not accept the gift under § 2635.204(a) because it is conditional upon official action by the employee. Pursuant to §§ 2635.202(c) and 2635.205(a), notwithstanding any exception to the rule, an employee may not accept a gift in return for being influenced in the performance of an official act.

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Agency* has the meaning set forth in § 2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and

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meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term excludes the following:

(1) Modest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation;

Example 1 to paragraph (b)(2): After giving a speech at the facility of a pharmaceutical company, a Government employee is presented with a glass paperweight in the shape of a pill capsule with the name of the company's latest drug and the date of the speech imprinted on the side. The employee may accept the paperweight because it is an item with little intrinsic value which is intended primarily for presentation.

Example 2 to paragraph (b)(2): After participating in a panel discussion hosted by an international media company, a Government employee is presented with an inexpensive portable music player emblazoned with the media company's logo. The portable music player has a market value of \$25. The employee may not accept the portable music player as it has a significant independent use as a music player rather than being intended primarily for presentation.

Example 3 to paragraph (b)(2): After giving a speech at a conference held by a national association of miners, a Department of Commerce employee is presented with a block of granite that is engraved with the association's logo, a picture of the Appalachian Mountains, the date of the speech, and the employee's name. The employee may accept this item because it is similar to a plaque, is designed primarily for presentation, and has little intrinsic value.

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of the employee's official duties;

Example 1 to paragraph (b)(5): A Government employee is attending a free trade show on official time. The trade show is held in a public shopping area adjacent to the employee's office building. The employee voluntarily enters a drawing at an individual vendor's booth which is open to the public. She fills in an entry form on the vendor's display table and drops it into the contest box. The employee may accept the resulting prize because entry into the contest was not required by or related to her official duties.

Example 2 to paragraph (b)(5): Attendees at a conference, which is not open to the public, are entered in a drawing for a weekend getaway to Bermuda as a result of being registered for the conference. A Government employee who attends the conference in his official capacity could not accept the prize under paragraph (b)(5) of this section, as the event is not open to the public.

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a current or former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

Example 1 to paragraph (b)(7): An employee at the Occupational Safety and Health Administration is assigned to travel away from her duty station to conduct an investigation of a collapse at a construction site. The employee's agency is paying for her travel expenses, including her airfare. The employee may accept and retain travel promotional items, such as frequent flyer miles, received as a result of her official travel, to the extent permitted by 5 U.S.C. 5702, note, and 41 CFR part 301-53.

(8) Free attendance to an event provided by the sponsor of the event to:

(i) An employee who is assigned to present information on behalf of the agency at the event on any day when the employee is presenting;

(ii) An employee whose presence on any day of the event is deemed to be essential by the agency to the presenting employee's participation in the event, provided that the employee is accompanying the presenting employee; and

(iii) The spouse or one other guest of the presenting employee on any day when the employee is presenting, provided that others in attendance will generally be accompanied by a spouse or other guest, the offer of free attendance for the spouse or other guest is

unsolicited, and the agency designee, orally or in writing, has authorized the presenting employee to accept;

Example 1 to paragraph (b)(8): An employee of the Department of the Treasury who is assigned to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of § 2635.204(a), the employee may accept a token of appreciation that has a market value of \$20 or less.

Example 2 to paragraph (b)(8): An employee of the Securities and Exchange Commission is assigned to present the agency's views at a roundtable discussion of an ongoing working group. The employee may accept free attendance to the meeting under paragraph (b)(8) of this section because the employee has been assigned to present information at the meeting on behalf of the agency. If it is determined by the agency that it is essential that another employee accompany the presenting employee to the roundtable discussion, the accompanying employee may also accept free attendance to the meeting under paragraph (b)(8)(ii) of this section.

Example 3 to paragraph (b)(8): An employee of the United States Trade and Development Agency is invited to attend a cocktail party hosted by a prohibited source. The employee believes that he will have an opportunity to discuss official matters with other attendees while at the event. Although the employee may voluntarily discuss official matters with other attendees, the employee has not been assigned to present information on behalf of the agency. The employee may not accept free attendance to the event under paragraph (b)(8) of this section.

(9) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to the employee's official duties which take place away from the employee's duty station, provided that the agency's acceptance is in accordance with the implementing regulations at 41 CFR chapter 304; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; and

(10) Anything for which market value is paid by the employee.

(c) *Market value* means the cost that a member of the general public would

reasonably expect to incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is deemed to be the face value of the ticket.

Example 1 to paragraph (c): An employee who has been given a watch inscribed with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable watch, not inscribed with a logo, generally sells for about \$50.

Example 2 to paragraph (c): During an official visit to a factory operated by a well-known athletic footwear manufacturer, an employee of the Department of Labor is offered a commemorative pair of athletic shoes manufactured at the factory. Although the cost incurred by the donor to manufacture the shoes was \$17, the market value of the shoes would be the \$100 that the employee would have to pay for the shoes on the open market.

Example 3 to paragraph (c): A prohibited source has offered a Government employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

Example 4 to paragraph (c): A company offers an employee of the Federal Communication Commission (FCC) free attendance for two to a private skybox at a ballpark to watch a major league baseball game. The skybox is leased annually by the company, which has business pending before the FCC. The skybox tickets provided to the employee do not have a face value. To determine the market value of the tickets, the employee must add the face value of two of the most expensive publicly available tickets to the game and the market value of any food, parking or other tangible benefits provided in connection with the gift of attendance that are not already included in the cost of the most expensive publicly available tickets.

Example 5 to paragraph (c): An employee of the Department of Agriculture is invited to a reception held by a prohibited source. There is no entrance fee to the reception event or to the venue. To determine the market value of the gift, the employee must add the market value of any entertainment, food, beverages, or other tangible benefit provided to attendees in connection with the reception, but need not consider the cost in-

curred by the sponsor to rent or maintain the venue where the event is held. The employee may rely on a per-person cost estimate provided by the sponsor of the event, unless the employee or an agency designee has determined that a reasonable person would find that the estimate is clearly implausible.

(d) *Prohibited source* means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

(e) *Given because of the employee's official position.* A gift is given because of the employee's official position if the gift is from a person other than an employee and would not have been given had the employee not held the status, authority, or duties associated with the employee's Federal position.

NOTE TO PARAGRAPH (E): Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1 to paragraph (e): Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

Example 2 to paragraph (e): Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority, or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

(f) *Indirectly solicited or accepted.* A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to the employee's parent, sibling, spouse, child, dependent relative, or a member of the employee's household because of that person's relationship to the employee; or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except the employee has not indirectly solicited or accepted a gift by the raising of funds or other support for a charitable organization if done in accordance with § 2635.808.

Example 1 to paragraph (f)(2): An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) *Free attendance* includes waiver of all or part of the fee for an event or the provision of food, refreshments, entertainment, instruction or materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, or entertainment collateral to the event. It does not include meals taken other than in a group setting with all other attendees, unless the employee is a presenter at the event and is invited to a separate meal for participating presenters that is hosted by the sponsor of the event. Where the offer of free attendance has been extended to an accompanying spouse or other guest, the market value of the gift of free attendance includes the market value of free attendance by both the employee and the spouse or other guest.

§ 2635.204 Exceptions to the prohibition for acceptance of certain gifts.

Subject to the limitations in § 2635.205, this section establishes exceptions to the prohibitions set forth in § 2635.202(a) and (b). Even though acceptance of a gift may be permitted by one of the exceptions contained in this section, it is never inappropriate and frequently prudent for an employee to decline a gift if acceptance would cause a reasonable person to question the

employee's integrity or impartiality. Section 2635.201(b) identifies considerations for declining otherwise permissible gifts.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph (a) does not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

Example 1 to paragraph (a): An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a community theater production, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

Example 2 to paragraph (a): An employee of the National Geospatial-Intelligence Agency has been invited by an association of cartographers to speak about her agency's role in the evolution of missile technology. At the conclusion of her speech, the association presents the employee a framed map with a market value of \$18 and a ceramic mug that has a market value of \$15. The employee may accept the map or the mug, but not both, because the aggregate value of these two tangible items exceeds \$20.

Example 3 to paragraph (a): On four occasions during the calendar year, an employee of the Defense Logistics Agency (DLA) was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at § 2635.102(k) to mean not only the corporate entity, but its

officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at paragraph (b) of this section for gifts based on a personal relationship.

Example 4 to paragraph (a): Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency (EPA) has accepted an association's gift of travel expenses and conference fees for an employee to attend a conference on the long-term effect of radon exposure. While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the authority under which the EPA accepted the gift to the agency of travel expenses and conference fees, a gift of \$20 or less accepted under paragraph (a) of this section is a gift to the employee rather than to her employing agency.

Example 5 to paragraph (a): During off-duty time, an employee of the Department of Defense (DoD) attends a trade show involving companies that are DoD contractors. He is offered software worth \$15 at X Company's booth, a calendar worth \$12 at Y Company's booth, and a deli lunch worth \$8 from Z Company. The employee may accept all three of these items because they do not exceed \$20 per source, even though they total more than \$20 at this single occasion.

Example 6 to paragraph (a): An employee of the Department of Defense (DoD) is being promoted to a higher level position in another DoD office. Six individuals, each employed by a different defense contractor, who have worked with the DoD employee over the years, decide to act in concert to pool their resources to buy her a nicer gift than each could buy her separately. Each defense contractor employee contributes \$20 to buy a desk clock for the DoD employee that has a market value of \$120. Although each of the contributions does not exceed the \$20 limit, the employee may not accept the \$120 gift because it is a single gift that has a market value in excess of \$20.

Example 7 to paragraph (a): During a holiday party, an employee of the Department of State is given a \$15 store gift card to a national coffee chain by an agency contractor. The employee may accept the card as the market value is less than \$20. The employee could not, however, accept a gift card that is issued by a credit card company or other financial institution, because such a card is equivalent to a gift of cash.

(b) *Gifts based on a personal relationship.* An employee may accept a gift given by an individual under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history and nature of the relationship and whether the family member or friend personally pays for the gift.

Example 1 to paragraph (b): An employee of the Federal Deposit Insurance Corporation (FDIC) has been dating an accountant employed by a member bank. As part of its "Work-Life Balance" program, the bank has given each employee in the accountant's division two tickets to a professional basketball game and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept the invitation to attend the game. Even though the tickets were initially purchased by the member bank, they were given without reservation to the accountant to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2 to paragraph (b): Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission (FTC) to join them in a golf tournament at a private club at the firm's expense. The entry fee is \$500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

Example 3 to paragraph (b): A Peace Corps employee enjoys using a social media site on the internet in his personal capacity outside of work. He has used the site to keep in touch with friends, neighbors, coworkers, professional contacts, and other individuals he has met over the years through both work and personal activities. One of these individuals works for a contractor that provides language services to the Peace Corps. The employee was acting in his official capacity when he met the individual at a meeting to discuss a matter related to the contract between their respective employers. Thereafter, the two communicated occasionally regarding contract matters. They later also granted one another access to join their social media networks through their respective social media accounts. However, they did not

communicate further in their personal capacities, carry on extensive personal interactions, or meet socially outside of work. One day, the individual, whose employer continues to serve as a Peace Corps contractor, contacts the employee to offer him a pair of concert tickets worth \$30 apiece. Although the employee and the individual are connected through social media, the circumstances do not demonstrate that the gift was clearly motivated by a personal relationship, rather than the position of the employee, and therefore the employee may not accept the gift pursuant to paragraph (b) of this section.

(c) *Discounts and similar benefits.* In addition to those opportunities and benefits excluded from the definition of a gift by § 2635.203(b)(4), an employee may accept:

(1) A reduction or waiver of the fees for membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates, commercial discounts, and free attendance or participation not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay.

Example 1 to paragraph (c)(2): A computer company offers a discount on the purchase of computer equipment to all public and private sector computer procurement officials who work in organizations with over 300 employees. An employee who works as the computer procurement official for a Government agency could not accept the discount to purchase the personal computer under the ex-

ception in paragraph (c)(2)(i) of this section. Her membership in the group to which the discount is offered is related to Government employment because her membership is based on her status as a procurement official with the Government.

Example 2 to paragraph (c)(2): An employee of the Consumer Product Safety Commission (CPSC) may accept a discount of \$50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$50 discount is a standard offer that the manufacturer has made broadly available through a number of employee associations and similar organizations to large segments of the public.

Example 3 to paragraph (c)(2): An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds, unless authorized by statute or regulation (e.g., 5 U.S.C. 5702, note, regarding frequent flyer miles).

Example 1 to paragraph (c)(3): The administrative officer for a field office of U.S. Immigration and Customs Enforcement (ICE) has signed an order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with ICE funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) *Awards and honorary degrees—(1) Awards.* An employee may accept a *bona fide* award for meritorious public service or achievement and any item incident to the award, provided that:

(i) The award and any item incident to the award are not from a person who has interests that may be substantially affected by the performance or non-performance of the employee's official duties, or from an association or other organization if a majority of its members have such interests; and

(ii) If the award or any item incident to the award is in the form of cash or an investment interest, or if the aggregate value of the award and any item

incident to the award, other than free attendance to the event provided to the employee and to members of the employee's family by the sponsor of the event, exceeds \$200, the agency ethics official has made a written determination that the award is made as part of an established program of recognition.

Example 1 to paragraph (d)(1): Based on a written determination by an agency ethics official that the prize meets the criteria set forth in paragraph (d)(2) of this section, an employee of the National Institutes of Health (NIH) may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2 to paragraph (d)(1): A defense contractor, ABC Systems, has an annual award program for the outstanding public employee of the year. The award includes a cash payment of \$1,000. The award program is wholly funded to ensure its continuation on a regular basis for the next twenty years and selection of award recipients is made pursuant to written standards. An employee of the Department of the Air Force, who has duties that include overseeing contract performance by ABC Systems, is selected to receive the award. The employee may not accept the cash award because ABC Systems has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

Example 3 to paragraph (d)(1): An ambassador selected by a nonprofit organization as a recipient of its annual award for distinguished service in the interest of world peace may, together with his spouse and children, attend the awards ceremony dinner and accept a crystal bowl worth \$200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$200, and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(2) *Established program of recognition.* An award and an item incident to the award are made pursuant to an established program of recognition if:

(i) Awards have been made on a regular basis or, if the program is new, there is a reasonable basis for concluding that awards will be made on a regular basis based on funding or funding commitments; and

(ii) Selection of award recipients is made pursuant to written standards.

(3) *Honorary degrees.* An employee may accept an honorary degree from an institution of higher education, as defined at 20 U.S.C. 1001, or from a similar foreign institution of higher education, based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

NOTE TO PARAGRAPH (D)(3): When the honorary degree is offered by a foreign institution of higher education, the agency may need to make a separate determination as to whether the institution of higher education is a foreign government for purposes of the Emoluments Clause of the U.S. Constitution (U.S. Const., art. I, sec. 9, cl. 8), which forbids employees from accepting emoluments, presents, offices, or titles from foreign governments, without the consent of Congress. The Foreign Gifts and Decorations Act, 5 U.S.C. 7342, however, may permit the acceptance of honorary degrees in some circumstances.

Example 1 to paragraph (d)(3): A well-known university located in the United States wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

(4) *Presentation events.* An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (3) of this section may also accept free attendance to the event provided to the employee and to members of the employee's family by the sponsor of an event. In addition, the employee may also accept unsolicited offers of travel to and from the event provided to the employee and to members of the employee's family by the sponsor of the event. Travel expenses accepted under this paragraph (d)(4) must be added to the value of the award for purposes of determining whether the aggregate value of the award exceeds \$200.

(e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1 to paragraph (e)(1): A Department of Agriculture employee whose spouse is a computer programmer employed by a Department of Agriculture contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under § 2635.502, the employee may be disqualified from performing official duties affecting her spouse's employer.

Example 2 to paragraph (e)(1): Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose spouse is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his spouse received a special invitation for herself and the employee.

(2) Resulting from the employee's outside business or employment activities when it is clear that such benefits are based on the outside business or employment activities and have not been offered or enhanced because of the employee's official status;

Example 1 to paragraph (e)(2): The members of an Army Corps of Engineers environmental advisory committee that meets six times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the advisory committee.

(3) Customarily provided by a prospective employer in connection with *bona fide* employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment; or

Example 1 to paragraph (e)(3): An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she

has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel, and meals in connection with an interview trip.

(4) Provided by a former employer to attend a reception or similar event when other former employees have been invited to attend, the invitation and benefits are based on the former employment relationship, and it is clear that such benefits have not been offered or enhanced because of the employee's official position.

Example 1 to paragraph (e)(4): An employee of the Department of the Army is invited by her former employer, an Army contractor, to attend its annual holiday dinner party. The former employer traditionally invites both its current and former employees to the holiday dinner regardless of their current employment activities. Under these circumstances, the employee may attend the dinner because the dinner invitation is a result of the employee's former outside employment activities, other former employees have been asked to attend, and the gift is not offered because of the employee's official position.

(5) For purposes of paragraphs (e)(1) through (4) of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services.

(f) *Gifts in connection with political activities permitted by the Hatch Act Reform Amendments.* An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation, and other benefits, including free attendance at events, for the employee and an accompanying spouse or other guests, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him or her to accompany an employee to a political event, may accept meals, free attendance, and entertainment provided at the event by such an organization.

Example 1 to paragraph (f): The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) *Gifts of free attendance at widely attended gatherings—*(1) *Authorization.* When authorized in writing by the agency designee pursuant to paragraph (g)(3) of this section, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering. For an employee who is subject to a leave system, attendance at the event will be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(2) *Widely attended gatherings.* A gathering is widely attended if it is expected that a large number of persons will attend, that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter, and that there will be an opportunity to exchange ideas and views among invited persons.

(3) *Written authorization by the agency designee.* The agency designee may authorize an employee or employees to accept a gift of free attendance at all or appropriate parts of a widely attended gathering only if the agency designee issues a written determination after finding that:

- (i) The event is a widely attended gathering, as set forth in paragraph (g)(2) of this section;
- (ii) The employee's attendance at the event is in the agency's interest because it will further agency programs or operations;
- (iii) The agency's interest in the employee's attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties; and
- (iv) If a person other than the sponsor of the event invites or designates the employee as the recipient of the gift of free attendance and bears the

cost of that gift, the event is expected to be attended by more than 100 persons and the value of the gift of free attendance does not exceed \$390.

(4) *Determination of agency interest.* In determining whether the agency's interest in the employee's attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties, the agency designee may consider relevant factors including:

- (i) The importance of the event to the agency;
- (ii) The nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation and the significance of the employee's role in any such matter;
- (iii) The purpose of the event;
- (iv) The identity of other expected participants;
- (v) Whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment;
- (vi) Whether the Government is also providing persons with views or interests that differ from those of the donor with access to the Government; and
- (vii) The market value of the gift of free attendance.

(5) *Cost provided by person other than the sponsor of the event.* The cost of the employee's attendance will be considered to be provided by a person other than the sponsor of the event where such person designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate the employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) *Accompanying spouse or other guest.* When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or one other accompanying guest to participate in all or a portion of the

event at which the employee's free attendance is permitted under paragraph (g)(1) this section. The authorization required by this paragraph (g)(6) must be provided in writing.

Example 1 to paragraph (g): An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$800 and anticipates attendance of approximately 400. An Air Force contractor pays \$4,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance because (a) the contractor, rather than the association, provided the cost of their attendance; (b) the contractor designated the specific employees to receive the gift of free attendance; and (c) the value of the gift exceeds \$390 per employee.

Example 2 to paragraph (g): An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$25 and anticipates attendance of approximately 50. An Air Force contractor pays \$125 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance because (a) the contractor, rather than the association, provided the cost of their attendance; (b) the contractor designated the specific employees to receive the gift of free attendance; and (c) the event was not expected to be attended by more than 100 persons.

Example 3 to paragraph (g): An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$800 and anticipates attendance of approximately 400. An Air Force contractor pays \$4,000 in order that the association might invite any five Federal employees. An Air Force official to whom the sponsoring association, rather than the contractor, extended one of the five invitations could attend if the employee's participation were determined to be in the interest of the agency and he received a written authorization.

Example 4 to paragraph (g): An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost \$390 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency and she receives a written authorization from the agency designee, she may accept the invitation from the news organization because more than 100 persons will attend

and the cost of the ticket does not exceed \$390. However, if the invitation were extended to the employee and an accompanying guest, the employee's guest could not be authorized to attend for free because the market value of the gift of free attendance would exceed \$390.

Example 5 to paragraph (g): An employee of the Department of Energy (DOE) and his spouse have been invited by a major utility executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her spouse. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her spouse who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

Example 6 to paragraph (g): An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$20 gift exception at paragraph (a) of this section.

Example 7 to paragraph (g): An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference under § 2635.203(b)(8). If the conference is widely attended, the employee may be authorized to accept the sponsor's offer to waive the attendance fee for the remainder of the conference if the agency designee has made a written determination that attendance is in the agency's interest.

Example 8 to paragraph (g): A military officer has been approved to attend a widely attended gathering, pursuant to paragraph (g) of this section, that will be held in the same city as the officer's duty station. The defense

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contractor sponsoring the event has offered to transport the officer in a limousine to the event. The officer may not accept the offer of transportation because the definition of "free attendance" set forth in § 2635.203(g) excludes travel, and the market value of the transportation would exceed \$20.

(h) *Social invitations.* An employee may accept food, refreshments, and entertainment, not including travel or lodgings, for the employee and an accompanying spouse or other guests, at a social event attended by several persons if:

(1) The invitation is unsolicited and is from a person who is not a prohibited source;

(2) No fee is charged to any person in attendance; and

(3) If either the sponsor of the event or the person extending the invitation to the employee is not an individual, the agency designee has made a written determination after finding that the employee's attendance would not cause a reasonable person with knowledge of the relevant facts to question the employee's integrity or impartiality, consistent with § 2635.201(b).

Example 1 to paragraph (h): An employee of the White House Press Office has been invited to a social dinner for current and former White House Press Officers at the home of an individual who is not a prohibited source. The employee may attend even if she is being invited because of her official position.

(i) *Meals, refreshments, and entertainment in foreign areas.* An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 300-3.1 may accept unsolicited food, refreshments, or entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event provided:

(1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC-FA), available on the Internet at www.state.gov;

(2) There is participation in the meeting or event by non-U.S. citizens

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or by representatives of foreign governments or other foreign entities;

(3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States, or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The gift of meals, refreshments, or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1 to paragraph (i): A number of local business owners in a developing country are eager for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the business owners at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(j) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his or her own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.205(a) or (b), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(k) *Gifts authorized by supplemental agency regulation.* An employee may accept any gift when acceptance of the gift is specifically authorized by a supplemental agency regulation issued with the concurrence of the Office of Government Ethics, pursuant to § 2635.105.

(l) *Gifts accepted under specific statutory authority.* The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item which a statute specifically authorizes an employee to accept. Gifts which may be accepted by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or

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meetings when accepted by the employee under the authority of 5 U.S.C. 4111. The employee's acceptance must be approved by the agency in accordance with part 410 of this title; or

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

(m) *Gifts of informational materials.* (1) An employee may accept unsolicited gifts of informational materials, provided that:

(i) The aggregate market value of all informational materials received from any one person does not exceed \$100 in a calendar year; or

(ii) If the aggregate market value of all informational materials from the same person exceeds \$100 in a calendar year, an agency designee has made a written determination after finding that acceptance by the employee would not be inconsistent with the standard set forth in § 2635.201(b).

(2) *Informational materials* are writings, recordings, documents, records, or other items that:

(i) Are educational or instructive in nature;

(ii) Are not primarily created for entertainment, display, or decoration; and

(iii) Contain information that relates in whole or in part to the following categories:

(A) The employee's official duties or position, profession, or field of study;

(B) A general subject matter area, industry, or economic sector affected by or involved in the programs or operations of the agency; or

(C) Another topic of interest to the agency or its mission.

Example 1 to paragraph (m): An analyst at the Agricultural Research Service receives an edition of an agricultural research journal in the mail from a consortium of private farming operations concerned with soil toxicity. The journal edition has a market value of \$75. The analyst may accept the gift.

Example 2 to paragraph (m): An inspector at the Mine Safety and Health Administration receives a popular novel with a market value

of \$25 from a mine operator. Because the novel is primarily for entertainment purposes, the inspector may not accept the gift.

Example 3 to paragraph (m): An employee at the Department of the Army is offered an encyclopedia on cyberwarfare from a prohibited source. The cost of the encyclopedia is far in excess of \$100. The agency designee determines that acceptance of the gift would be inconsistent with the standard set out in § 2635.201(b). The employee may not accept the gift under paragraph (m) of this section.

[81 FR 81648, Nov. 18, 2016, as amended at 82 FR 22736, May 18, 2017]

§ 2635.205 Limitations on use of exceptions.

Notwithstanding any exception provided in this subpart, other than § 2635.204(j), an employee may not:

(a) Accept a gift in return for being influenced in the performance of an official act;

(b) Use, or permit the use of, the employee's Government position, or any authority associated with public office, to solicit or coerce the offering of a gift;

(c) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using the employee's public office for private gain;

Example 1 to paragraph (c): A purchasing agent for a Department of Veterans Affairs medical center routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays, and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in § 2635.204(a) on gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(d) Accept a gift in violation of any statute; relevant statutes applicable to all employees include, but are not limited to:

(1) 18 U.S.C. 201(b), which prohibits a public official from, directly or indirectly, corruptly demanding, seeking,

receiving, accepting, or agreeing to receive or accept anything of value personally or for any other person or entity in return for being influenced in the performance of an official act; being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or for being induced to do or omit to do any action in violation of his or her official duty. As used in 18 U.S.C. 201(b), the term “public official” is broadly construed and includes regular and special Government employees as well as all other Government officials; and

(2) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality;

(e) Accept a gift in violation of any Executive Order; or

(f) Accept any gift when acceptance of the gift is specifically prohibited by a supplemental agency regulation issued with the concurrence of the Office of Government Ethics, pursuant to § 2635.105.

§ 2635.206 Proper disposition of prohibited gifts.

(a) Unless a gift is accepted by an agency acting under specific statutory authority, an employee who has received a gift that cannot be accepted under this subpart must dispose of the gift in accordance with the procedures set forth in this section. The employee must promptly complete the authorized disposition of the gift. The obligation to dispose of a gift that cannot be accepted under this subpart is independent of an agency’s decision regarding corrective or disciplinary action under § 2635.106.

(1) *Gifts of tangible items.* The employee must promptly return any tangible item to the donor or pay the donor its market value; or, in the case of a tangible item with a market value

of \$100 or less, the employee may destroy the item. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality.

Example 1 to paragraph (a)(1): A Department of Commerce employee received a \$25 T-shirt from a prohibited source after providing training at a conference. Because the gift would not be permissible under an exception to this subpart, the employee must either return or destroy the T-shirt or promptly reimburse the donor \$25. Destruction may be carried out by physical destruction or by permanently discarding the T-shirt by placing it in the trash.

Example 2 to paragraph (a)(1): To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$200 given at the conclusion of his speech on Federal lands policy. To comply with this section, the employee must either promptly return the barometer or pay the donor the market value of the gift. Alternatively, the National Park Service may choose to accept the gift if permitted under specific statutory gift acceptance authority. The employee may not destroy this gift, as the market value is in excess of \$100.

(2) *Gifts of perishable items.* When it is not practical to return a tangible item in accordance with paragraph (a)(1) of this section because the item is perishable, the employee may, at the discretion of the employee’s supervisor or the agency designee, give the item to an appropriate charity, share the item within the recipient’s office, or destroy the item.

Example 1 to paragraph (a)(2): With approval by the recipient’s supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office’s reception area.

(3) *Gifts of intangibles.* The employee must promptly reimburse the donor the market value for any entertainment, favor, service, benefit or other intangible. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1 to paragraph (a)(3): A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a prohibited source. Although his attendance is not in the interest

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of the agency under § 2635.204(g), he may attend if he reimburses the donor the \$300 face value of the ticket.

(4) *Gifts from foreign governments or international organizations.* The employee must dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 102-42.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his or her own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his or her agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on the employee's own initiative.

(d) Employees are encouraged to record any actions they have taken to properly dispose of gifts that cannot be accepted under this subpart, such as by sending an electronic mail message to the appropriate agency ethics official or the employee's supervisor.

Subpart C—Gifts Between Employees

§ 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.302 General standards.

(a) *Gifts to superiors.* Except as provided in this subpart, an employee may not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) *Gifts from employees receiving less pay.* Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

(c) *Limitation on use of exceptions.* Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 2635.303 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Gift* has the meaning set forth in § 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) *Indirectly*, for purposes of § 2635.302(b), has the meaning set forth in § 2635.203(f). For purposes of § 2635.302(a), it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in § 2635.203(c).

(d) *Official superior* means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			BPA NO.	1. CONTRACT ID CODE	PAGE 1	OF PAGES 1
2. AMENDMENT/MODIFICATION NUMBER P00002		3. EFFECTIVE DATE 07-01-2017		4. REQUISITION/PURCHASE REQ. NUMBER 101-17-3-5834-0025		5. PROJECT NUMBER (if applicable)
6. ISSUED BY Department of Veterans Affairs Veterans Benefits Administration Office of Acquisition 1800 G. Street N.W. Washington DC 20006		CODE 00101	7. ADMINISTERED BY (If other than Item 6) Department of Veterans Affairs Veterans Benefits Administration Benefits Assistance Service (BAS), 1800 G. Street N.W. Washington DC 20006		CODE 00101	
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, county, State and ZIP Code) DUTY FIRST CONSULTING LLC 2650 PARK TOWER DR STE 100 VIENNA VA 22180				(X)	9A. AMENDMENT OF SOLICITATION NUMBER	
					9B. DATED (SEE ITEM 11)	
				X	10A. MODIFICATION OF CONTRACT/ORDER NUMBER GS-00F-221CA VA101V-16-F-3158	
					10B. DATED (SEE ITEM 13) 06-28-2016	
CODE 4SJK4		FACILITY CODE				
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS						
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.						
12. ACCOUNTING AND APPROPRIATION DATA (If required)		101-3670151-5834-303300-2580 020043H00 Net Increase \$1,657,337.84 Obligation Number: 101J72366				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.						
CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).					
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
X	D. OTHER (Specify type of modification and authority) 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT					
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.						
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)						
The Purpose of this Modification is to Exercise Option Year One, in Accordance with the Terms and Conditions Contained Benefits Assistance Service (BAS), Outreach and Marketing Services Task Order referenced in BLOCK 10A. A. Option Year One Net Increase: \$1,657,337.84. B. Option Year One Period of Performance: July 1, 2017 to June 30, 2018 C. Please Reference Obligation Number 101J72366 on all Invoices for Option Year One Services. D. Exercising Line Items 1001 Through 1007; and 0008 Travel. All Other Terms and Conditions, Including all Modifications Previously Issued, Remain in Effect.						
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.						
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)			
			Mary K. Hoelscher Contracting Officer			
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
(Signature of person authorized to sign)				BY (Signature of Contracting Officer)		06/26/2017

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			BPA NO.	1. CONTRACT ID CODE	PAGE 1	OF PAGES 1
2. AMENDMENT/MODIFICATION NUMBER P00008		3. EFFECTIVE DATE 06-27-2018		4. REQUISITION/PURCHASE REQ. NUMBER 101-18-3-5834-0021		5. PROJECT NUMBER (if applicable)
6. ISSUED BY Department of Veterans Affairs Veterans Benefits Administration Office of Acquisition 1800 G. Street N.W. Washington DC 20006		CODE 00101	7. ADMINISTERED BY (If other than Item 6) Department of Veterans Affairs Veterans Benefits Administration Benefits Assistance Service (BAS), 1800 G. Street N.W. Washington DC 20006		CODE 00101	
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, county, State and ZIP Code) DUTY FIRST CONSULTING LLC 2650 PARK TOWER DR STE 100 VIENNA VA 22180				(X)	9A. AMENDMENT OF SOLICITATION NUMBER	
					9B. DATED (SEE ITEM 11)	
				X	10A. MODIFICATION OF CONTRACT/ORDER NUMBER GS-00F-221CA VA101V-16-F-3158	
					10B. DATED (SEE ITEM 13) 06-28-2016	
CODE 4SJK4		FACILITY CODE				
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS						
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.						
12. ACCOUNTING AND APPROPRIATION DATA (If required)		101-3680151-5834-303300-2580 020043H00 Net Increase \$1,674,264.08 Obligation Number: 101J82340				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.						
CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).					
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
X	D. OTHER (Specify type of modification and authority) 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT					
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.						
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)						
The Purpose of this Modification is to Exercise Option Year Two, in Accordance with the Terms and Conditions Contained Benefits Assistance Service (BAS), Outreach and Marketing Services Task Order referenced in BLOCK 10A. A. Option Year Two Net Increase: \$1,674,264.08. B. Option Year Two Period of Performance: July 1, 2018 to June 30, 2019. C. Please Reference Obligation Number 101J82340 on all Invoices for Option Year Two Services. D. Exercising Line Items 2001 Through 2007; and 2008 Travel. All Other Terms and Conditions, Including all Modifications Previously Issued, Remain in Effect.						
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.						
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)			
			Mary K. Hoelscher Contracting Officer			
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
(Signature of person authorized to sign)				BY (Signature of Contracting Officer)		27 JUNE 2018

**VETERANS AFFAIRS
ADMINISTRATIVE INVESTIGATION BOARD**

ADMINISTRATIVE INVESTIGATION BOARD
INTO ALLEGATIONS OF SENIOR LEADER MISCONDUCT AT THE
WASHINGTON, D.C. VA MEDICAL CENTER,
WASHINGTON, D.C.

Interview of:

TOM MURPHY

was held telephonically, on Thursday, July 12, 2018, from
10:03 a.m. until 11:33 a.m., before the Administrative
Investigation Board.

A P P E A R A N C E S

On Behalf of the Agency:

(b)(6), (b)(7)(C)

Employee Relations Investigator
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On Behalf of the Witness:

(b)(6), (b)(7)(C)

ESQUIRE

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TOM MURPHY

Interview by AIB

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<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(None)

P R O C E E D I N G S

(10:03 a.m.)

MS. (b)(6) (b)(7)(C) Today is July 12, 2018. The time is 10:03 a.m. Eastern. Speaking is (b)(6) (b)(7)(C) Administrative Investigator for the VA Office of Accountability and Whistleblower Protection, present on this call today for the purpose of hearing testimony of Thomas Murphy concerning various allegations regarding mandatory overtime, unprofessional conduct and/or prohibited personnel practices.

We are conducting this interview telephonically and in addition to myself, present on the phone are (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) Investigator with the VA Office of Accountability and Whistleblower Protection; Thomas Murphy, our witness; (b)(6) (b)(7)(C) Mr. Murphy's counsel; and (b)(6) (b)(7)(C) our court reporter.

This interview is being tape recorded and will be transcribed verbatim.

For the record, Mr. Murphy, can you please state and spell your full name and provide your title and place of employment?

MR. MURPHY: Thomas J. Murphy, T-H-O-M-A-S, J, M-U-R-P-H-Y, and I am the Area Director of the Midwest District.

MR. (b)(6) (b)(7)(C) Ms. (b)(6) (b)(7)(C) before we proceed,

1 just to make sure we have on the record, we have in front
2 of us the signed Notice of Witness Obligations signed by
3 Mr. Murphy and by me and by you indicating that this is a
4 compelled interview and we're prepared to go forward.

5 Ms. (b)(6), (b)(7)(C) Okay. Very good. Thank you.
6 Mr. Murphy, do you have a preference whether to swear or
7 affirm your testimony?

8 MR. MURPHY: I'll swear.

9 MS. (b)(6), (b)(7)(C) Swear, okay. At this time I'm
10 going to place you under oath so just let me know when
11 your right hand is raised.

12 MR. MURPHY: Okay.

13 (Whereupon,

14 **TOM MURPHY**

15 having been duly sworn, was interviewed and testified, as
16 follows:)

17 MS. (b)(6), (b)(7)(C) Okay. And, for the record as
18 Mr. O'Toole just said, I'd like to state that we've
19 obtained the witness' signature on the Statement of
20 Employee Rights and Responsibilities. Okay.

21 **INTERVIEW**

22 BY MS. (b)(6), (b)(7)(C)

23 Q. Mr. Murphy, can you tell me how long you've
24 been in your current position as Area Director?

25 A. Since, oh, I remember -- I think it was

1 approximately the end of the first week of May I got
2 moved into this job.

3 Q. Okay. Can you get a little bit closer to the
4 speaker?

5 A. Oh, sure, sorry.

6 Q. I don't know if Valerie is having the same
7 problem I am, you're a little -- sounded a little low.

8 A. Okay. I'll speak up a little bit. It was
9 about the end of the first week of May that I moved into
10 this position.

11 Q. May 2018?

12 A. Yeah, yeah, this year, sorry.

13 Q. Okay. No, that's okay. And what was your
14 position prior to that?

15 A. My official position was the Principal Deputy
16 Under Secretary of Benefits.

17 Q. Okay. And how long were you in that position?

18 A. Just under two years because I was acting in
19 that role for a short time and then I -- again, I could
20 go back and check the records, but approximately July
21 of '16.

22 Q. Okay. Okay. An approximation is fine.

23 A. Okay.

24 Q. So before I begin with the specific questions
25 and our charge memo, I just want to establish whether you

1 had an opportunity to review the documents that I emailed
2 you, specifically, the OIG non-case referral as well as
3 the letter from the Whistleblowers of America
4 Organization?

5 A. Yes, I have.

6 Q. Okay, all right. And when I refer to the
7 Whistleblowers of America, from this point forward I'm
8 just going to say WOA.

9 A. Okay, that's much clearer, thanks.

10 Q. Yeah. So one of the things that you had
11 indicated when I sent you the official notification is
12 that the anonymous source for the WOA letter was probably
13 from a former employee named (b)(6) (b)(7)(C) who was
14 terminated from employment last year.

15 Can you tell me why you think that that letter
16 originated from (b)(6)

17 A. Yes. When (b)(6) left my office after (b)(6) was
18 given (b)(6) notice of termination (b)(6) threatened me in a
19 way saying, okay, then it's game on. And (b)(6) did it in
20 front of a witness, because I've been doing this a long
21 time; when you have actions like that you always have
22 other people there so I did.

23 I had a witness in the room and I believe that
24 (b)(6) comment of, okay, then it's game on, resulted in this
25 action.

1 Q. Okay. And who was the witness who was in the
2 room with you?

3 A. I believe it was (b)(6), (b)(7)(C) my

4 (b)(6) I'm trying to remember if the
5 lawyer was in the room with me or not but I don't know
6 for certain.

7 Q. Okay. Who would that lawyer might -- who was
8 the lawyer do you think?

9 A. Well, he's Office of General Counsel for VA;
10 his name is (b)(6), (b)(7)(C)

11 Q. Okay.

12 A. (b)(6), (b)(7)(C)

13 Q. And (b)(6), (b)(7)(C)

14 A. Correct.

15 Q. Okay. Okay. So let's discuss the charge memo.
16 So Charge A is regarding whether you and/or Jamie Manker
17 manipulated or inappropriately used funds allocated to
18 the VA's Transition Assistance Program, or TAP.

19 Can you tell me a little bit about why that
20 might be alleged, or can you tell me a little bit about
21 how that program is managed?

22 A. Sure.

23 MR. (b)(6), (b)(7)(C) Before he starts, and I don't
24 mean to complain right from the beginning but that's a --
25 question. Which of those two do you want him to try to

1 answer? You said, why it was alleged and then you said
2 or how was it managed. In order to make sure he responds
3 to what you want, could I ask you to rephrase that?

4 BY MS. (b)(6), (b)(7)(C)

5 Q. Let's start with the first one. Why do you
6 think that that was alleged?

7 A. I don't know for certain, but I believe it was
8 a case of an individual at an operational level seeing
9 funds being spent in other places and believing that it
10 was done inappropriately.

11 Q. Okay. So why would that person think that
12 that's being done inappropriately?

13 MR. (b)(6), (b)(7)(C) Because are you, are you asking
14 him to tell you what somebody else is thinking?

15 MS. (b)(6), (b)(7)(C) Who's asking that? Who just asked
16 me that question?

17 MR. (b)(6), (b)(7)(C) This is (b)(6), (b)(7)(C)

18 MS. (b)(6), (b)(7)(C) Okay.

19 MR. (b)(6), (b)(7)(C) I'm just trying to figure out if
20 he -- if you want him to guess as to what somebody, what
21 somebody was thinking when they, when they alleged
22 something?

23 MS. (b)(6), (b)(7)(C) Okay. Mr. (b)(6), (b)(7)(C) part of the
24 reason that you can participate in this investigation is
25 to ask clarification questions, which I know this is, but

1 if he can't understand the question I'd like him to tell
2 me he can't answer the question. I don't want you
3 speaking for him.

4 MR. (b)(6); (b)(7)(C) Right. That's fair enough, sure,
5 absolutely.

6 MS. (b)(6); (b)(7)(C) Okay.

7 BY MS. (b)(6); (b)(7)(C)

8 Q. So let's back up. So can you tell me in the
9 allocating of the TAP funds to other programs did that
10 happen that TAP money was allocated to other areas?

11 A. Money that was appropriated by Congress to us
12 for TAP was spent in other programs, yes, absolutely
13 true.

14 Q. Okay.

15 A. However, it was done in the full light and
16 knowledge and briefings to Congress and in front of the
17 whole world and that money was intently spent on other
18 programs, yes.

19 Q. Okay, okay. And that's what, kind of what, I'm
20 getting at here. I'm just trying to give you an
21 opportunity to address some of these things.

22 Obviously, you're the subject matter expert in
23 regards to these programs and I'm, you know, giving you
24 the opportunity to help us understand what's being
25 alleged, and as I believe you said in an email to show us

1 how these things are not true or they're false.

2 So that's all I'm looking for here. I mean,
3 we're just looking to get to the bottom of the
4 allegations and know and understand that even if you did
5 allocate them to other programs that it's completely
6 appropriate and it was done with appropriate approval.
7 So that's kind of what I'm getting at here.

8 A. Yes. All of it was done with the appropriate
9 approval. It was absolutely done with the appropriate
10 approval. It's the only way you survive in Washington is
11 doing things above board.

12 OMV (ph.) Secretary of VA's Office, briefings
13 to Congress, briefings to various service organizations,
14 these decisions to spend that money in other places was
15 done in the full light of day and was knowledgeable.

16 Q. Okay, very good. So Charge B discusses
17 whether -- well, let me back up.

18 MS. (b)(6), (b)(7)(C) do you have any questions
19 about that before I move on?

20 MS. (b)(6), (b)(7)(C) Yeah, I do, just a few.

21 BY MS. (b)(6), (b)(7)(C)

22 Q. Mr. Murphy, can you tell me who was in charge,
23 who was actually in charge of the Transition Assistance
24 Program?

25 A. I can tell you what office it was under. It

1 was under the Office of Economic Development, which is
2 run by, was run by Deputy Under Secretary of Economic
3 Opportunity, Kurt Coy.

4 Now you're asking a question which has got
5 multi-facets based on timelines because the timeline
6 we're looking at, all of this there were different people
7 that ran part of that organization.

8 Q. So specifically to the contract, let's just
9 talk to the contract. How often did you have
10 communication with, did you say -- was his name Kurt?

11 A. Kurt Coy, yes.

12 Q. Kurt Coy, okay. How often did you have
13 communications with Mr. Coy?

14 A. Multiple times. Every workday he was a direct
15 report of mine.

16 Q. And would any of the fund allocations, excuse
17 me, would any fund allocations, approval for TAP, have
18 been required to come through you for final approval?

19 A. No.

20 MS. (b)(6); (b)(7)(C) Okay. That's all I have (b)(6);
21 thank you. (b)(7)(C)

22 MS. (b)(6); (b)(7)(C) Okay. You're welcome.

23 BY MS. (b)(6); (b)(7)(C)

24 Q. So moving on to Charge B, and the charge memo
25 states: Whether Mr. Murphy was inappropriately involved

1 in the drafting and/or editing of the TAP contract in
2 order to favor his own personal needs.

3 Can you tell me if you know what that might be
4 alleging as far as the drafting or editing of the
5 contract?

6 And, again, let me just explain. Without
7 specificity in this particular complaint I'm having to
8 ask pretty general questions so --

9 A. Yeah. I'm sorry, sorry, go ahead.

10 Q. Yeah, yeah. So, I mean, that's kind of why I'm
11 asking in a sense, do you have any idea what the
12 Complainant might have been getting at in this
13 particular, this particular allegation?

14 A. I can only guess what was going on in that
15 person's mind when they made that allegation. But if
16 they can tell you how -- whether Mr. Murphy was
17 inappropriately involved in the drafting or editing of
18 the tech contract in order to favor his own personal
19 needs.

20 I can tell you how my involvement in that
21 contract had nothing to do with my personal needs.

22 Q. Okay.

23 A. But I can't tell you what was going on in that
24 person's head when they made that phone call.

25 Q. Now can you tell me, can you tell me how

1 involved you were in the drafting or editing of the TAP
2 contract? Let's start there.

3 A. I don't, nor have I ever, drafted a contract.
4 It's not a task that we at the executive level do.

5 Q. Okay. So no -- you didn't have any input into
6 the TAP contract?

7 A. No, that's different. That's a different
8 question. Did I draft the contract? No. Did I identify
9 the business required and set an executive level? Yes,
10 absolutely. That's the task of an executive is to say
11 these are the tasks I need you to complete.

12 And in this case the decision was to make those
13 during -- by contracting those out.

14 Q. Okay. And who did you have those
15 communications with?

16 A. I had those communications with the staff of
17 the organization called OTEEI.

18 Q. Okay. And, for the record, can you, can you
19 spell out or explain what that acronym stands for?

20 A. I don't know exactly. Office of Employment --
21 Economic and Employment Improvement. It was initiative,
22 it was initiative.

23 MS. (b)(6) (b)(7)(C) For the record, it's Office of
24 Transition Employment and Economic Impact.

25 MR. MURPHY: There you go. Thank you.

1 MS. (b)(6), (b)(7)(C) Thank you.

2 MR. MURPHY: That's it.

3 MS. (b)(6), (b)(7)(C) Okay.

4 MR. MURPHY: So the deputies and employees that
5 worked in that organization. Go ahead.

6 BY MS. (b)(6), (b)(7)(C)

7 Q. So were they, I'm sorry, so were they the
8 employees that were actually doing the drafting and
9 editing of the contract?

10 A. I honestly don't know the answer to that and
11 the reason is I give direction at an executive level,
12 here's the things I need you to do. And then those
13 individuals take that out to the contract officer and
14 under the guidance and direction and involvement of the
15 contract officer a group of people do that writing.

16 So you're asking me questions of things that
17 are so far down that it's an action officer and I don't
18 have involvement with those kind of things.

19 Q. Okay. Do you know who the contract officer
20 would have been over that contract?

21 A. I don't.

22 MS. (b)(6), (b)(7)(C) Okay. Sandy, do you have any
23 questions about that one?

24 BY MS. (b)(6), (b)(7)(C)

25 Q. Do you know who -- when we're talking about the

1 OIG report, are you familiar with anybody in, I believe
2 it's called, is it Calibre? Do you know that company?

3 A. Do I know who the company Calibre? Is that
4 what you're asking me?

5 Q. Yes.

6 A. Yes, I know of Calibre, yes.

7 Q. Do you have involvement with anybody in that
8 company?

9 A. I have had conversations in a professional
10 sense in the building at 1800 G Street with people from
11 Calibre and it was very limited in scope and it was
12 singularly about this contract.

13 Q. And just so I understand, are you saying that
14 VBA awarded a 22 million dollar contract to Calibre and
15 you had very little communication in that, you had very
16 little to do with that?

17 A. I'm saying I'm going to be much more direct and
18 much more blunt on that one, a little more definitive. I
19 had absolutely no conversation and the contract you're
20 talking about being awarded happened while I was the
21 director of the Compensation Service and I had zero
22 involvement in any, way, shape or form with that
23 contract.

24 MS. (b)(6); (b)(7)(C) Okay. Thank you.

25 MR. (b)(6); (b)(7)(C) Now is there any doubt about

1 that, that this contract was in effect before he was in a
2 position to have the impact we're talking about?

3 MR. (b)(6), (b)(7)(C) This is (b)(6), (b)(7)(C) I want to
4 make sure that we've cleared that up. If there's any
5 question, we'd be happy to talk more about it if that
6 would be helpful. If not we're happy to move on.

7 MS. (b)(6), (b)(7)(C) Nope, I think that's why I
8 wanted to get that on the record is, what was your
9 involvement? Was your involvement and were you in charge
10 during the signing of that contract?

11 MR. MURPHY: Again, very -- a direct answer to
12 a very direct question; no, I was not in charge and I had
13 no involvement in any way, shape or form with the
14 awarding of the Calibre contract.

15 BY MS. (b)(6), (b)(7)(C)

16 Q. Okay. Moving on to Allegation C. There was a
17 reference to a senior leader meeting in 2017 in McLean,
18 Virginia. Do you happen to know what meeting is being
19 referenced?

20 A. I believe -- don't know for certain, that's
21 pretty broad but we do business out there from time to
22 time. But I believe that was a session, a senior leader
23 session, that the Secretary of VA had where he brought in
24 approximately 500, 550 SESs and other leaders into a two-
25 day, two-and-a-half day meeting.

1 And then we did a breakout session by each of
2 the administrations following the two-day meeting.

3 Q. Okay. And I'm going to read a portion of the
4 WOA letter and ask you to respond to what I'm reading.

5 A. Sure.

6 Q. "Mr. Murphy repeatedly interrupted the few
7 female presenters. He openly discussed the need to
8 replace field employees with military spouses or soccer
9 moms."

10 Do you remember ever making those comments or
11 did you make those comments?

12 A. There's two parts to that question and let's go
13 back to the first one, which is continually interrupted
14 few female presenters.

15 There were no presenters. This was an open
16 dialogue, Town Hall style meeting with me standing in the
17 front of the room and 50 direct report executives that
18 were on the organization in the room.

19 So it was an open dialogue with individuals in
20 the room picking the topic.

21 Q. Okay.

22 A. Now the second part of the question was, did I
23 recall what -- soccer moms?

24 Q. Say that you -- according to the allegation it
25 states that you openly discussed the need to replace

1 field employees with military spouses or "soccer moms".

2 A. Okay. Did I use the phrase "soccer moms"?

3 Yes. Did I put it in the context of we needed to replace
4 field employees with military spouses or "soccer moms"?

5 No, absolutely not.

6 Q. Okay. Can you tell me the context in which you
7 used that phrase?

8 A. Sure, absolutely. We have phone centers and
9 our phone centers have about a thousand employees in them
10 and they have to run from 8:00 in the morning until 9:00
11 at night Eastern Standard Time.

12 So when you go back in and look at the main end
13 of when veterans are calling in you can't meet that
14 demand and, by the way, the task from the Secretary was
15 you will answer every phone call without exception within
16 30 seconds of hold time.

17 So in order to do that you have to have a
18 workforce that doesn't work Monday through Friday 8:00 to
19 5:00, which is the majority of our thousand employees.

20 So I was explaining to the 15 or 20 directors
21 in the room that had hiring authority over those phone
22 centers that they needed a different kind of employee
23 than a traditional government 40 hours. They needed
24 part-time employees.

25 And they were saying, well, we can't get

1 quality part-time employees. How are we supposed to do
2 that? And I said, let me give you examples of extremely
3 high-skilled, well-educated motivated employees, or
4 people in the workforce that want to come to work for a
5 place like VA.

6 And then I said, there's a group of people
7 called "soccer moms". Here's the definition of a soccer
8 mom: A parent, gender neutral parent, gets up, takes the
9 children to school, drops them off in the morning, comes
10 home about 3:00 in the afternoon, goes back to school,
11 picks up their children and brings them on to their
12 sports activities throughout the day.

13 So that leaves a big hole in the middle of the
14 day with that parent not having anything to do. There
15 are highly educated people, degrees from Stanford, from
16 Harvard, from some of the best universities around that
17 are more than willing to come in in that timeframe, log
18 in from home, answer the phone, answer highly technical
19 questions for veterans that are calling in about their
20 claim, log out and then go pick up their child and
21 continue their day.

22 Now that becomes important because the nature
23 of the call that comes in is heavily concentrated on a
24 Monday/Tuesday so the most highest call volume is Monday;
25 the lowest call volume is Friday.

1 Then the next part of that is the call volume
2 is at its peak between 10:00 in the morning and 2:00 in
3 the afternoon.

4 So put that in perspective of why do I need
5 that? If I had all one thousand people on board Monday
6 through -- on Monday working, I would have level coverage
7 from 8:00 in the morning until 9:00 at night.

8 But if I have those people so that they're
9 working part-time shifts I get two for one. I get two
10 people working four hours from 10:00 to 2:00, so I can
11 now handle the volume and it's like a curve that grows
12 for that 10 to 2 and then on Friday you don't need that.

13 So you needed a part-time employee, you needed
14 them highly skilled, you needed them highly capable that
15 are available during certain hours. And in order to do
16 that you need a soccer mom-like individual.

17 Q. Okay.

18 A. So I see that as a term of endearment and
19 actually complimentary because my degree is not from
20 Harvard or Yale but those are the individuals.

21 And just to put another reference into this to
22 show that I'm not using that in a negative light, New
23 York Times, you pick an article; Business Weekly, you
24 just go out and Google the term "soccer moms".

25 The definition is just like I describe to you

1 except the comments I read when I went and did a little
2 research were along the lines of, I've got all this great
3 education and I can't put it to use anymore. I'd like to
4 find an organization that respects my ability and knows
5 how to use it.

6 So I see that as a term of endearment for
7 people that want to get back in the workforce and come to
8 a quality place like the VA.

9 Q. Okay. I understand, I understand the
10 explanation about the personnel needs and I appreciate
11 that. Did you explain that in that much detail to the
12 audience that you had that day that the soccer moms
13 terminology was referencing men and women who were at
14 home in the middle of the day?

15 A. Yes. And in that level of detail like I did
16 with you because you don't get in a job like this without
17 being able to read a crowd.

18 Q. Okay.

19 A. So I'm sitting there looking and I'm telling --
20 saying that term, and you can see the reaction on
21 people's faces that says you need to explain that to me.

22 Q. Okay.

23 A. So in great detail, just like I did with you, I
24 went through that with the room and they said, oh, okay,
25 I understand what you're saying.

1 Q. Okay. During that meeting was there any
2 discussion by you or any statement made by you regarding
3 whistleblowers being disruptive employees or disloyal
4 employees?

5 A. No. Whistleblowers are not disloyal or
6 disruptive. Whistleblowers, sometimes it's a matter of
7 perspective and other times it's -- their shedding,
8 bringing light onto a problem that needs to be dealt
9 with. So, no.

10 Q. Okay. Was the issue of whistleblower or
11 whistleblower retaliation discussed during that meeting?

12 A. No. I don't recall one way or the other but it
13 wouldn't surprise me if it came up and the answer would
14 be similar to what you just described.

15 There's a sense of, there's a sense of -- the
16 directors in the field, these are the 50 leaders that run
17 the VBA, okay, each one of them runs an organization
18 anywhere from 100 to 1,100 people.

19 And the whistleblowers are often blowing the
20 whistle on those individuals. So those individuals in
21 the room have a very high level of concern about I'm
22 being attacked by whistleblowers. And the response to a
23 comment like that from them is, you need to operate above
24 board and in full light of everything that's going on,
25 it's your best protection.

1 Then when you do have somebody that decides
2 they want to be a whistleblower you're safe because you
3 operated in the full light of day for everybody and all
4 involved.

5 Q. Okay. Was (b)(6), (b)(7)(C) that we
6 discussed earlier, was (b)(6) present at this meeting that
7 we're referring to?

8 A. I can't give you a definitive, but my answer
9 is, yes, I believe (b)(6) was.

10 Q. Okay.

11 A. I can give you a stronger than I believe by
12 saying (b)(6) was at the meeting and present during the two
13 and a half days, so it's highly likely that (b)(6) was in
14 the room during the breakdown (ph.).

15 MS. (b)(6), (b)(7)(C) Okay. Great. Thank you. (b)(6), (b)(7)(C)
16 do you have any questions about that one?

17 MS. (b)(6), (b)(7)(C) I do.

18 BY MS. (b)(6), (b)(7)(C)

19 Q. Mr. Murphy, can you tell me what (b)(6), (b)(7)(C)
20 title was?

21 A. I can't tell you the title, but I can tell you
22 the job category (b)(6) was in, it's called an (b)(6) I don't
23 know if it's a (b)(6) et cetera, but it's a
24 technical expert at the SES level but they're in a
25 completely different job of only being an expert in a

1 particular field. (b)(6) happened to be (b)(6), and
2 they do not manage; supervise executive positions by
3 definition from OPM.

4 Q. And what was (b)(6) a (b)(6) -- what
5 program over, do you recall?

6 A. (b)(6) was a (b)(6) for Mr. Kurt Coy, the
7 Deputy Under Secretary of Economic Opportunity on the
8 subject of employment.

9 Q. And do you recall why (b)(6) was terminated?

10 A. Yes, I do.

11 Q. Why was (b)(6) terminated?

12 A. The compilation of various travel policy
13 violations over a long period of time despite the fact
14 that (b)(6) was told in writing that (b)(6) needed to stop
15 doing though (b)(6) continued doing it.

16 Q. And were --

17 A. It is not only did (b)(6) continue to do them, but
18 (b)(6) continued to do and expand and just essentially
19 ignore the guidance from the Comptroller's Office and
20 Finance people telling (b)(6) to stop doing it.

21 Q. And what was your involvement in (b)(6)
22 termination?

23 A. I need to go back a little bit more on the last
24 part and then I'll come back to my involvement and
25 interaction.

1 Q. Sure. Yes.

2 A. Some examples of the things that (b)(6) did. (b)(6)
3 ordered an Uber. (b)(6) didn't like the size of the car;
4 (b)(6) sent it away. And (b)(6) sent it away again and then a
5 third one and a fourth one and a fifth one. And on every
6 one, the VA got a bill for \$50.00.

7 And then (b)(6) finally got in a big one, which
8 was a Suburban, and then we got another bill for \$50.00.
9 So what should have been a 25, \$30 taxi ride ended up
10 being 4 or \$500 worth of expenses.

11 (b)(6) went on the 4th of July weekend three or
12 four days early ahead of a conference that was happening
13 after the 4th of July weekend in the YTT and then put
14 (b)(6) in a room, ocean-facing room, at the Marriott at
15 \$800 a night saying, well, I couldn't get another room at
16 another hotel.

17 The problem is there's a VA policy that says if
18 you're ever going to spend more than 300 percent of the
19 per diem rate, only the Secretary can approve it and
20 anything over 150 percent of the per diem rate needs to
21 be approved by the Under Secretary.

22 (b)(6) was over the 300 percent rate and didn't do
23 that, and those two are just two examples of an
24 investigation which was sitting on my desk that without
25 exaggeration the paper stack was over two feet tall.

1 Q. Okay. And what was —

2 A. I'm sorry, go ahead.

3 Q. Please, no, continue.

4 A. Okay. The second part you asked was what was
5 my involvement in (b)(6) termination?

6 Q. Right.

7 A. I was the deciding official in that termination
8 part so I'm the one that reviewed the evidence after the
9 recommending official did his part. I sustained some of
10 the charges and I removed some of the other charges and
11 then made the ultimate decision to terminate (b)(6)
12 employment.

13 Q. Okay. Have you ever heard the phrase friends
14 of Tom?

15 A. I've heard it and read it in the report you
16 wrote here, yes.

17 Q. Before the report, had you ever heard that
18 phrase?

19 A. No. I don't have friends of Tom. I have
20 people that do their job and deliver results, they're not
21 friends.

22 Q. And how many -- approximately when you were the
23 Deputy Under Secretary, approximately how many female
24 employees reported directly to you?

25 A. Directly to me?

1 Q. Yes.

2 A. Well, there's, depending on how you clarify
3 that for me, there's two very different answers. How
4 many reported directly to me or how many were in the
5 office and around me because directly to me there was
6 only one employee as the acting Under Secretary that
7 worked for me directly and that was Jamie Manker, the
8 Principal Deputy Under Secretary of Benefits.

9 And then the reason I'm laying it out that way
10 is the organization is structured so that the -- to
11 protect the political appointee, the Under Secretary of
12 Benefits, you put only the principal deputy as the single
13 direct report into that person.

14 And then all of the other people in VBA, who
15 are all career employees, report to the Principal Deputy
16 Under Secretary of Benefits and that person writes 25
17 different performance reviews for various directors
18 across the organization.

19 So the direct answer to your question was there
20 was one person who reported to me and that was Jamie
21 Manker.

22 Q. So of those 25, and I understand that that was
23 just maybe an approximate number, of those 25 employees
24 who reports to your, your deputy, correct?

25 A. Yes.

1 Q. What would have been your involvement in
2 removing any of those employees?

3 A. What would have been my involvement in the 25
4 direct reports to the principal deputy?

5 Q. Correct.

6 A. Okay. I would -- because they're direct
7 reports the way the process works, a direct report to
8 Jamie, Jamie would be the proposing official and then I
9 would be the deciding official.

10 Q. Okay. And one last question, during the
11 "soccer moms" discussion to the group that we referenced
12 earlier, do you remember referencing replacing field
13 employees with the "soccer moms"?

14 What I'm specifically looking for is it was
15 referenced that you were replacing field employees, not
16 necessarily that you wanted to hire "soccer moms", but
17 that you would be replacing field employees.

18 A. Yes. Okay, I know what you're saying.
19 Replacing field employees in the sense of, I have a
20 thousand, and this is specifically phone centers because
21 the whole reference to "soccer moms", the only place that
22 reference is applicable, or was applicable, during that
23 conversation is regarding part-time employees working in
24 the phone center because one of the questions was we're
25 fully staffed now, how do we, how do we do this? And the

1 answer is, when you attrition out other people leave then
2 you hire back the "soccer moms" category individual.

3 Now, further clarifying comments about why
4 that's a significant comment, it's not a case of
5 targeting field employees our call centers or entry-level
6 divisions, the lowest graded position we have in the VA.
7 We have a very high turnover rate. At VBA we run an
8 attrition rate something south of five percent annually.

9 But in the phone centers, that number runs
10 between 30 and 50 percent because those people come in,
11 they spend six months on the job, they learn it and then
12 they start applying for other higher graded positions in
13 VA.

14 My point is this, the turnover in those
15 positions is very high and the comment about replacing
16 field employees is a comment not only taken out of
17 context but inappropriately used.

18 It was as attrition occurs, one full-time
19 employee leaves, you go out and hire two part-time
20 employees to take that person's job. And just to expand
21 on a question I was asked a little while ago, how
22 detailed was that explanation during that and it was in
23 great detail just like I did here.

24 Q. And do you remember during that great detailed
25 explanation saying that they weren't -- the "soccer moms"

1 were not going to file reasonable accommodations or were
2 not going to demand raises?

3 A. Nobody demands raises so let's take care of
4 that part first. We're in the federal government there
5 is no raises, it's a very structured process and it's
6 controlled tightly by OPM.

7 I'm trying to -- this first part was, did I
8 remember saying that "soccer moms" would not file
9 reasonable accommodations.

10 Q. Correct.

11 A. I don't recall saying that.

12 MS. (b)(6), (b)(7)(C) that's all I have.

13 MS. (b)(6), (b)(7)(C) Okay. Thanks, (b)(6), (b)(7)(C)

14 MR. MURPHY: I've got to go back to the other
15 comment about the 25 people that were direct reports to
16 Jamie Manker.

17 MS. (b)(6), (b)(7)(C) Sure.

18 MR. MURPHY: In the nearly two years that I was
19 the Under Secretary of Benefits, I did one termination
20 and that was (b)(6), (b)(7)(C)

21 MS. (b)(6), (b)(7)(C) Okay.

22 MR. MURPHY: And the reason I say that is --
23 you're kind of getting at these 25 people and what would
24 my involvement be in any of those terminations, and one
25 of the allegations in this letter is that I move these

1 females out.

2 Wait a minute, there was one involvement, one
3 termination, and that was (b)(6), (b)(7)(C) for very clear
4 compelling evidence.

5 MS. (b)(6), (b)(7)(C) Very good, okay.

6 MS. (b)(6), (b)(7)(C) Did you -- I'm sorry, (b)(6),
7 one more question. Did you maybe not remove them or
8 terminate them? Did you move them out of the position to
9 another position within VBA or VA?

10 MR. MURPHY: There were moves that were done
11 before I stepped into that role by Deputy Under
12 Secretary, Sloan Gibson, he moved quite a few people
13 around, and we're going to get into that here in just a
14 minute when you start talking about Rob Reynolds.

15 But that whole move, that whole orchestration
16 was done and executed by Sloan Gibson.

17 MS. (b)(6), (b)(7)(C) Okay. Thank you.

18 MR. MURPHY: I could give you a clarifying
19 comment here. It's a philosophy that I operate under and
20 this primarily comes from the corporate world. You have
21 a goal; you have an objective that you need to
22 accomplish.

23 And the task of the leader is to find the best
24 people you can find regardless of any of the other
25 factors, that you need to find the best people who can do

1 the job that are going to get the job done for you, that
2 are going to make the organization successful.

3 Sometimes they're female, sometimes they're
4 male, sometimes they're other things. And it just so
5 happens in VA, with VBA, I believe, where 55 percent
6 females, and if you go back out and look in the
7 executive -- you'll find that that number is represented
8 there as well.

9 MS. (b)(6), (b)(7)(C) Okay. Thank you for that
10 clarification. Appreciate it.

11 BY MS. (b)(6), (b)(7)(C)

12 Q. So you just mentioned Rob Reynolds, so let's
13 talk about him. Can you tell us a little bit about how
14 he came into the position as is listed in these
15 allegations?

16 A. Let me make sure I'm answering exactly the
17 question you're looking for, whether Mr. Murphy committed
18 a personal practice when Mr. Rob Reynolds was promoted to
19 a Deputy Under Secretary position.

20 Mr. Reynolds was the BAS, Benefits Assistance
21 Service Director for a number of years and on two days
22 before I stepped in as the Acting Under Secretary for
23 Benefits, just before -- retirement, the Deputy
24 Secretary, Sloan Gibson, came in and transferred Rob
25 Reynolds from the BAS job into the Deputy Under Secretary

1 for policy, an office we call 20P, using VA's office
2 numbers.

3 Q. Okay. Was that a promotion as it's alleged or
4 was that a lateral reassignment?

5 A. On paper it's called a promotion but inside the
6 OPM's Operating Rules they're not promotions in the sense
7 of a GS-14 promoted to a GS-15, they're reassignments
8 with greater responsibility inside the SES Core.

9 And to clarify this, to talk about how -- was
10 Mr. Reynolds singled out by the deputy secretary to get
11 something that everybody else doesn't get? The answer
12 there is, no.

13 I'm going to give you an example. The current
14 Principal Deputy Under Secretary for Benefits was in a
15 Level 3, SES position; Level 3 being the lowest and then
16 she without competition, without discussion, without
17 anything else was reassigned by the VA chief of staff
18 into the Principal Deputy Under Secretary position which
19 is the highest SES position in the VA.

20 And that is just an example because it's such a
21 prominent one but if we went back and looked at it you
22 would see that same process done out hundreds of times
23 over the last several years.

24 Q. Sure. So you didn't have any -- this is
25 Mr. Gibson who made this move, you didn't, you didn't

1 make this move?

2 A. That's correct.

3 Q. Okay. Did Mr. Gibson consult with you about
4 the move -- about moving, reassigning him?

5 A. Oh, of course he did, yes. That's the reason
6 he consulted with me from the standpoint I have to
7 deliver the organization's performance. And the comment
8 is we're going to assign Rob Reynolds in here and can you
9 get the job done with Rob Reynolds in that job?

10 Q. Okay. Did you have to sign off on any
11 paperwork to make that happen?

12 A. I really don't know.

13 Q. Okay. Okay.

14 A. Yeah, I don't --

15 Q. I'm sorry?

16 A. I definitely did not sign the document that
17 makes it official is the SF-50 which is the standard
18 Form 50. It's a Notice of Personnel Action that goes in
19 the individual's file.

20 In moves the originating document is usually an
21 SF-52 which is a proposed notice of -- and I don't recall
22 signing any of those either so --

23 Q. Okay.

24 A. I don't believe so is the answer to that.

25 Q. Okay. And is it accurate that the TAP was

1 moved under his oversight under Mr. Reynold's oversight
2 when he was moved into that new position?

3 A. Under, not completely. It's a
4 mischaracterization of a move that happened for other
5 reasons. There was an organizational change from an
6 office that was called the VDPO.

7 The VADOD Collaboration Office and the
8 contract -- that Calibre contract you referred to of 22
9 million dollars fell under the organization called the
10 VDPO, the VADOD Program Office and it was a liaison
11 office between us, DOD, Department of Labor, Department
12 of Education, Small Business Administration and others
13 that were involved with the TAP process, okay.

14 So there was an organizational change that said
15 we're no longer going to have the VDPO and we split that
16 function up into a couple of parts. Some of it went
17 under Kurt Coy and (b)(6); (b)(7)(C) in the OTEEI Office and
18 some of those tasks and responsibilities went under the
19 BAS, Benefits Assistance Service, which was Mr. Reynold's
20 former job.

21 He was, he was promoted to the next level up
22 from that and it went under the BAS. So a big chunk of
23 that contract was moved under the Benefits Assistance
24 Service.

25 Q. Okay, okay.

1 A. You need to -- let's go. Let me clarify a
2 little more on there. It just came to mind me thinking
3 about it. The question there, the important piece of
4 what you're asking here is why.

5 And the answer for that was when we did that
6 reorganization, and we did that realignment we moved and
7 I can't give you an exact number off the top of my head
8 but something in the neighborhood of 70 full-time
9 employees were sent out to the field to work on
10 adjudication, development, et cetera, the prime function
11 of the VA.

12 So by having the organizations that we did, we
13 had two or three organizations that all had the same
14 responsibility with overlapping scope and responsibility,
15 so there was a realignment that consolidated that under
16 one and then reduced the number of people that were doing
17 it, because before you had three organizations that each
18 had 10 bodies then you combine it, you're able to do the
19 job with 15 people so you have 15 extra bodies.

20 Those people were then reassigned out to the
21 field to go do other things and deliver benefits to
22 veterans. So all of this was going on at the same time
23 as these changes that are referred to in here in saying
24 this was moved under Mr. Reynolds.

25 Q. Okay.

1 A. Not really, it was moved under one of the
2 organizations that Mr. Reynolds was responsible for. But
3 the other part of that was the BAS, over the last several
4 decades, called the benefits assistance service, their
5 job; their prime task is outreach and communications with
6 veterans.

7 And the TAP process is largely outreach and
8 communications with BAS.

9 MS. (b)(6), (b)(7)(C) Okay. Understood. (b)(6), (b)(7)(C) any
10 questions?

11 MS. (b)(6), (b)(7)(C) I do not.

12 MS. (b)(6), (b)(7)(C) Okay. Okay. Thank you for that
13 detail.

14 BY MS. (b)(6), (b)(7)(C)

15 Q. Okay. So let's talk about the next allegation
16 in regards to VBA leaders. I'm going to read it as it's
17 stated in the WOA letter: "VBA leaders routinely travel
18 to VIP NASCAR events and have used under the radar
19 contracts to fund the relationship."

20 So let's start with, is it true that VBA
21 leaders have traveled to these VIP NASCAR events?

22 A. It is true that VA leaders travel to NASCAR
23 events for outreach, yes. You insert the word VIP in
24 there like it's some kind of special privilege you get.
25 No, that's way off base.

1 Q. Okay. Can you explain the circumstances under
2 which they would be attending these events, the propriety
3 of it?

4 A. Well, no, let's go back to the other comment in
5 there which says under the radar.

6 Q. Yeah, I was going to get to that but go ahead.

7 A. And the reason is it clarifies the next
8 comment, okay. There's no under the radar to it.
9 There's a contract that was let out by, I believe it was
10 the VDPO, giving an idea that was back in like 2012/13
11 timeframe.

12 My point is long before I had any involvement
13 with any of this or responsibility for any of this.
14 There was a free and open competition the contractor got,
15 was awarded it to do outreach at various events,
16 conferences, conventions, NASCAR events, other supporting
17 events where there's high groups of high concentrations
18 of veterans in order to go and do the outreach that we
19 do.

20 And one of those was three NASCAR events per
21 year that are specifically and intently setup to be
22 focusing on veterans. And part of that process is a
23 leader from somewhere in the VA -- usually VBA but
24 sometimes VA goes to those events and stands up and does
25 photo opportunities with veterans and shakes their hand

1 and then goes on with life.

2 Q. Okay. So when they're at these events, when
3 there's a VBA representative at these events, is there a
4 special area where they're setup with like a table or a
5 booth saying -- basically advertising that they're there
6 for the veterans to answer questions for the veterans?

7 A. Yes, there is. There's actually -- there's a
8 long sequence with a very detailed agenda because of this
9 very conversation we're having is the reason we do this
10 kind of thing, okay.

11 But we bring in -- typically it's an RV that's
12 converted to an office. We put people working there,
13 some from the hospital, some from memorial affairs, and
14 some from the benefits side, excuse me.

15 And these people sit there and they have
16 conversations with veterans and each veteran that comes
17 up signs in our log book and as we go back in and say,
18 here's what we did.

19 In one particular event -- the only one of
20 these events that I went to was in Phoenix, there were
21 over 2,400 veterans that came up to that booth that were
22 interacting and getting stuff handled for them during the
23 outreach so that's one aspect of it. That's kind of like
24 the face of where it all comes from. And, in addition to
25 that, people look at it and say NASCAR, that's the race

1 on Sunday.

2 Well, not really, it's more like the PGA Tour
3 where it's got a lead up and there's a whole bunch of
4 series of events that happen over the course of a
5 weekend.

6 And I tell you that because these events we
7 pick a population of veterans and equip those veterans
8 with VIP credentials and have them walk around. They
9 meet with drivers, they meet with the cars, they go to
10 the driver meetings, they go to all the different
11 functions that are happening over the course of the
12 weekend.

13 And then the -- whatever executive it is that's
14 there shows up and shakes their hand, gets the photo
15 opportunity and in my case NASCAR is just a loud, sweaty
16 event for me, the sooner I can get out of there the
17 better. I left.

18 And then I show up for the next scheduled event
19 and I leave then I schedule the next event and then I
20 leave. So there's a series of events and photo
21 opportunities.

22 And, for example, the track owner is standing
23 up there saying, will all the veterans in the crowd
24 please stand because of recognition. And I don't know if
25 you know this or not, over 40 percent of the people that

1 attend a NASCAR race are veterans, so you're looking at
2 an audience of 125 to 150,000 people coming to watch this
3 race and 60,000 of the veterans that I'm delivering
4 services to.

5 The point of this contract is you need to put
6 the VA where the veterans are and then in this case is
7 happens to be a NASCAR event because so much of the
8 population are veterans.

9 So you show up at an event, the introduction of
10 the drivers, you're standing on the stage; you shake the
11 driver's hand congratulations. The owner of the track
12 calls these six veterans up, recognizes them and give
13 them all pats on the back, thanks for coming in today.

14 Thanks the whole audience, everybody, 30,
15 40,000 people around thanking them for their service. A
16 big round of applause for everybody and then the next
17 event goes on.

18 So this is singled out as it's a NASCAR event
19 because it's VIP treatment. It's not VIP treatment.
20 It's -- you need to be where the veterans are when the
21 veterans are for these events that happen. You're not
22 there to watch the race.

23 Q. Right. Do -- who puts together these events?
24 Like, it talks about that these contracts -- I know
25 you've already addressed that they're not under the radar

1 but who actually puts together all these details?

2 A. Those contracts belong to BAS, the Benefits
3 Assistance Service and --

4 Q. Okay.

5 A. -- the contractor provides -- they actually do
6 a really good job at this because you want to know, I'm
7 going to spend money on doing an event like this, what's
8 the return you're getting.

9 So there's great detail in -- and they give us
10 upfront, here's an agenda. It starts on this day and
11 these are the events, times, places, et cetera, and then
12 they go away and execute the event.

13 And then after the event they come back with
14 here's the impact. We've talked to this many thousands
15 of veterans on these dates, you had a great turnout.
16 These were -- and here's the pictures that we took and
17 here's the stories, out of that same event we take those
18 pictures and we take the stories and we hand it over to
19 our public affairs, public relations people, who then go
20 out to places like the military time, Associated Press,
21 et cetera, and put pictures out that VA is out there
22 serving, taking care of veterans.

23 So my point is it's all part of a very big,
24 very well-orchestrated planned out event that at the time
25 and place you put an executive there to shake the right

1 hand.

2 Q. Okay. It's a very visible event in other
3 words?

4 A. Oh, yeah, yeah, yeah.

5 MS. (b)(6); (b)(7)(C) Yeah, okay. (b)(6); (b)(7)(C) any questions
6 about this one?

7 MS. (b)(6); (b)(7)(C) I do.

8 BY MS. (b)(6); (b)(7)(C)

9 Q. Mr. Murphy, you just stated you need to be
10 where the veterans are. Did you go to any other
11 veterans' events besides NASCAR?

12 A. Yes.

13 Q. Can you tell us about that?

14 A. I'm sorry, let me lean in so you can hear a
15 little better, DAV National Convention, VFW National
16 Convention, Country Veteran Service Officers Convention.

17 The VA can run, VBA can run, all by itself
18 internally without an Under Secretary, and the reason is
19 that the professional core people that do the work every
20 single day and stay inside focused can do very well and
21 drive the organization.

22 The job of the Under Secretary is to be out, be
23 seen to get quoted in the newspapers, to shake veterans'
24 hands to say, hey, we're here, I'm here, how can I help
25 you. And that's exactly what I did in track -- in

1 looking at this.

2 I had ever in those two years I had something
3 more than 125 different engagements similar to NASCAR
4 DAV, VFW, et cetera.

5 And I'll give you a typical event, let's say I
6 walked out to Minnesota -- here's a better one, I went
7 out to Albuquerque, New Mexico to do an office visit. So
8 I show up, I do an office visit, I talk to the employees.

9 Then I would do an employee Town Hall meeting
10 with only -- no managers, only the employees. Then I
11 have a separate meeting with the manager. Then I have a
12 third meeting with the veteran service organizations that
13 are there, DAV, VFW, State of New Mexico, et cetera.

14 Then I got in the car and I drove up to
15 Santa Fe and I stood there while the governor and the
16 Secretary of Veterans Affairs for the state of New Mexico
17 proclaimed it some kind of a veterans day.

18 The guy sitting next to me is a 94 year old
19 Navajo code talker who's being honored for his service,
20 so pictures of me shaking his hand and patting him on the
21 back, telling him -- or patting him on the back, excuse
22 me, telling him, thanking him for his service.

23 Then from there we went out and visited one of
24 the Navajo tribes and we're walking around having
25 conversations with the tribal chief and he's telling me

1 how he's having problems getting Native American home
2 loans for the members of his tribe living on the
3 Reservation and he's having health problems and he's
4 having -- and then I come back and I share that with the
5 others in VA to go back in and improve the services on
6 that particular Navajo pueblo.

7 That's just one example of the 125 to 150 of
8 those I did over that year, almost two years on the job.

9 Q. Did you ever -- I believe you already said
10 this, the Phoenix NASCAR, was that the only NASCAR event
11 that you went to?

12 A. Yes, it is.

13 Q. And --

14 A. And here's one, it's not a case of NASCAR, it's
15 a case of having an Under Secretary show up at an event
16 is a very big thing. So you've got to spread it around.
17 You've got to hit different places and you don't get an
18 impact by going to the same event six times, you get an
19 impact by hitting this event once and then hitting six
20 other events that you've never seen before.

21 And the idea is to give that omnipresence I'm
22 always here and you don't get that by going to the same
23 event over and over and over.

24 Q. I understand that. But at the NASCAR event
25 that you did go to, did you actually stay by the RV or

1 did you ever go up to a suite?

2 A. I went up and had a meeting with the owner
3 where I was introduced to -- the owner has a public
4 affairs guy -- this is my guy that does veterans
5 interaction, he's responsible for this event.

6 So, yeah, I went up there and met with them.
7 And then when I went down into the pits I went down into
8 the drivers' meeting with the -- I mean, I was everywhere
9 on that track, all over the place.

10 MS. (b)(6), (b)(7)(C) Okay. Thank you.

11 BY MS. (b)(6), (b)(7)(C)

12 Q. Okay. All right. So let's talk about -- get
13 away from the WOA letter for a minute and talk about the
14 OIG non-case referral regarding fees of mandatory
15 overtime.

16 Now you sent me an email with a message that
17 you sent out to staff on May 10, 2018, that you sent to
18 VBA employees and partners. That is pretty self-
19 explanatory but specifically can you tell me about the
20 allegation that -- and I apologize, I'm looking for that.
21 Here it is, the backlog has actually increased since
22 mandatory overtime was instituted in 2017. I've read
23 your email which says contrary to that but I want it on
24 the record just your explanation of how the backlog has
25 actually been decreased as opposed to increased?

1 A. Yeah. Backlog is a function of 125 days from
2 the time a veteran files a claim to the time they receive
3 a decision on their claim.

4 And my point is it's demand driven. So when
5 the veteran files the claim it starts the clock.
6 Sometimes in a month we get 100,000 claims, 90,000
7 claims, other times in a month we get 140,000 claims.

8 But I still have the same number of employees;
9 about 10,000 direct employees that process those claims
10 so sometimes the backlog goes up, sometimes the backlog
11 goes down.

12 Did the backlog go up in 2017? It did but not
13 in the way that it's referenced in this letter. You have
14 to go back to 2016 to look at that. The direction from
15 the secretary of VA at the time was I need you to pull
16 out all the stops and get me under 70,000 claims by the
17 1st of October fiscal year 2017.

18 So if you go back into 2016 and you look at the
19 decrease in the last six months going in we focused
20 efforts, we focused concentration and we put a full drive
21 into -- and this is a very important part -- the last
22 quarter and the third quarter of the year are the two
23 most productive quarters out of the year.

24 Just like everybody understands I've got a
25 deadline meaning I've got to produce more, I've got to

1 produce more and they concentrate and they do more work.

2 So 65, 70 percent of the work for years done in
3 the last six months. So the concentration to drive that
4 number down to 70,000 for the 1st of October going into
5 2017, we ended up somewhere 71, 72,000 something like
6 that. We missed the mark.

7 So then the next thing that happens is you go
8 back in and look historically -- go back and look a
9 decade, the first quarter of the year everybody has
10 finished that sprint to drive and the backlog increases.

11 In this case the backlog increased 2,095 (ph.)
12 97,000 claim more. Then we went back in and said, okay,
13 enough of this and we started driving that number back
14 down the other way again.

15 And this year at the beginning the 1st of
16 October 2018 we ended --

17 MR. (b)(6), (b)(7)(C) October '18.

18 MR. MURPHY: Fiscal year '18.

19 MR. (b)(6), (b)(7)(C) Okay.

20 MR. MURPHY: Yeah, fiscal, 1st of October
21 fiscal year '18, the end of last fiscal year, we were at
22 the -- again, just above, I think it was 71, 73,
23 something like that.

24 And, at the same time, Secretary Shulkin had
25 gone to Congress and made a comment that he was going to

1 cut backlog in half again on the record as a commitment
2 to Congress within two years.

3 So the task was for me to get us to the 60,000
4 mark. So not only did I need to break the 70 but I
5 needed to figure out a way to get it down to 60,000.

6 So the end of October or the beginning of
7 October 2018, fiscal year, we were at the 71,000
8 something mark. Then when we did a bunch of changes,
9 operations, spending overtime money, hiring more people,
10 et cetera, and then that backlog number finally went down
11 to that 68, 69,000 mark that you saw referenced in that
12 memo there.

13 It actually was a little lower than that
14 because that letter was sent out on a different day than
15 when we really hit the peak or hit the bottom.

16 Q. Okay. So you instituted -- when did you
17 institute the mandatory overtime?

18 A. Oh, thanks for asking that. I didn't institute
19 mandatory overtime; I stopped that mandatory overtime.
20 Alison Hickey (ph.) in Year Number 1 of her four-year
21 tenure, instituted mandatory overtime across the board
22 and she put everybody, every employee will work 20 hours
23 per month of mandatory overtime.

24 And, at that time, our mandatory -- our
25 overtime spend, which by the way is a line item from

1 congress saying issue overtime, okay. Then we put other
2 money on top of that that were available -- appropriately
3 available and increased that number so that we crossed
4 over the 100 million dollar annual mark of overtime.

5 When she put the entire workforce for three
6 years on mandatory overtime of 20 hours a month, then
7 that continued under -- when he was the acting person.

8 And then he, being of a different mind, a
9 business guy, he looks at overtime as it's very expensive
10 labor. In 2016 into 2017 started looking at the way we
11 were spending our money and making some changes.

12 And I shifted some of that overtime money into
13 permanent employee money and started hiring more people
14 and getting them trained up.

15 Now in 2017 when that was going on, we still
16 had to spend at that same overtime rate but we had
17 switched from everybody will work always overtime
18 mandatory to select and targeted only for certain people.

19 And, for example, if you were a rater you had
20 to work mandatory overtime because I didn't need people
21 developing cases, I had a big backlog, not a backlog, an
22 inventory of cases that were ready to rate.

23 So I stopped everybody else from working
24 overtime and I only made the raters work overtime. And
25 then what happens is the raters working overtime cleaned

1 up all the inventory that needed to be done, so we told
2 the raters, you don't have to work overtime anymore but
3 all of you VSRs, developers, you're now on mandatory
4 overtime.

5 And here's the -- you've got to go to a
6 philosophical answer to your question. If the permanent
7 use of a blanket everybody will do overtime always does
8 nothing but drive the morale down of a workforce.

9 But when you apply it in such a way that you
10 turn it on as a tool that has to be done right now to
11 meet a specific objective and goal of the Administration
12 in the VA and a direction from Congress and then turn it
13 off when you meet that, now we're acting with the intent
14 to what Congress is expecting us to do, fiscally
15 responsible and not abusing your employees.

16 And I'll tell you the result of what happened
17 in 2017, we were spending over 100 million dollars a year
18 in overtime. In 2018 our overtime budget was cut to 30
19 million dollars.

20 Now because a couple things didn't quite work
21 out, they put another 10 or 20 million dollars in there,
22 but for 2018 we're still at 50 percent of the overtime
23 spend rate that we were in previous years.

24 Q. So right now are the VSRs still working that
25 overtime?

1 A. I don't know the answer to that and the reason
2 is that new leadership making different decisions on who
3 will go do overtime and when.

4 Q. Okay.

5 A. Here's what I do know is that we were given
6 guidance that we weren't allowed to spend more than -- we
7 were given specific numbers of dollars that we could use
8 in only certain jobs that we were allowed to use it on.

9 So in some office, office by office because
10 they're not all the same always, okay, some you'll find a
11 team of these raters were all on mandatory overtime. You
12 go to the office in the next state and they're not
13 necessarily all on mandatory overtime.

14 So the numbers are greatly reduced and there's
15 been a little more decentralization and put it back in
16 the hands of the individual office directors to make some
17 of those decisions.

18 Q. Okay. Now you mentioned low morale if you had
19 everybody doing mandatory overtime for an extended period
20 of time. But did you ever hear any complaints about
21 employee burnout or increased use of employee leave as a
22 result of being burned out?

23 A. No, this one I can answer from the standpoint
24 of did that kind of thing happen? Yes. Did it happen
25 because of my actions? No.

1 And the reason for that is like I explained
2 when I came in, we cut back the use of that mandatory
3 overtime. So the comments that you're referring to about
4 employee burnout and employees using leave in lieu of,
5 that's part of the reason why I implemented the changes
6 that we did because you can't, you can't run at full out
7 maximum effort forever. It doesn't work that way.

8 Q. Right.

9 A. So I put the things in place that said, stop
10 spending the overtime, hire more people. Let's give
11 these people back their lives and let's stop wasting the
12 taxpayers' money when I can hire some more people to do
13 the job.

14 The key to this one is when you make that
15 decision, we don't just get to go out and hire a worker
16 that comes in and the next day is productive. There's a
17 ramp up period that's between 18 months and two years to
18 get that person from the time I hire them to the time
19 they're performing at the full-performance grade of the
20 job.

21 And just to give you an idea of how structured
22 that is, we've got career ladder hired, you get hired in
23 as a 7 and a year later you go to a 9, the year after
24 that you go to a 10, the year after that you can compete
25 and go into a GS-11.

1 So we know that and we hire people in over that
2 timeframe. So if you go back to the time I got hired --
3 well, put in, excuse me, signed in as the Under Secretary
4 and then made the decision to make that change in
5 overtime, we're just now in 2018 seeing the benefits of
6 that through the reduced spend but maintaining that
7 higher level of output that we did when we were spending
8 100 million dollars a year in overtime.

9 So some of these employees -- I mean, this
10 is -- obviously these were written by a person coming in
11 saying this is what's happening to me in my space.

12 Q. Right.

13 A. Wow, I was putting the things in place to stop
14 that from happening. We continued that in 2017 in order
15 to get the 2018 fix that we're enjoying the benefits of
16 today.

17 MS. (b)(6); (b)(7)(C) Okay. Very good. (b)(6);
18 (b)(7)(C) any questions?

19 MS. (b)(6); (b)(7)(C) Mr. Murphy, what were the
20 consequences if an employee refused to work overtime?

21 MR. MURPHY: It's management's right to assign
22 work which includes overtime but you have to be
23 reasonable. I mean, we could get into a long protected
24 battle and say, I said you must do it -- the battle --
25 you don't do that with your employees.

1 You work with the employee, you have a
2 conversation. You said, okay, why can't you work
3 overtime? I've got a three week vacation. I have a
4 multitude of different reasons. I have a reasonable
5 accommodation.

6 And, by the way, there were hundreds if not
7 thousands of reasonable accommodations where the person
8 said I can't work. They brought us documentation. We
9 said you're excluded; you don't have to work mandatory
10 overtime.

11 So just the other part you've got to, you've
12 got to turn this around because an individual that's come
13 in and worked three years of overtime of 20 hours a month
14 has got a bigger paycheck.

15 Then we went back in and we lifted the
16 restriction that says there's no more overtime because
17 we're out of money and we stopped everybody doing. And
18 the complaints turned from you're pushing me so hard,
19 you're doing it to -- you're taking money out of my
20 pocket, I don't want to keep working.

21 So it's the, it's the -- I don't like change
22 aspect more than the pain of I'm going through this. But
23 we did get to the point in 2017 where it was not
24 mandatory overtime, it was voluntary overtime and that
25 met our needs.

1 And my point is, we got off the mandatory
2 overtime as quickly as we could and still be able to
3 deliver the services to veterans that we were tasked to
4 do and that took until 2018 in order to be able to do
5 that.

6 MS. (b)(6), (b)(7)(C) And just one last question.
7 You mentioned that there was some mandated 20 hours a
8 month. Were employees allowed to choose how they were
9 going to work those 20 hours a month, whether it be maybe
10 two hours after their scheduled tour of duty or the
11 weekends or was that their decision or was that left up
12 to the coaches and supervisors?

13 MR. MURPHY: In 2017 it was 20 hours of the
14 employee's choosing. Some people chose to work an extra
15 hour a day, which by the way there's typically 20 hours
16 in a month. Other people chose to -- they worked a
17 compressed work schedule so they just worked two of those
18 days.

19 If you're working like a 5.9 (ph.) workday you
20 work that extra day there's the majority of your
21 overtime. So it was up to the employee and it actually
22 made perfect sense because of the system we had in place
23 we could track their performance, we knew what they were
24 doing. Why take it away from the employee.

25 MS. (b)(6), (b)(7)(C) Thank you.

1 BY MS. (b)(6), (b)(7)(C)

2 Q. Okay. The last thing we're going to talk about
3 is the OIG report that I sent to you this morning
4 regarding contracting improprieties or irregularities, I
5 should say.

6 A. Okay.

7 Q. Okay. For the record, I just want to -- it's
8 Report Number 16-04555-138 dated May 2, 2018. A couple
9 of clarification questions, in the report it talks about
10 the former OTEEI director and assistant director.

11 Do you know who those individuals were?

12 A. I do not.

13 Q. Okay.

14 A. If you're asking me to pull something out of a
15 big giant head of knowledge in here, I'm just -- I can't
16 off the top of my head tell you who those people were.

17 Q. Okay.

18 A. Here's what I can tell you. The OTEEI job was
19 vacant for -- I think it was vacant the entire time I was
20 in the undersecretary -- the Acting Under Secretary role
21 and the Principal Deputy role and it had a series like a
22 revolving door acting because you're not allowed to keep
23 somebody in there more than 120 days on an acting
24 assignment.

25 Q. Right.

1 A. So it's on a revolving door of people, one
2 after another after another for two years.

3 Q. Okay. Do you know who the VBA's chief of
4 transition was that is being referenced in this report?

5 A. I do not.

6 Q. Okay. Okay. So let's just get to the bottom
7 line of this. One of the things that -- in the VBA
8 comments which is -- it's an attachment.

9 A. Okay. Our responses, Documents A and B.

10 Q. Yeah. It says veterans' benefits
11 administration comments on OIG draft report.

12 A. What you looking for?

13 Q. Under the section that says VBA provides the
14 following general comments. If you go to the fourth
15 paragraph.

16 A. Before you go on, what page are you on, please?
17 I'm --

18 Q. Actually there's not -- oh, theirs is a page
19 number, sorry, Page 12, Page 12.

20 A. Thank you, thank you.

21 Q. Okay. Fourth paragraph under VBA provides the
22 following general comments; it states that the VBA is
23 coordinating with the appropriate offices to determine if
24 there is sufficient funds to credit the general operating
25 expense account for the IT equipment purchases for the

1 corresponding fiscal years.

2 Do you know if that was done?

3 A. I don't. I do not. And let me put this whole
4 thing in context with the dates on here, okay?

5 Q. Okay.

6 A. Go back and look at the timing that we set when
7 I first stepped -- when we first started this interview
8 and when I went into the job, right.

9 Then you look at the dates on here. The IG
10 received an anonymous hotline tip in this report.

11 Q. Right.

12 A. Before, before I was in that position then
13 looked at it and published this report, give or take a
14 day, 10 days before I left the job. So I can expand on
15 here with and share with you everything I know about the
16 pieces in here but my comment is this is a big giant --
17 not me.

18 When the things that they're alleging happened
19 I was the director of Compensation Service and had no
20 involvement whatsoever with any of this stuff that
21 they're talking about in here.

22 Q. Okay.

23 A. Then they went through and did their
24 investigation and during an investigation we were told by
25 the IG we are to keep our hands off it, touch nothing and

1 do nothing until they conclude their report and publish,
2 then we're allowed to step in and take action.

3 Q. Okay.

4 A. So scoping that I'm off the hook from the
5 standpoint of the responsibility for the things that
6 occurred in here, even to the extent of, Tom, you have to
7 go clean these up.

8 Q. Okay.

9 A. Because the persons that are to clean up, Paul
10 Lawrence and Margarita Devlin, who are running the
11 organization today.

12 Q. Okay, understood. So if you -- so let's look
13 at Page 14 and let me ask you a question there.

14 A. Okay.

15 Q. I just need your insight on this. So, where it
16 says VBA response, who would have drafted that response?
17 Who would have put this language in there and given it to
18 the OIG? Do you have any idea?

19 A. Most likely. And, again, I'm not 100 percent
20 certain but most likely that was drafted by Kurt Coy,
21 deputy undersecretary.

22 Q. Okay.

23 A. And then edited and reviewed by the (b)(6); (b)(7)(C)

24 (b)(6); (b)(7)(C) is her name. But what
25 you've got to understand with this one is, we are -- we

1 the VBA are not allowed to go in and do a response like
2 this without sending it over to VA Central Office and
3 getting the concurrences of all the various staffs that
4 have involvement in it, then we get to write this and
5 send it back out.

6 Q. Right.

7 A. My point is we don't get to do this in a
8 vacuum, the whole world needs to look at it, see it and
9 concur with it and get a chance to hack at it and change
10 it.

11 Q. Right. No, no, no, I understand that. I just
12 wanted to know who would have been the central point of
13 contact at VBA, who was --

14 A. Let me read. Sorry, go ahead.

15 Q. And the reason, and the reason I'm asking is
16 because I want to be able to go to that person or persons
17 and say, what came out of these action plans -- these --
18 you know, those target completion dates to some of these
19 and I want to know what the status is of them and if
20 these issues were corrected.

21 So that's why I'm trying to pick your brain
22 basically to find out who would have responsibility for
23 this?

24 A. Well, I'll tell you exactly who to go to.

25 Q. Okay.

1 A. Okay. I'm trying to remember his last name but
2 there's an individual, a GS-14, GS-15. His job, his sole
3 job, in life is to take these reports and these responses
4 and track them and drive them until -- what happens after
5 this is we go away, take the action and then we tell the
6 guys, here's what we did.

7 And they look at it and say, yes, that's good
8 enough or, no, it's not. Once you get to that's good
9 enough they close the action.

10 And his name is (b)(6) I'll think of it before
11 (b)(7)(C) the interview is over but give me a minute. You want to
12 know the status of exactly where this one stands and all
13 the communications between VBA and the IG, (b)(6)
14 (b)(7)(C) is your
guy.

15 Q. Okay.

16 A. It's his job to track that very thing. So he
17 can tell you exactly the status on each one of these,
18 when the next update is done, whatever actions were
19 taken.

20 Q. Okay. And if you can't remember by the end of
21 our call today you can certainly email us and just let us
22 know when you do think of his name.

23 A. Okay. And the other thing you said is who
24 possibly wrote this response? So I'm looking at the
25 first one on Page 14 that says, VA Office of

1 Acquisitions -- give me like 30 seconds to read the
2 paragraph and out of there it might tell me who to point
3 out to say you probably ought to go to talk to this
4 person.

5 Q. Okay.

6 A. (Pause).

7 Q. Are you still there?

8 A. I'm still here; I'm reading.

9 Q. Okay. Yeah, it just kind of went super silent
10 so I wasn't sure.

11 A. Oh, okay. Oh, sorry.

12 Q. Thought got cut off. No, you're fine.

13 A. Okay. This first one here is highly, highly
14 technical so (b)(6) (b)(7)(C) is nothing more than like the project
15 manager to make sure it's flowing along but the person
16 that would be overseeing the writing of this, the
17 scripting would be (b)(6) (b)(7)(C) -- I think it's (b)(6) (b)(7)(C)
18 (b)(6) (b)(7)(C) is the (b)(6)

19 But even she wouldn't be writing this level of
20 detail in here. This has got to come from either the
21 core contract office representative or the contracting
22 officer himself or herself, whoever that happens to be.

23 It's too technical and it commits to the cross
24 organization lines meaning that VBA can't do this by
25 themselves, a contract officer needs to be in on this

1 kind of a commitment.

2 Q. Okay. And you said (b)(6), (b)(7)(C) is that with a (b)
3 as in (b)(6), (b)(7)(C)

4 A. (b)(6), (b)(7)(C)

5 Q. And the last name, (b)(6), (b)(7)(C)

6 A. I think it's (b)(6), (b)(7)(C)

7 Q. Okay.

8 A. But let me double check that one too.

9 Q. That's okay, we can look that up. We can look
10 that up in Outlook.

11 A. I'm not 100 percent about the (b)(6), (b)(7)(C) part
12 that's why I'm saying let me check that.

13 Q. Oh, okay.

14 A. I'm looking at my email because her name will
15 pop up in the email. Yeah, (b)(6), (b)(7)(C)

16 Q. Okay, great. Thank you. And I'm not really
17 concerned about Recommendation 2, but if you could tell
18 me for Recommendation 3?

19 A. Okay. Here's something before I jump into that
20 one. The other name, (b)(6), (b)(7)(C) - his last name is (b)(6), (b)(7)(C)

21 Q. How do you spell that?

22 A. Do you want me to spell that? (b)(6), (b)(7)(C)

23 Q. Okay. Thank you.

24 A. You're welcome. Let me take a look at
25 Recommendation 3 here, yeah, what we're talking about

1 here, they're recommending we go back in and move the
2 funds from the GLE for VBA over into IG.

3 Q. Exactly.

4 A. Okay. So what was your question about that
5 then?

6 Q. I think you were trying to tell me who might
7 have written that particular response or be responsible
8 for that just as you were for the first one?

9 A. Okay. Let me see what VBA's response was.
10 It's a little shorter, less technical. Okay, this again
11 got to be -- when they talk about -- determine if there
12 are sufficient funds.

13 Q. Right. I would think it would be some sort of
14 a fiscal point of contact.

15 A. Exactly. That's my point. It's somebody in
16 finance and I don't know if it's -- I don't know.

17 Q. Okay.

18 A. (b)(6); (b)(7)(C) -- is the Deputy Finance Officer, Deputy
19 CFO, Jamie Manker is the CFO, but someone up in the top
20 two of three layers up in the -- it's called ORM, Office
21 of Resource Management.

22 Again, if you, if you ask when you talk to (b)(6); (b)(7)(C)

23 (b)(6); (b)(7)(C)

24 Q. Yeah.

25 A. -- if you ask him who wrote this response he'll

1 tell you, oh, that came from so and so and then you'll
2 get right to the right place.

3 Q. Okay. We will do that then, okay.

4 A. A clarifying comment on here about determining
5 if there is sufficient funds, what they're talking about
6 is the funds allocated by congress for a year. Even
7 though you don't spend some of them you get to hold back
8 some of those funds and then spend them in future years.

9 But you get to spend them in future years on
10 events that will occur during that year.

11 Q. Sure.

12 A. In this case it was an IT thing so they may
13 come back in and say, well, all the money for, you know,
14 2005 has been allocated and we don't have the funds to
15 transfer it.

16 Q. Sure.

17 A. But that takes coordination between the IT
18 world and the VBA.

19 Q. Gotcha, okay. So just really one last question
20 in regards to this OIG investigation, did they interview
21 you at all during this investigation on these issues?

22 A. I've had multiple interviews with them and I'm
23 trying to recall if this was one of the topics that I
24 interviewed on. I don't think it was.

25 Q. Okay.

1 A. I can't give you a definitive no but I can give
2 you a definite I don't think so. I'll even take it to
3 the level of I'm pretty sure they did not.

4 Q. Okay.

5 A. And, again, tying back to the timeframe that
6 they were looking at, the things that they were asking
7 about was nowhere on my radar involvement responsibility,
8 et cetera. It just flat wasn't there and that was --

9 Q. Okay.

10 A. -- how IG operates they're not looking for
11 trouble they're taking care of what lands in their lap
12 and I was nowhere involved with any of the scope of it so
13 it's highly unlikely that they would interview me on
14 this.

15 MS. (b)(6); (b)(7)(C) Okay. (b)(6); (b)(7)(C) do you have any
16 questions about this?

17 MS. (b)(6); (b)(7)(C) Yeah.

18 BY MS. (b)(6), (b)(7)(C)

19 Q. If I could, Mr. Murphy, I just want to clarify
20 some timeframes. When were you appointed the Principal
21 Under Secretary for Benefits?

22 A. It was in July of 2016.

23 Q. Okay. So in the report it says in May 2016
24 that the printing contract with Calibre was terminated.
25 Were you involved with that? Did they brief you on that

1 at all even though it was a couple months after or before
2 you came into office?

3 A. Let's clarify one point first. There was no
4 printing contract with Calibre. There was a TAP outreach
5 contract of which one of the tasks they were given was
6 printed.

7 And then this IG report talks about appropriate
8 or not appropriate but that's a different conversation.
9 The second one was, was I involved with the termination
10 of that contract? No, I was not.

11 Q. Were you briefed at all on it?

12 A. Was I what? I'm sorry.

13 Q. I'm sorry, were you briefed at all when you
14 came into office in July on what was going on with this
15 contract?

16 A. I was told that the contract was being re-
17 competed and a common sense thing that if somebody tells
18 you we're re-competing a contract that means the old one
19 has to either end or be terminated.

20 But actually I didn't recall it being
21 terminated I read that in here. I thought it had ended.
22 And it really didn't end. What it was is they decided
23 not to exercise the next option here is what I learned by
24 reading all of this stuff here and that's not necessarily
25 a bad thing.

1 It's not really, you've got new managers,
2 you've got new leaders. They decided to go in a
3 different direction and that's not a bad thing, that's
4 not a bad thing.

5 MS. (b)(6); (b)(7)(C) Okay. Thank you.

6 BY MS. (b)(6); (b)(7)(C)

7 Q. Okay. Mr. Murphy, I think that's it for as far
8 as our formal questions. Is there anything else that we
9 haven't specifically asked you that you feel is important
10 to get on the record regarding the allegations that we've
11 presented to you today?

12 A. If you can give us a second, just one second,
13 please.

14 Q. Sure.

15 A. Okay, I'm back. You asked was there anything
16 else I wanted to comment on. I'm just sitting here
17 looking over these six allegations in here and we went in
18 pretty good depth on those. I think they adequately
19 answered everything that you were driving at and think it
20 was very forthcoming and open.

21 Is there something missing? Are there any
22 holes here or something that I'm not seeing from your
23 angle?

24 Q. No, no, absolutely not. I just wanted to know
25 if there was anything else. I mean, there were a couple

1 of times where you felt like you needed to clarify
2 something and I just wanted to know if there was anything
3 else that you wanted to add regarding anything you've
4 already said?

5 So I'm just giving you that opportunity.
6 Certainly, after we get off the -- well, after we get off
7 the call if you think of anything else or if you have any
8 documentation that you feel would be relevant to provide
9 to us to backup anything that you said to us today,
10 you're welcome to do that.

11 I do, I do want to go back to an email that you
12 had sent me. The email where you stated that (b)(6), (b)(7)(C)
13 probably was the person who submitted the WOA letter and
14 you made a statement that you have emails to prove it.

15 I don't know if that's something that's in
16 those emails or anything relevant to what we discussed
17 today but if they are relevant I would ask you to provide
18 those to us just so we have some documentation to further
19 backup anything that you said today.

20 So that's all we're trying to get at is to give
21 you that opportunity to address everything as thoroughly
22 as possible.

23 MR. (b)(6), (b)(7)(C) This is (b)(6), (b)(7)(C) for one
24 second here. The answer to his -- the answer from
25 Mr. Murphy to your question and your response. Respond

1 and make sure we understand so that we can supply you
2 whatever, whatever's relevant.

3 Your interview today and Mr. Murphy's responses
4 are between A, B, C, D, E and F of the June 20th
5 memorandum, the charge document. You referred back to
6 his WOA document quite a few times and we talked about a
7 lot of the contents of the WOA document.

8 But you want to know basically does Mr. Murphy
9 feel comfortable that he responded with relevant answers
10 to A through F. He's not being asked today whether or in
11 the future whether he has any other responses to his WOA
12 document, correct?

13 MS. (b)(6) (b)(7)(C) No, no, no, no.

14 MR. (b)(6) (b)(7)(C) You just want to know A through
15 F, right?

16 MS. (b)(6) (b)(7)(C) No. There's a lot of things in
17 the WOA document that we didn't feel was our scope to ask
18 about -- within our scope to ask about.

19 MR. (b)(6) (b)(7)(C) Okay.

20 MS. (b)(6) (b)(7)(C) So, no, we're just talking about
21 the things specifically that we discussed today.

22 MR. (b)(6) (b)(7)(C) Okay, good. So in that regard,
23 just as an observation, the email that Mr. Murphy's
24 referring to does link those two individuals together in
25 some capacity but that doesn't related in any manner to

1 A, B, C, D, E or F so I'm just sort of curious --

2 MS. (b)(6) (b)(7)(C) Okay.

3 MR. (b)(6) (b)(7)(C) -- you know, we don't need to
4 give it to you for A through F but if you're asking for
5 it we can provide it.

6 MS. (b)(6) (b)(7)(C) You know, honestly if it doesn't
7 relate to what we've discussed today I don't think that
8 it's relevant.

9 MR. (b)(6) (b)(7)(C) Okay. That's exactly what I'm
10 getting at so that's --

11 MS. (b)(6) (b)(7)(C) Yeah. Yeah, there's no, there's
12 no hidden agenda here. We're just trying to really just
13 get to the bottom of all these allegations and understand
14 if there's any credibility to them. And so we're just
15 giving Mr. Murphy the opportunity to provide us with
16 anything that he feels, as he said, you know, would
17 address these allegations or prove that every charge is
18 wrong, you know, so --

19 MR. (b)(6) (b)(7)(C) Right. We're not looking to
20 raise issues we're looking to respond to your issues.

21 MS. (b)(6) (b)(7)(C) Right.

22 MR. (b)(6) (b)(7)(C) On a related issue, are you going
23 to send us a copy of the transcript that may generate
24 another response by him or what is your timeframe in this
25 regard?

1 MS. (b)(6), (b)(7)(C) Yes. If he wants a copy of the
2 transcript I'll definitely send it to him. We usually
3 get those within a few days so I can email that to both
4 of you once I get it. That's not a problem.

5 MR. (b)(6), (b)(7)(C) I think that's very helpful,
6 (b)(6), (b)(7)(C) if you get that. (b)(6), (b)(7)(C) I'm sorry; if you do send
7 that to us and if there's some supplemental response
8 we'll get it to you right away.

9 MS. (b)(6), (b)(7)(C) Okay. Very good, very good.
10 Okay. Well, then unless there's anything else we'll go
11 ahead and go off the record.

12 COURT REPORTER: Off the record.

13 (Whereupon, at 11:33 a.m., the Interview in the
14 above-entitled matter was concluded.)
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

This is to certify that the attached proceedings before

(b)(6) (b)(7)(C)

and

(b)(6) (b)(7)(C)

In the matter of:

Administrative Investigation Board
into Allegations of Senior Leader
Misconduct at the
Washington, DC VA Medical Center
Washington, D.C.

Place:

Teleconference

Date:

July 12, 2018

were held as therein appears, and that this is the original
transcript thereof for the files of the Veterans
Administration.

By

(b)(6) (b)(7)(C)

(Official Reporter)

ERRATA SHEET

ADMINISTRATIVE INVESTIGATIVE BOARD
 INTO ALLEGATIONS OF SENIOR LEADER MISCONDUCT AT THE
 WASHINGTON, DC VA MEDICAL CENTER
 WASHINGTON, D.C.

TESTIMONY OF: TOM MURPHY, 7-12-18

The above information has been furnished without a pledge of confidentiality, and I understand that it may be shown to the interested parties to this complaint, subscribed and sworn to me, subject to the penalties of perjury on this date.

I have reviewed the transcript of my testimony. I wish to make the following corrections/changes:

PAGE	LINE	AS TRANSCRIBED	CHANGE TO

 Witness Signature

 Date

From: (b)(6)
To: (b)(6); (b)(7)(C); Murphy, Thomas
Cc: (b)(6); (b)(7)(C)
Subject: [EXTERNAL] NASCAR Event
Date: Monday, July 23, 2018 9:02:07 AM

Dear Ms. (b)(6); (b)(7)(C)

You are welcome. Yes, Mr. Murphy (b)(6) did accompany him on this trip and to the event. Please be advised that (b)(6) trip was at zero cost to the government. Mr. Murphy purchased his (b)(6) airline ticket and all of his expenses were at or below per diem allowed. The Murphy's stayed on military base housing on the Scott Air Force base at approximately one half the allowed per diem.

Please contact me if there are additional questions. Thank you.

Regards,

(b)(6)

Bonner Kiernan Trebach & Crociata
1233 20th Street, NW, 8th Floor
Washington, DC 20036

T 202-712-7000

F 202-712-7100

www.bonnerkiernan.com

From: (b)(6); (b)(7)(C) [mailto:(b)(6); (b)(7)(C)@va.gov]
Sent: Monday, July 23, 2018 9:24 AM
To: (b)(6) Murphy, Thomas
Cc: (b)(6); (b)(7)(C) VACO
Subject: RE: [WARNING: ATTACHMENT UNSCANNED][EXTERNAL] RE: Follow-Up Request for Information

Thank you for very much for the detailed documentation. This is very helpful.

Can you tell me if Mr. Murphy's (b)(6) attended the NASCAR event?

From: (b)(6) [mailto:(b)(6)@bonnerkiernan.com]
Sent: Wednesday, July 18, 2018 3:57 PM
To: (b)(6); (b)(7)(C)@va.gov; Murphy, Thomas <(b)(6)@va.gov>
Cc: (b)(6); (b)(7)(C) VACO (b)(6); (b)(7)(C)@va.gov
Subject: [WARNING: ATTACHMENT UNSCANNED][EXTERNAL] RE: Follow-Up Request for Information

Dear Ms. (b)(6); (b)(7)(C) and Ms. (b)(6); (b)(7)(C)

I have attached documents relating to the NASCAR event in Phoenix we discussed and a VBA Watch Officer Activity Brief which comes out daily and which sets out a notice of a NASCAR event to occur in Richmond, VA, which is more indication on how important the NASCAR relationship is to reaching out to veterans. As you will see the NASCAR Phoenix attachments discuss the event and its successes and shows Mr. Murphy in a photo with others at the very important outreach event. If you have any additional questions relating to that Phoenix event and Mr. Murphy's involvement there, please let us know.

You also requested the name of anyone who when to a NASCAR event while Mr. Murphy was Acting Principal Deputy Under Secretary. Please be advised that during that time, Mr. Jamie Manker attended at least one such NASCAR event.

At our interview you inquired about the email exchange Mr. Murphy mentioned showing the relationship between Ms. (b)(6) and Ms. (b)(6) of the Whistleblowers of America. While you did not specifically request it in you July 12th email, we have attached it here.

You also requested a copy of the BAS contract. Mr. Murphy does not have it but believes he can obtain it. As soon as he does, we will provide it to you. If you have already obtained it, I would appreciate your letting me know.

I trust this responds to your July 12th requests. If you need or want other material, we will be pleased to provide it. Thank you for keeping us informed as your investigation progresses.

Best regards,

(b)(6)

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BONNER KIERNAN

BONNER KIERNAN TREBACH & CROCIATA LLP

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From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C)@va.gov]
Sent: Thursday, July 12, 2018 12:33 PM
To: Murphy, Thomas
Cc: (b)(6), (b)(6), (b)(7)(C) VACO
Subject: Follow-Up Request for Information

Mr. Murphy,

Thank you again for your time today. As a follow up to your interview, we would like to request the following documents/information:

1. A copy of the BAS contract and detailed agenda for your Phoenix NASCAR visit.
2. You indicated that there are 3 NASCAR events per year. Since you stated you only went to the Phoenix event, who went to the other NASCAR events during the time you were the Acting Principal Deputy Under Secretary?

Thank you,

(b)(6), (b)(7)(C)

Administrative Investigator

VA Office of Accountability and Whistleblower Protection (OAWP)

(b)(6), (b)(7)(C) Office
(b)(6), (b)(7)(C) Cell

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Cc: VACO
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Dear Ms. (b)(6); (b)(7)(C)

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Please contact me if there are additional questions. Thank you.

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Sent: Wednesday, July 18, 2018 3:57 PM
To: (b)(6); (b)(7)(C)@va.gov; Murphy, Thomas (b)(6)@va.gov
Cc: (b)(6); (b)(7)(C) VACO (b)(6); (b)(7)(C)@va.gov
Subject: [WARNING: ATTACHMENT UNSCANNED][EXTERNAL] RE: Follow-Up Request for Information

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I trust this responds to your July 12th requests. If you need or want other material, we will be pleased to provide it. Thank you for keeping us informed as your investigation progresses.

Best regards,

(b)(6)

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Sent: Thursday, July 12, 2018 12:33 PM
To: Murphy, Thomas
Cc: (b)(6), (b)(7)(C) VACO
Subject: Follow-Up Request for Information

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Thank you,

(b)(6), (b)(7)(C)

Administrative Investigator
VA Office of Accountability and Whistleblower Protection (OAWP)

(b)(6), (b)(7)(C) - Office
(b)(6), (b)(7)(C) - Cell

From: (b)(6)
To: (b)(6), (b)(7)(C) VACO
Cc: [Murphy, Thomas](#)
Subject: [EXTERNAL] Requested material
Date: Friday, July 27, 2018 11:08:25 AM
Attachments: [GS-07F-0566Y.PDF](#)
[MC03 GS-07F-0566Y VA101V-13-F-0088 P00005_DFC.PDF](#)
[DFCMod7.pdf](#)

Dear Ms. (b)(6), (b)(7)(C) and Ms. (b)(6), (b)(7)(C)

As you requested, please find attached the BAS contract along with the two relevant modifications. We trust that these are the documents you referenced. If not, please be in touch. Also, please be advised that the POC would be the then Deputy Under Secretary of Disabilities Assistance, who was the Director of BAS, Rob Reynolds.

As Mr. Murphy and I reviewed the transcript of the interview, we see at pages 33-47 that you inquired whether he visited "a suite" while he was at the NASCAR event (page 47). As he replied yes, please let Mr. Murphy make it clear that as part of this important VA outreach effort he had a valuable meeting in the owner's suit, the VIP suite, with the owner, and he later met veterans in the pit with the drivers for meeting and photo opportunities. Mr. Murphy's (b)(6) who had accompanied him on this business trip to Phoenix at zero cost to the government, joined him in the meetings in the VIP suite and in the pit, as it is often thought, as here, the (b)(6) presence adds a very personal touch to these personal contact outreach events.

As we have said before, we are looking forward to assisting you in this investigation. If you have additional questions on the above matters or on any other, please be in touch. Thank you for your attention to these important matters.

Best regards,

(b)(6)

Bonner Kiernan Trebach & Crociata
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There are two task orders for GS-07F-0566Y. VA101V-13-F-0088 will be closed out, VA101V-13-0117 has been closed and is in the archive. There are also two other task orders on this contract – VA244-14-F-3090, [REDACTED] | VA730-14-F-0183, [REDACTED]

This information is publicly releasable

GS-07F-0566Y VA101V-13-F-0088 EBenefits, FDC

Award Date – 6/28/2013

Award Amount - \$428,711

Total Value at award - \$1,315,941.83

PoP

Base – 7/1/2013 – 6/30/2014

Option 1 – 7/1/2014 – 6/30/2015

Option 2 – 7/1/2015 – 6/30/2016

Modifications –

1 – 9/25/2013 - \$199,894

2 – 12/16/2013 - \$0.00

3 – 6/11/2014 - \$438,572 (Option 1)

4 – n/a

5 – 4/28/2015 - \$0.00

6 – 6/30/2015 – \$448,659 (Option 2)

7 – 8/27/2015 - \$0.00

Scope –

This procurement is for the continuation of services for Fully Developed Claims process and electronic submission through eBenefits and SEP and encouraging using the assistance of a VSO. This strategy and communication outreach acquisition is part of the claims backlog messaging that included a full suite of products including over 20 print materials and celebrity video and radio PSA's. The Contractor shall provide all resources necessary to accomplish the work and produce the deliverables in the Performance Work Statement (PWS). The contractor shall develop and update communication materials in support of the FDC Program. The marketing strategy will focus on encouraging claimants to utilize the FDC process and submit electronically via eBenefits or SEP Portal and to work with VSOs when submitting FDCs. The contractor shall develop marketing materials in support of the FDC Program and electronic submission via eBenefits portal to assist claimants who may not have representation in submitting FDCs and in the best methods of doing so. The Contractor shall create partnerships with internal VA stakeholders and external stakeholders to disseminate messages and materials related to eBenefits portal enrollment

GS-07F-0566Y VA101V-17-F-0117 – BAS FDC Training

Award Date – 09/25/2013

Award Amount - \$483,615.51

Total Value at award - \$1,464,496.13

PoP

Base – 8/30/2013 – 8/29/2014

Option 1 – 8/30/2014 – 8/29/2015

Option 2 – 8/30/2015 – 8/29/2016

Modifications –

1 – 9/25/2013 - \$0.00

2 – 11/04/2013 - \$0.00

3 – 3/28/2014 - \$0.00

4 – 7/9/2014 - \$0.00

5 – 8/6/2014 - \$488,131 (Option 1)

6 – 7/14/2015 – \$0.00

7 – 9/9/2015 - \$0.00

Scope

This procurement is for services to support the FDC and DBQ process and electronic submission through eBenefits and SEP and encouraging using the assistance of a VSO. This acquisition is part of the claims backlog messaging that includes a full suite of at least 24 training videos about FDC, DBQ and other VBA programs available through eBenefits. The Contractor shall provide all resources necessary to accomplish the work and produce the deliverables in the Performance Work Statement (PWS). The contractor shall develop and update training materials in support of the FDC and DBQ process which allows for the submission of a digital claim via the eBenefits portal. The training strategy will focus on encouraging VA employees, VSOs and stakeholders to utilize the FDC and DBQ process and submit electronically via eBenefits or SEP Portal. The contractor shall develop training materials in support of the FDC and DBQ process and electronic submission via eBenefits portal to assist claimants who may not have representation in submitting FDCs and in the best methods of doing so. The Contractor shall create partnerships with internal VA stakeholders and external stakeholders to disseminate messages and materials related to FDC and DBQ via the eBenefits portal.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

BPA NO.

1. CONTRACT ID CODE

PAGE
1OF PAGES
32. AMENDMENT/MODIFICATION NO.
P000053. EFFECTIVE DATE
04-28-2015

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (if applicable)
none

6. ISSUED BY

CODE

Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.

Washington DC 20006

7. ADMINISTERED BY (If other than Item 6)

CODE

Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.

Washington DC 20006

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

DUTY FIRST CONSULTING LLC

1921 GALLOWS RD STE 120

VIENNA VA 221820000

(X)

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.
GS-07F-0566Y VA101V-13-F-0088

10B. DATED (SEE ITEM 13)

X

06-28-2013

CODE

FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

X

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: 52.212-4(c) Changes.

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this no-cost modification is to make changes to the performance work statement (PWS) at no cost to the Government (see attached).

All other terms and conditions remain unchanged and are in full force and effect.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

William T. Speagle, President

15B. CONTRACTOR/OFFEROR

(Signature of person authorized to sign)

15C. DATE SIGNED

4/28/15

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Vernon Mario Quilici
Contracting Officer

VBA13L2-3149

16B. UNITED STATES OF AMERICA

BY Vernon M. Quilici
131117

(Signature of Contracting Officer)

Digitally signed by Vernon M. Quilici
DN: dc=gov, dc=va, o=internal, ou=people,
0.9.2342.19200300.100.1.1=Vernon M. Quilici@va.gov,
cn=Vernon M. Quilici 131117
Date: 2015.04.28 15:18:25 -0400

16C. DATE SIGNED

SF-30 CONTINUATION PAGE

The purpose of this modification is to amend the Performance Work Statement (PWS) to reflect language changes to Task One and Task Two Benefits Assistance Service has determined.

This modification is at no cost.

Task One:

(Original Contract Language)

The Contractor shall develop, design and create a celebrity or sports spokesperson video and radio Public Service Announcements (PSA) promoting the Fully Developed Claim process and electronic submission through eBenefits.

(Revised Contract Language)

The Contractor shall develop, produce and create a testimonial video promoting the Fully Developed Claim process, electronic submission through eBenefits, standard forms or other associated products. The contractor shall also coordinate two VA/NASCAR Partnership events, including sponsorship, coordination, assets, logistical support, promotional collateral, etc.

Deliverables:

- One 3-5 Minute testimonial video featuring Veterans and VSOs using eClaims and the FDC Program. (Distribution via existing VA channels and partners.)
- NASCAR Partnership Coordination for 2 in-person events. Includes sponsorship, coordination, assets, logistical support, promotional collateral, b-roll filming, photography and/or an event promotional video (1-2 minutes in length).

Note: The above will include travel to appropriate sites for the filming of content.

Task Two:

(Original Contract Language)

The Contractor shall develop, design and update fact sheets, FAQs, flyers, advertisement, poster, brochures and other informational/promotional materials about FDC and eBenefits. The Contractor shall develop the written content including call scripts, magazines, and newsletter articles for national publications, blog post, and targeted content for VBA Facebook and twitter accounts. The Contractor shall support press releases and media pitches. (Includes: 25 new or updated promotional products; 2-3 written content and social media blogs monthly; Support of press releases and media pitches twice a year)

(Revised Contract Language)

The Contractor shall develop, design and update fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products. The Contractor shall develop other written content including outreach plans, call scripts, magazines, and newsletter articles for national or VSO publications, blog posts, and targeted content for VBA Facebook and twitter accounts. The Contractor shall support a series of 6-8 NASCAR-VA outreach racetrack activities as requested by BAS. This includes providing associated planning, logistical and promotional support, which may include partner and Veteran engagement, and materials development, press release and media support, branding support, and promotional activities with racetracks. (Includes: up to 25 new or updated promotional products and other written content, and support for up to 8 NASCAR-VA activities.)

Deliverables: (TOTAL: up to 25 products + up to 8 NASCAR-VA activities)

- BAS Outreach Plan (including Stakeholder interviews and background research)
- Up to 10 Ad Hoc Materials & Web Content Development
- Contract-Specific Outreach/Workplan Updates
- Promotional Media and Marketing Support for up to 8 NASCAR-VA Racetrack Activities (may include Partner and Veteran Engagement, Media Engagement, Branding Support, and support of Promotional Activities with Racetracks)

End of Document

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

BPA NO.

1. CONTRACT ID CODE

PAGE

OF PAGES

2. AMENDMENT/MODIFICATION NO
P000373. EFFECTIVE DATE
08-27-2015

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (If applicable)
None

6. ISSUED BY CODE

7. ADMINISTERED BY (If other than Item 6)

CODE

Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.
Washington DC 20006Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.
Washington, DC 20006

9. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

(X) 9A. AMENDMENT OF SOLICITATION NO.

DUTY FIRST CONSULTING LLC

9B. DATED (SEE ITEM 11)

1921 GALLOW'S RD STE 120

10A. MODIFICATION OF CONTRACT/ORDER NO.
GS-07F-0566Y VA131V-13-F-0088

VIENNA VA 221820000

10B. DATED (SEE ITEM 11)

CODE

FACILITY CODE

X 06-28-2013

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.102(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF 52.212-4(c) Changes.

X

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The Purpose of this No-Cost Modification is Reflect Changes made to the Performance Work Statement (PWS) Within the VBA, Benefits Assistance Services (BAS), Marketing Task Order Referred to in Block 10A.

A. Period of Performance: July 1, 2015 to June 30, 2016. Remains Unchanged.

B. Option Year Two Increase Amount: \$ _____ Remains Unchanged.

C. Revisions made to the Performance Work Statement (PWS) are Below. (See Attached).

All Other Terms and Conditions Remain Unchanged and are in Full Effect.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

William T. Speegle President

Vernon Mario Quilici
Contracting Officer

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

(Signature of person authorized to sign)

8/27/2015

BY Vernon M. Quilici

(Signature of Contracting Officer)

Digitally signed by Vernon M. Quilici
DN: c=us, o=va, ou=internal, cn=people,
ou=23427920030C10001, email=quilici@va.gov,
cn=Vernon M. Quilici 131117
Date: 2015.08.27 11:57:42 -0400

SF-30 CONTINUATION PAGE

The purpose of this modification is to reflect in-scope changes to the Performance Work Statement (PWS) regarding Task One and Task Two.

This modification is at no cost.

CHANGE FROM:

Task One:

The Contractor shall develop, produce and create a testimonial video promoting the Fully Developed Claim process, electronic submission through eBenefits, standard forms or other associated products. The contractor shall also coordinate two VA/NASCAR Partnership events, including coordination, assets, logistical support, promotional collateral, etc.

Deliverables:

- One 3-5 Minute testimonial video featuring Veterans and VSOs using eClaims and the FDC Program. (Distribution via exiting VA channels and partners.)
- NASCAR Partnership Coordination for 2 in-person events. Includes coordination, assets, logistical support, promotional collateral, b-roll filming, photography and/or an event promotional video (1-2 minutes in length).

Note: The above will include travel to appropriate sites for the filming of content.

Task Two:

The Contractor shall develop, design and update fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products. The Contractor shall develop other written content including outreach plans, call scripts, magazines, and newsletter articles for national or VSO publications, blog posts, and targeted content for VBA Facebook and twitter accounts. The Contractor shall support a series of 6-8 NASCAR-VA outreach racetrack activities as requested by BAS. This includes providing associated planning, logistical and promotional support, which may include partner and Veteran engagement, and materials development, press release and media support, branding support, and promotional activities with racetracks. **(Includes: up to 25 new or updated promotional products and other written content, and support for up to 8 NASCAR-VA activities.)**

Deliverables: (TOTAL: up to 25 products + up to 8 NASCAR-VA activities)

- BAS Outreach Plan (including Stakeholder interviews and background research)
- Outreach Toolkit (5-10 topic specific materials to support outreach in ROs)
- Up to 10 Ad Hoc Materials & Web Content Development
- Contract-Specific Outreach/Work plan Updates
- Promotional Media and Marketing Support for up to 8 2016 NASCAR-VA Racetrack Activities (may include Partner and Veteran Engagement, Media Engagement, Branding Support, and support of Promotional Activities with Racetracks)

CHANGE TO:

Task One:

The Contractor shall develop, produce, and create two radio Public Service Announcements (PSA) and implement a targeted Digital PSA placement campaign on select web channels to promote the Fully Developed Claims (FDC) Program, electronic claims submission through eBenefits, or other key-VA topic as determined by BAS. DFC will use targeted demographic and channel analysis to identify appropriate outreach channels to reach Veteran audiences. The contractor shall also provide support services to BAS to execute the scheduled 9/11 NASCAR Outreach Event with Richmond International Raceway (RIR), including outreach coordination, promotional, media and social media strategies, and coordination and promotion of the 9/10 VAMC NASCAR Driver Visit and outreach event, and other related services associated with those two activities as required to ensure successful event execution.

Deliverables:

- Two 30-second radio PSAs, promoting key VA topics, distributed to 3,000 media outlets nationwide
- Targeted digital PSA placement campaign on select web channels to reach Veteran audiences. Includes the creation of a digital outreach plan, and possible placement of electronic banners, print ads, or using existing or repurposed video footage to promote access to and use of VA benefits.
- Outreach coordination supporting BAS for the 9/10 NASCAR outreach event at the Richmond VAMC and one (1), large in-person Outreach Event on September 11, 2015 in Richmond, VA, to include corresponding activities on 9/12. Includes coordination with RIR, NASCAR, NASCAR drivers, media and marketing activities leading up to and through race weekend, outreach coordination with VA staff, pre and post event reporting, and documenting of outreach activities through film (for use in future marketing and outreach activities).

Task Two:

The Contractor shall develop, design, and update up to 20 fact sheets, FAQs, flyers, advertisements, posters, brochures, social media and blog posts, and other informational/promotional materials promoting FDCs, eClaims, eBenefits, and other key VA topics, as indicated by BAS. The Contractor shall develop other written content as part of an "Outreach Toolkit," not to exceed 10 written materials and 75 pages. The contractor shall support up to eight (8) 2016 NASCAR outreach racetrack activities as requested by BAS (the actual number is pending fees associated with potential track events). This includes providing associated planning, contract review and execution, and logistical and promotional support, which may include partner and Veteran engagement, materials development, press release and media support, branding support, and promotional activities with racetracks. The Contractor shall also expand partnership engagement by working with BAS staff on targeted partnership development activities to further leverage existing VA Partners and assist in facilitating the development of new partners to help further expand VA reach into Veteran communities. This may include ongoing outreach to VSOs, SDVAs, military-related associations and organizations as well as research and support to identify and build relationships with national entities such as the U.S.P.S., the national library association or others as directed.

Deliverables:

- Up to 21 Materials & Web Content Development and/or reporting documents on key VA Topics (fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products and reporting one pagers, PowerPoint presentations, etc.)
- Outreach Toolkit (includes the creation of up to 10 written topic-specific materials to support outreach in ROs; not to exceed 75 pages)
- Contract negotiation, coordination, and acquisition of up to eight (8) 2016 NASCAR-VA Racetrack Activities (may include contract review and execution, partner and Veteran engagement, media engagement, branding support, and support of promotional activities with racetracks, as directed by BAS; includes fee and non-fee based advertising at track events, pending track negotiations; not to exceed \$ [REDACTED] in racetrack advertising and marketing fees).
- Targeted partnership engagement and expansion support, including supporting BAS staff on partner engagement, leveraging existing VA Partners (VSOs, associations, SDVAs) and assistance in facilitating the development of new VA Partnerships (not to exceed 275 hours of support).

End of Document

There are two task orders for GS-07F-0566Y. VA101V-13-F-0088 will be closed out, VA101V-13-0117 has been closed and is in the archive. There are also two other task orders on this contract – VA244-14-F-3090, [REDACTED] | VA730-14-F-0183, [REDACTED]

This information is publicly releasable

GS-07F-0566Y VA101V-13-F-0088 EBenefits, FDC

Award Date – 6/28/2013

Award Amount - \$428,711

Total Value at award - \$1,315,941.83

PoP

Base – 7/1/2013 – 6/30/2014

Option 1 – 7/1/2014 – 6/30/2015

Option 2 – 7/1/2015 – 6/30/2016

Modifications –

1 – 9/25/2013 - \$199,894

2 – 12/16/2013 - \$0.00

3 – 6/11/2014 - \$438,572 (Option 1)

4 – n/a

5 – 4/28/2015 - \$0.00

6 – 6/30/2015 – \$448,659 (Option 2)

7 – 8/27/2015 - \$0.00

Scope –

This procurement is for the continuation of services for Fully Developed Claims process and electronic submission through eBenefits and SEP and encouraging using the assistance of a VSO. This strategy and communication outreach acquisition is part of the claims backlog messaging that included a full suite of products including over 20 print materials and celebrity video and radio PSA's. The Contractor shall provide all resources necessary to accomplish the work and produce the deliverables in the Performance Work Statement (PWS). The contractor shall develop and update communication materials in support of the FDC Program. The marketing strategy will focus on encouraging claimants to utilize the FDC process and submit electronically via eBenefits or SEP Portal and to work with VSOs when submitting FDCs. The contractor shall develop marketing materials in support of the FDC Program and electronic submission via eBenefits portal to assist claimants who may not have representation in submitting FDCs and in the best methods of doing so. The Contractor shall create partnerships with internal VA stakeholders and external stakeholders to disseminate messages and materials related to eBenefits portal enrollment

GS-07F-0566Y VA101V-17-F-0117 – BAS FDC Training

Award Date – 09/25/2013

Award Amount - \$483,615.51

Total Value at award - \$1,464,496.13

PoP

Base – 8/30/2013 – 8/29/2014

Option 1 – 8/30/2014 – 8/29/2015

Option 2 – 8/30/2015 – 8/29/2016

Modifications –

1 – 9/25/2013 - \$0.00

2 – 11/04/2013 - \$0.00

3 – 3/28/2014 - \$0.00

4 – 7/9/2014 - \$0.00

5 – 8/6/2014 - \$488,131 (Option 1)

6 – 7/14/2015 – \$0.00

7 – 9/9/2015 - \$0.00

Scope

This procurement is for services to support the FDC and DBQ process and electronic submission through eBenefits and SEP and encouraging using the assistance of a VSO. This acquisition is part of the claims backlog messaging that includes a full suite of at least 24 training videos about FDC, DBQ and other VBA programs available through eBenefits. The Contractor shall provide all resources necessary to accomplish the work and produce the deliverables in the Performance Work Statement (PWS). The contractor shall develop and update training materials in support of the FDC and DBQ process which allows for the submission of a digital claim via the eBenefits portal. The training strategy will focus on encouraging VA employees, VSOs and stakeholders to utilize the FDC and DBQ process and submit electronically via eBenefits or SEP Portal. The contractor shall develop training materials in support of the FDC and DBQ process and electronic submission via eBenefits portal to assist claimants who may not have representation in submitting FDCs and in the best methods of doing so. The Contractor shall create partnerships with internal VA stakeholders and external stakeholders to disseminate messages and materials related to FDC and DBQ via the eBenefits portal.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

BPA NO.

1. CONTRACT ID CODE

PAGE
1OF PAGES
32. AMENDMENT/MODIFICATION NO.
P000053. EFFECTIVE DATE
04-28-2015

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (if applicable)
none

6. ISSUED BY

CODE

Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.

Washington DC 20006

7. ADMINISTERED BY (If other than Item 6)

CODE

Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.

Washington DC 20006

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

DUTY FIRST CONSULTING LLC

1921 GALLOWS RD STE 120

VIENNA VA 221820000

(X)

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.
GS-07F-0566Y VA101V-13-F-0088

10B. DATED (SEE ITEM 13)

X

06-28-2013

CODE

FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

X

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: 52.212-4(c) Changes.

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this no-cost modification is to make changes to the performance work statement (PWS) at no cost to the Government (see attached).

All other terms and conditions remain unchanged and are in full force and effect.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

William T. Speagle, President

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Vernon Mario Quilici
Contracting Officer VBA13L2-3149

15B. CONTRACTOR/OFFEROR

(Signature of person authorized to sign)

15C. DATE SIGNED

4/28/15

16B. UNITED STATES OF AMERICA

BY _____
(Signature of Contracting Officer)

16C. DATE SIGNED

SF-30 CONTINUATION PAGE

The purpose of this modification is to amend the Performance Work Statement (PWS) to reflect language changes to Task One and Task Two Benefits Assistance Service has determined.

This modification is at no cost.

Task One:

(Original Contract Language)

The Contractor shall develop, design and create a celebrity or sports spokesperson video and radio Public Service Announcements (PSA) promoting the Fully Developed Claim process and electronic submission through eBenefits.

(Revised Contract Language)

The Contractor shall develop, produce and create a testimonial video promoting the Fully Developed Claim process, electronic submission through eBenefits, standard forms or other associated products. The contractor shall also coordinate two VA/NASCAR Partnership events, including sponsorship, coordination, assets, logistical support, promotional collateral, etc.

Deliverables:

- One 3-5 Minute testimonial video featuring Veterans and VSOs using eClaims and the FDC Program. (Distribution via existing VA channels and partners.)
- NASCAR Partnership Coordination for 2 in-person events. Includes sponsorship, coordination, assets, logistical support, promotional collateral, b-roll filming, photography and/or an event promotional video (1-2 minutes in length).

Note: The above will include travel to appropriate sites for the filming of content.

Task Two:

(Original Contract Language)

The Contractor shall develop, design and update fact sheets, FAQs, flyers, advertisement, poster, brochures and other informational/promotional materials about FDC and eBenefits. The Contractor shall develop the written content including call scripts, magazines, and newsletter articles for national publications, blog post, and targeted content for VBA Facebook and twitter accounts. The Contractor shall support press releases and media pitches. (Includes: 25 new or updated promotional products; 2-3 written content and social media blogs monthly; Support of press releases and media pitches twice a year)

(Revised Contract Language)

The Contractor shall develop, design and update fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products. The Contractor shall develop other written content including outreach plans, call scripts, magazines, and newsletter articles for national or VSO publications, blog posts, and targeted content for VBA Facebook and twitter accounts. The Contractor shall support a series of 6-8 NASCAR-VA outreach racetrack activities as requested by BAS. This includes providing associated planning, logistical and promotional support, which may include partner and Veteran engagement, and materials development, press release and media support, branding support, and promotional activities with racetracks. (Includes: up to 25 new or updated promotional products and other written content, and support for up to 8 NASCAR-VA activities.)

Deliverables: (TOTAL: up to 25 products + up to 8 NASCAR-VA activities)

- BAS Outreach Plan (including Stakeholder interviews and background research)
- Up to 10 Ad Hoc Materials & Web Content Development
- Contract-Specific Outreach/Workplan Updates
- Promotional Media and Marketing Support for up to 8 NASCAR-VA Racetrack Activities (may include Partner and Veteran Engagement, Media Engagement, Branding Support, and support of Promotional Activities with Racetracks)

End of Document

OF PAGES

5. PROJECT NO. (If applicable)
None

CODE

Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.
Washington, DC 20006

(X) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.
GS-07F-0566Y VA101V-13-F-C088

10B. DATED (SEE ITEM 13)

FACILITY CODE

X :06-28-2013

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

(X) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

8. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.102(b). (such as changes in paying office, appropriation date, etc.)

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF § 2.212-4 (c) Changes

D OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The Purpose of this No-Cost Modification is Reflect Changes made to the Performance Work Statement (PWS) Within the VBA, Benefits Assistance Services (BAS), Marketing Task Order Referred to in Block 10A.

A. Period of Performance: July 1, 2015 to June 30, 2016. Remains Unchanged.

B. Option Year Two Increase Amount: \$ [REDACTED] Remains Unchanged.

2. Revisions made to the Performance Work Statement (PWS) are Below. (See Attached).

All Other Terms and Conditions Remain Unchanged and are in Full Effect.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

5A. NAME AND TITLE OF SIGNER (Type or print)

William T. Speagle President

15B. CONTRACTOR/OFFEROR

(Signature of person authorized to Sign)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Vernon Mario Quilici
Contracting Officer

16B. UNITED STATES OF AMERICA

8/27/2015

BY 131117

13111

Digitally signed by Vernon M. Gullig, DN: c=us, dc=ve, ou=internal, ou=people, o=9.2.342.79200305.100.1, email=gullig@gnv, cn=Vernon M. Gullig, 131117
Date: 2013.08.27 11:57:42 -0400

SF-30 CONTINUATION PAGE

The purpose of this modification is to reflect in-scope changes to the Performance Work Statement (PWS) regarding Task One and Task Two.

This modification is at no cost.

CHANGE FROM:

Task One:

The Contractor shall develop, produce and create a testimonial video promoting the Fully Developed Claim process, electronic submission through eBenefits, standard forms or other associated products. The contractor shall also coordinate two VA/NASCAR Partnership events, including coordination, assets, logistical support, promotional collateral, etc.

Deliverables:

- One 3-5 Minute testimonial video featuring Veterans and VSOs using eClaims and the FDC Program. (Distribution via exiting VA channels and partners.)
- NASCAR Partnership Coordination for 2 in-person events. Includes coordination, assets, logistical support, promotional collateral, b-roll filming, photography and/or an event promotional video (1-2 minutes in length).

Note: The above will include travel to appropriate sites for the filming of content.

Task Two:

The Contractor shall develop, design and update fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products. The Contractor shall develop other written content including outreach plans, call scripts, magazines, and newsletter articles for national or VSO publications, blog posts, and targeted content for VBA Facebook and twitter accounts. The Contractor shall support a series of 6-8 NASCAR-VA outreach racetrack activities as requested by BAS. This includes providing associated planning, logistical and promotional support, which may include partner and Veteran engagement, and materials development, press release and media support, branding support, and promotional activities with racetracks. **(Includes: up to 25 new or updated promotional products and other written content, and support for up to 8 NASCAR-VA activities.)**

Deliverables: (TOTAL: up to 25 products + up to 8 NASCAR-VA activities)

- BAS Outreach Plan (including Stakeholder interviews and background research)
- Outreach Toolkit (5-10 topic specific materials to support outreach in ROs)
- Up to 10 Ad Hoc Materials & Web Content Development
- Contract-Specific Outreach/Work plan Updates
- Promotional Media and Marketing Support for up to 8 2016 NASCAR-VA Racetrack Activities (may include Partner and Veteran Engagement, Media Engagement, Branding Support, and support of Promotional Activities with Racetracks)

CHANGE TO:

Task One:

The Contractor shall develop, produce, and create two radio Public Service Announcements (PSA) and implement a targeted Digital PSA placement campaign on select web channels to promote the Fully Developed Claims (FDC) Program, electronic claims submission through eBenefits, or other key-VA topic as determined by BAS. DFC will use targeted demographic and channel analysis to identify appropriate outreach channels to reach Veteran audiences. The contractor shall also provide support services to BAS to execute the scheduled 9/11 NASCAR Outreach Event with Richmond International Raceway (RIR), including outreach coordination, promotional, media and social media strategies, and coordination and promotion of the 9/10 VAMC NASCAR Driver Visit and outreach event, and other related services associated with those two activities as required to ensure successful event execution.

Deliverables:

- Two 30-second radio PSAs, promoting key VA topics, distributed to 3,000 media outlets nationwide
- Targeted digital PSA placement campaign on select web channels to reach Veteran audiences. Includes the creation of a digital outreach plan, and possible placement of electronic banners, print ads, or using existing or repurposed video footage to promote access to and use of VA benefits.
- Outreach coordination supporting BAS for the 9/10 NASCAR outreach event at the Richmond VAMC and one (1), large in-person Outreach Event on September 11, 2015 in Richmond, VA, to include corresponding activities on 9/12. Includes coordination with RIR, NASCAR, NASCAR drivers, media and marketing activities leading up to and through race weekend, outreach coordination with VA staff, pre and post event reporting, and documenting of outreach activities through film (for use in future marketing and outreach activities).

Task Two:

The Contractor shall develop, design, and update up to 20 fact sheets, FAQs, flyers, advertisements, posters, brochures, social media and blog posts, and other informational/promotional materials promoting FDCs, eClaims, eBenefits, and other key VA topics, as indicated by BAS. The Contractor shall develop other written content as part of an "Outreach Toolkit," not to exceed 10 written materials and 75 pages. The contractor shall support up to eight (8) 2016 NASCAR outreach racetrack activities as requested by BAS (the actual number is pending fees associated with potential track events). This includes providing associated planning, contract review and execution, and logistical and promotional support, which may include partner and Veteran engagement, materials development, press release and media support, branding support, and promotional activities with racetracks. The Contractor shall also expand partnership engagement by working with BAS staff on targeted partnership development activities to further leverage existing VA Partners and assist in facilitating the development of new partners to help further expand VA reach into Veteran communities. This may include ongoing outreach to VSOs, SDVAs, military-related associations and organizations as well as research and support to identify and build relationships with national entities such as the U.S.P.S., the national library association or others as directed.

Deliverables:

- Up to 21 Materials & Web Content Development and/or reporting documents on key VA Topics (fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products and reporting one pagers, PowerPoint presentations, etc.)
- Outreach Toolkit (includes the creation of up to 10 written topic-specific materials to support outreach in ROs; not to exceed 75 pages)
- Contract negotiation, coordination, and acquisition of up to eight (8) 2016 NASCAR-VA Racetrack Activities (may include contract review and execution, partner and Veteran engagement, media engagement, branding support, and support of promotional activities with racetracks, as directed by BAS; includes fee and non-fee based advertising at track events, pending track negotiations; not to exceed \$ [REDACTED] in racetrack advertising and marketing fees).
- Targeted partnership engagement and expansion support, including supporting BAS staff on partner engagement, leveraging existing VA Partners (VSOs, associations, SDVAs) and assistance in facilitating the development of new VA Partnerships (not to exceed 275 hours of support).

End of Document

From: (b)(6)
To: (b)(6), (b)(7)(C)
Cc: Murphy, Thomas, VBASTL; (b)(6), (b)(7)(C) VACO
Subject: RE: [EXTERNAL] Requested material
Date: Friday, August 24, 2018 3:59:01 PM

Dear Ms (b)(6), (b)(7)(C)

As I meant to communicate in my previous email, no, Mr. Murphy did not seek an ethics opinion prior to having his (b)(6) join him at the outreach event in Phoenix, because (b)(6) presence did not result in an expense to the United States. The cost to the United States was zero. Mr. Murphy paid for all of her expenses, including but not limited to (b)(6) travel, accommodations and dining while on the trip. As borne out by my referencing the conversations with the gentlemen I mentioned, the "hot passes" issued to allow (b)(6) to join (b)(6) in the VIP suite, while he pursued the VA's mission and to the track, where he, likewise, pursued the VA's mission, were provided as a courtesy and were of no identifiable value and came at no expense to the VA. The Murphy's attended the NASCAR event as an outreach responsibility of Mr. Murphy's leadership position with the VA, primarily, and not to travel to Phoenix to attend an auto race.

As to your question, "was there someone from the VA or VBA who told Mr. Murphy that his (b)(6) presence was recommended at the event? Yes or No", no, Mr. Murphy does not believe anyone either told him to take his (b)(6) nor was it specifically recommended that he do so. However, it was absolutely not inappropriate for him to do so nor was it contrary with the custom and practice at the VA for the leadership to be accompanied by their (b)(6) at a variety of VA leadership attended events such as Veteran's Day Breakfast at the White House, the wreath laying ceremony at the Arlington National Cemetery and the Opening Day at the National's Stadium where numerous leadership members attended along with their (b)(6). So, while he was not told to do so, having his (b)(6) attend the NASCAR event, at zero cost to the United States, was in no way inappropriate.

Thank you for your attention to this.

Best regards,

(b)(6)

Bonner Kiernan Trebach & Crociata
1233 20th Street, NW, 8th Floor
Washington, DC 20036

T 202-712-7000

F 202-712-7100

www.bonnerkiernan.com

From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C)@va.gov]
Sent: Thursday, August 23, 2018 2:44 PM
To: (b)(6)
Cc: Murphy, Thomas, VBASTL; (b)(6), (b)(7)(C) VACO
Subject: RE: [EXTERNAL] Requested material

Mr. (b)(6)

BEFORE you knew any of the below, not "in light of" what you just learned from Mr. (b)(6) did Mr. Murphy request an ethics opinion about his (b)(6) attendance prior to them both attending the event? Yes or No?

As requested below and has yet to be answered, was there someone from the VA or VBA who told Mr. Murphy that his (b)(6) presence was recommended at the event? Yes or No?

(b)(6); (b)(7)(C)

Administrative Investigator
Office of Accountability and Whistleblower Protection
(b)(6); (b)(7)(C) Office
VA Cell

From: (b)(6) <@bonnerkiernan.com>

Sent: Thursday, August 23, 2018 6:18:26 AM

To: (b)(6); (b)(7)(C)

Cc: Murphy, Thomas, VBASTL; (b)(6); (b)(7)(C) VACO

Subject: RE: [EXTERNAL] Requested material

Dear Ms. (b)(6); (b)(7)(C) thank you for your patience as we have looked to address your questions below.

Please be advised that I have spoken to Mr. (b)(6) at the Phoenix Raceway and to Mr. (b)(6) to International Speedway Corporation (parent company for Phoenix Raceway), regarding a telephone conversation I understand you had with Mr. (b)(6). I was told that you contacted Mr. (b)(6) to inquire about the value of the "Hot Pass" used by Mr. Murphy and his (b)(6) to gain entry to the VIP suite and the track on their VA related visit to the raceway last November, where they both visited with the track owner briefly in the raceway President's VIP suite and visited the track where Mr. Murphy met with and had photos taken with many Vets, which was an important aspect of the visit to the NASCAR event.

In my discussion with the gentlemen associated with the raceway, I was told that Mr. (b)(6) understood that the Hot Passes referred to were only given as a courtesy to VIP visitors, like Mr. Murphy and his (b)(6) and that those passes were not available to the public, and as such had no discernable value. Passes such as the Hot Passes are more for working access (think akin to a press credential) and are not for sale to the general public. Notwithstanding that, I understand the Mr. (b)(6) in his conversation with you, eventually assigned a value of \$520.00 for the access Mr. Murphy received. I understand that Mr. (b)(6) actually believes, and if asked today, would, upon reflection, amend what he communicated to you. Mr. (b)(6) would state that a value could not and cannot be placed on the referenced Hot Passes because, as stated, those passes are for the benefit of the VIPs, not available to anyone but the VIPs and, as such, cannot have a monetary value placed on them. Mr. (b)(6) would state that the \$520 was a number he calculated based on the rental cost of a VIP suite for the entire race day and divided by the number of possible occupants. However, such individual suite access is not for sale to the general public. Moreover, Mr. Murphy

spent only a few minutes in the suite as I stated in the first paragraph.

If you have further questions on this matter, I am told by Mr. (b)(6) that you are free to call him directly and he will be pleased to confirm what I have stated above. If you have further questions on this matter, please let me know.

In response to your inquiry regarding whether Mr. Murphy sought an official ethics opinion the answer, in light of the above, is no. As the Hot Passes had no discernable value, his and his wife's use of them was expected and part of the planned outreach exercise at this important outreach event.

As always, if there are further issues, please be in touch with me.

Regards,

(b)(6)

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From: (b)(6); (b)(7)(C) [mailto:(b)(6); (b)(7)(C)@va.gov]

Sent: Tuesday, August 14, 2018 2:03 PM

To: (b)(6)

Cc: Murphy, Thomas, VBASTL; (b)(6); (b)(7)(C) VACO

Subject: RE: [EXTERNAL] Requested material

Good afternoon,

Following up on the below questions...

From: (b)(6) [mailto:(b)(6)@bonnerkiernan.com]
Sent: Friday, August 10, 2018 1:34 PM
To: (b)(6), (b)(7)(C) @va.gov>
Cc: Murphy, Thomas, VBASTL (b)(6) @va.gov>; (b)(6), (b)(7)(C) VACO
<(b)(6), (b)(7)(C) @va.gov>
Subject: RE: [EXTERNAL] Requested material

Dear Ms. (b)(6),
(b)(7)(C)

Thank you for this. I will look into this request and will get a response to you as soon as possible, by the first of the week.

Have a good weekend.

Regards,

(b)(6)

From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C) @va.gov]
Sent: Friday, August 10, 2018 1:19 PM
To: (b)(6)
Cc: Murphy, Thomas, VBASTL; (b)(6), (b)(7)(C) VACO
Subject: RE: [EXTERNAL] Requested material

Mr. (b)(6)

You indicated below that (b)(6) joined (b)(6) "in the meetings in the VIP suite and in the pit, as it is often thought, as here, the (b)(6) presence adds a very personal touch to these personal contact outreach events." Was there someone who told Mr. Murphy that his (b)(6) presence was recommended for the reason you propose? If so, who? Did Mr. Murphy request an official ethics opinion from the VA's OGC Ethics Office regarding (b)(6) Murphy accompanying him to all the NASCAR race day events, including the meetings in the VIP suite and meet-and-greet with the drivers on the track?

We appreciate the additional insight you can provide us regarding this matter.

Regards,

(b)(6), (b)(7)(C)

From: (b)(6) [mailto:(b)(6)@bonnerkiernan.com]
Sent: Friday, July 27, 2018 11:06 AM
To: (b)(6), (b)(7)(C) @va.gov>; (b)(6), (b)(7)(C) VACO (b)(6), (b)(7)(C) @va.gov>
Cc: Murphy, Thomas <(b)(6) @va.gov>

Subject: [EXTERNAL] Requested material

Dear Ms. (b)(6), (b)(7)(C) and Ms. (b)(6), (b)(7)(C)

As you requested, please find attached the BAS contract along with the two relevant modifications. We trust that these are the documents you referenced. If not, please be in touch. Also, please be advised that the POC would be the then Deputy Under Secretary of Disabilities Assistance, who was the Director of BAS, Rob Reynolds.

As Mr. Murphy and I reviewed the transcript of the interview, we see at pages 33-47 that you inquired whether he visited "a suite" while he was at the NASCAR event (page 47). As he replied yes, please let Mr. Murphy make it clear that as part of this important VA outreach effort he had a valuable meeting in the owner's suit, the VIP suite, with the owner, and he later met veterans in the pit with the drivers for meeting and photo opportunities. Mr. Murphy's (b)(6) who had accompanied him on this business trip to Phoenix at zero cost to the government, joined him in the meetings in the VIP suite and in the pit, as it is often thought, as here, the (b)(6) presence adds a very personal touch to these personal contact outreach events.

As we have said before, we are looking forward to assisting you in this investigation. If you have additional questions on the above matters or on any other, please be in touch. Thank you for your attention to these important matters.

Best regards,

(b)(6)

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OFFICE OF ACCOUNTABILITY & WHISTLEBLOWER PROTECTION

IN RE: WASHINGTON, D.C.

SWORN STATEMENT OF (b)(6); (b)(7)(C)

REPORT OF PROCEEDINGS at the Administrative
Board of Investigation of the above-entitled cause
before (b)(6); (b)(7)(C) Chairperson of said
Investigation; (b)(6); (b)(7)(C) Member, on
July 26, 2018, commencing at the hour of 3:07 p.m.
Central Standard Time.

Reported by: (b)(6); (b)(7)(C) CSR

License No.: 084-003383

1 INVESTIGATOR (b)(6) (b)(7)(C) Today is July 26th,
2 2018. The time is 4:07 p.m. Eastern.

3 Speaking is (b)(6) (b)(7)(C) Administrative
4 Investigator for the VA Office of Accountability and
5 Whistleblower Protection, present here today for the
6 purpose of hearing testimony of (b)(6) (b)(7)(C) to
7 determine the underlying facts and circumstances
8 surrounding allegations regarding VBA contracting
9 issues and outreach events.

10 We are conducting this interview
11 telephonically. In addition to myself, present on the
12 phone are (b)(6) (b)(7)(C) investigator with the VA
13 Office of Accountability and Whistleblower Protection;
14 (b)(6) (b)(7)(C) our witness; and (b)(6) (b)(7)(C)
15 the court reporter.

16 This interview is being tape-recorded and
17 will be transcribed verbatim.

18 EXAMINATION

19 BY INVESTIGATOR (b)(6) (b)(7)(C)

20 Q. (b)(6) (b)(7)(C) can you please tell us, for the
21 record, your -- I'm sorry, could you please state and
22 spell your full name and provide your title and place
23 of employment.

24 A. Yes, my full name is (b)(6) (b)(7)(C)

25 (b)(6) (b)(7)(C) And my current

1 title is (b)(6) (b)(7)(C) in the Office of Field
2 Operations in Veteran's Benefits Administration.

3 Q. Okay. Thank you.

4 At this time I'm going to place you under
5 oath. Do you have a preference whether to swear or
6 affirm your testimony?

7 A. I have no preference, no.

8 Q. Okay. Just let me know when your right
9 hand is raised.

10 A. It's raised.

11 Q. Do you solemnly swear that the testimony
12 you will give in this case under investigation will be
13 the truth, the whole truth, and nothing but the truth,
14 so help you God?

15 A. I do.

16 Q. Okay. For the record, I'd like to state
17 that the witness will be signing and sending her
18 statement of witness obligations to us in a little
19 while.

20 (b)(6) (b)(7)(C) how long have you been the
21 deputy director in field operations for VBA?

22 A. Oh, gosh, probably, maybe, three months or
23 so.

24 Q. Okay. And prior to this position, where
25 were you?

1 A. I was the executive assistant for the
2 acting undersecretary for benefits.

3 Q. Okay. And during that time, who were or
4 was the acting undersecretary?

5 A. It was Tom Murphy.

6 Q. Okay. Now, during that time, did you
7 travel with Mr. Murphy to a VBA NASCAR event in
8 Phoenix, Arizona?

9 A. I did, yes.

10 Q. Okay. Was that in approximately November
11 of 2016 -- 2017, excuse me?

12 A. Yes.

13 Q. Okay. Now, did you go -- had you been to
14 any of these NASCAR events prior to this one?

15 A. No.

16 Q. Okay. And how did you get selected to go
17 to this event?

18 A. With the undersecretary's travel, he was
19 always accompanied by an EA, and I can't recall the
20 specific reason, but someone else was not available to
21 go, so I went to assist him.

22 Q. And do you remember how long you were there
23 for? What the dates were?

24 A. Oh, I don't. I mean, I could --

25 Q. Even generally speaking, did you maybe fly

1 in on a Thursday and leave on a Saturday, or that sort
2 of thing.

3 Q. Do you remember any of that?

4 A. No, I'm sorry, not without looking at the
5 calendar. I mean, I -- I'm sorry, I -- no.

6 Q. Okay. That's okay. Do you know if
7 Mr. Murphy brought (b)(6) on this trip with him?

8 A. Yes, he did.

9 Q. Okay. And do you know how that came about
10 for (b)(6) to travel with him on this particular trip?

11 A. No, I didn't have any coordination with
12 that.

13 Q. Okay. Do you know if (b)(6) traveled
14 with him on other trips?

15 A. I honestly don't know because I did not
16 coordinate any of those other trips.

17 Q. Okay. So did you have anything to do with
18 his travel, at all?

19 A. Not really. He had a special assistant
20 that coordinated all of his other travel.

21 Q. Okay. So during the event, specifically
22 the NASCAR event, did (b)(6) walk around with
23 Mr. Murphy throughout the time that you were there?

24 A. At the outreach event?

25 Q. Yes.

1 A. Yes.

2 Q. Okay. So did (b)(6) attend the portion of the
3 event where they were in the pit, or on the track
4 meeting the drivers, that sort of thing?

5 A. Yes.

6 Q. Okay. And you were there, as well?

7 A. Yes.

8 Q. Had you ever met (b)(6) before this
9 event?

10 A. Oh, we had met in passing briefly. I don't
11 recall when, but, yes, I had met (b)(6) before.

12 Q. Okay. So for all intents and purposes, was
13 she credentialed the same way that you were, and that
14 (b)(6) was to attend all of the same events that
15 you attended?

16 A. I don't -- I'm sorry, I don't understand
17 the question.

18 Q. Did (b)(6) have something called a -- I
19 believe it's called a hot pass, which basically would
20 give (b)(6) access to all of the same things that
21 Mr. Murphy was going to during that outreach event?

22 A. I don't know, I was given my pass to -- you
23 know, where all of the veterans were going to be, I
24 didn't receive a pass for (b)(6) so I don't know what
25 (b)(6) was given.

1 Q. Okay. So were you with Mr. Murphy the
2 entire time during that NASCAR event?

3 A. Yes.

4 Q. Was (b)(6) also with you?

5 A. Yes.

6 Q. Okay. And is that the only NASCAR event
7 that you've been to?

8 A. Yes.

9 Q. Okay.

10 INVESTIGATOR (b)(6) (b)(7)(C) do you have
11 any questions?

12 INVESTIGATOR (b)(6) (b)(7)(C) I do.

13 EXAMINATION

14 BY INVESTIGATOR (b)(6) (b)(7)(C)

15 Q. Sorry, I'm writing as we're talking.

16 Hi, (b)(6) (b)(7)(C) how are you?

17 A. Hi. Great. Thanks.

18 Q. Good.

19 Can you tell me generally, what were your
20 duties as the (b)(6)

21 A. As his (b)(6) Yeah, sure.

22 Q. Yes.

23 A. You know, it was making sure meetings were
24 coordinated, and documents got signed, and he was
25 where he was supposed to be at any given time, and,

1 you know, working with the secretary's office to, you
2 know, get things done.

3 Q. So I believe you said earlier that (b)(6) and
4 is that okay if I call them (b)(6) or would you rather
5 (b)(6) ?

6 A. No, that's fine.

7 Q. Okay. So I believe you said earlier, and
8 please correct me if I'm wrong, but you said normally
9 (b)(6) attend those events with the acting
10 undersecretary, or with the undersecretary, is that a
11 correct statement?

12 A. I believe what I said is that the
13 undersecretary always traveled with an executive
14 assistant for support, for all of his events.

15 Q. And can you tell me why?

16 A. Yes, I -- there is a slew of reasons, many
17 of them are taking down action items, and questions,
18 and things that, you know, he can't be doing while
19 he's interfacing with the veterans, passing contact
20 information, getting basically action items and
21 due-outs. Yeah.

22 Q. You had mentioned that a special assistant
23 took care of his travel, do you have a name of that
24 special assistant?

25 A. Yes, it's (b)(6); (b)(7)(C)

1 (b)(6), (b)(7)(C)

2 Q. Okay. And can you tell me, why did (b)(6)

3 (b)(6) attend all of the events with him?

4 A. I don't --

5 Q. You were there, why was (b)(6) there?

6 Do you know?

7 A. I -- no.

8 Q. And the passes are pretty big and visible
9 with -- you know, when you're attending NASCAR events,
10 the hot passes and -- but you did -- you never saw (b)(6)

11 (b)(6) have one of those big passes on around (b)(6) neck?

12 A. I -- I'm sorry, I don't think I was really
13 paying attention.

14 Q. Okay.

15 A. We were -- you know, we were doing
16 outreach, talking with a lot of folks, talking with a
17 lot of veterans. I'm sorry, I -- I don't remember
18 necessarily seeing --

19 Q. So who was -- yes, I'm sorry. I didn't
20 mean to interrupt. Go ahead.

21 A. No, that's fine.

22 Q. So were you -- as part of your passes and
23 part of your outreach, were you down on the track, and
24 up in the VIP suites, and all over the track?

25 A. I remember being escorted to where all of

1 the veteran functions were, and so wherever the
2 veteran functions were is where we were escorted and
3 told to be.

4 **Q. And were the veteran functions down**
5 **actually on the track or up in the VIP suites?**

6 A. There was -- on the track, there was the
7 meet and greet with veterans and a driver, that was an
8 event, so, yes, on there.

9 And in reference to the suite, that's where
10 we were told to meet our, you know, escort for the day
11 and be shown where we needed to go.

12 **Q. And was it -- did they ever refer to it as**
13 **the VIP suite?**

14 A. I don't remember what the actual -- you
15 know, the box. I don't -- I don't -- I remember just
16 referring to it as the box.

17 **Q. And where was it on the track?**

18 A. I don't -- what --

19 **Q. I mean, did you have to go up to an**
20 **elevator and you were -- you could overlook the whole**
21 **track; was it down below right on the track or --**

22 A. Oh, yes. Yes. I'm sorry, yeah, you -- it
23 was overlooking the track, yes.

24 **Q. Okay.**

25 INVESTIGATOR (b)(6); (b)(7)(C) that's all

1 I have.

2 INVESTIGATOR (b)(6) (b)(7)(C) Okay.

3 EXAMINATION

4 BY INVESTIGATOR (b)(6) (b)(7)(C)

5 Q. And just for -- I'm sure you figured out
6 why we're asking some of these questions, and mainly
7 it's because we're trying to figure out why (b)(6)
8 went on this trip with him, and had the same
9 privileges as a VA -- VBA employee, so that's why
10 we've been asking some of these questions, to
11 understand the appropriateness of why (b)(6) was also
12 there.

13 So having said that, was there any time
14 that you felt that it was not appropriate that (b)(6)
15 (b)(6) should have been attending some of these events?

16 A. No. I'm -- I -- no, is the simple answer,
17 I don't --

18 Q. You didn't think it was inappropriate for
19 (b)(6) to be there?

20 A. I don't think I get paid to make those
21 decisions, but I do -- (b)(6) being there did not
22 distract from the outreach mission.

23 Q. Okay. I think that's pretty much all we
24 have. I don't anticipate having any other questions,
25 but if we do, we'll reach out to you via email, or set

1 up another call, but I think that's really all we're
2 looking at right now.

3 A. Okay.

4 INVESTIGATOR (b)(6); (b)(7)(C) last call for
5 questions?

6 INVESTIGATOR (b)(6); (b)(7)(C) Nope, I'm good.
7 Thank you.

8 INVESTIGATOR (b)(6); (b)(7)(C) Okay.

9 Q. (By Investigator (b)(6); (b)(7)(C) All right. So
10 before we go off the record, I just wanted to let you
11 know that we're continuing to investigate some of
12 these matters, and I would ask you not to discuss this
13 interview or this investigation with anyone.

14 A. Of course.

15 Q. If anyone should approach you about it, I
16 would ask that you tell them that we asked you not to
17 discuss what we've talked about today.

18 A. Yes. Of course. Yep.

19 Q. Also, if there is anything that comes to
20 mind after we get off the call, feel free to reach out
21 to us about that and provide us any additional
22 information.

23 A. Okay. Sure.

24 INVESTIGATOR (b)(6); (b)(7)(C) And we will now go
25 off the record at 3:20 -- I'm sorry, 4:21 p.m.

Eastern.

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OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION

IN RE: WASHINGTON, D.C.

ACKNOWLEDGEMENT OF AFFIANT

I, (b)(6); (b)(7)(C) do hereby

acknowledge that I have read and examined the pages of
the transcript of my affidavit taken on July 26, 2018,
and that: (Check appropriate box)

☐ The same is a true, correct, and
complete transcription of the answers given by me to
the questions therein recorded.

☐ Except for the changes noted in
the attached Errata Sheet, the same is a true,
correct, and complete transcription of the answers
given by me to the questions therein recorded.

Signature

Date

ERRATA SHEET

	Page and line number as reported	Correction or change and reason
1		
2		
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1 CERTIFICATE OF REPORTER

2 STATE OF ILLINOIS)
3 COUNTY OF CLINTON) SS

4 I, (b)(6), (b)(7)(C) a Certified Shorthand
5 Reporter and Notary Public, the officer before whom
6 the foregoing deposition was taken, do hereby certify
7 that the witness whose testimony appears in the
8 foregoing deposition was duly sworn by me; that the
9 testimony of said witness was taken by me to the best
10 of my ability and thereafter reduced to typewriting
11 under my direction; that I am neither counsel for,
12 related to, nor employed by any of the parties to the
13 action in which this deposition was taken, and
14 further that I am not a relative or employee of any
15 attorney or counsel employed by the parties thereto,
16 nor financially or otherwise interested in the
17 outcome of the action.

18
19
20 (b)(6), (b)(7)(C) CSR

21 Notary Public in and for
22 the State of Illinois
23

24 My Commission expires January 21, 2021.
25

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

BPA NO.

1. CONTRACT ID CODE

PAGE

OF PAGES

2. AMENDMENT/MODIFICATION NO
P000373. EFFECTIVE DATE
08-27-2015

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (If applicable)
None

6. ISSUED BY

CODE

7. ADMINISTERED BY (If other than Item 6)

CODE

Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.
Washington DC 20006Department of Veterans Affairs
VBA Office of Acquisition
1800 G. Street N.W.
Washington DC 20006

9. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

(X) 9A. AMENDMENT OF SOLICITATION NO.

DUTY FIRST CONSULTING LLC

9B. DATED (SEE ITEM 11)

1921 GALLONS RD STE 120

10A. MODIFICATION OF CONTRACT/ORDER NO.
GS-07F-0566Y VA131V-13-F-0088

VIENNA VA 221820000

10B. DATED (SEE ITEM 11)

CODE

FACILITY CODE

X 06-28-2013

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.102(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF 52.212-4(c) Changes.

X

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The Purpose of this No-Cost Modification is Reflect Changes made to the Performance Work Statement (PWS) Within the VBA, Benefits Assistance Services (BAS), Marketing Task Order Referred to in Block 10A.

A. Period of Performance: July 1, 2015 to June 30, 2016. Remains Unchanged.

B. Option Year Two Increase Amount: \$ _____ Remains Unchanged.

C. Revisions made to the Performance Work Statement (PWS) are Below. (See Attached).

All Other Terms and Conditions Remain Unchanged and are in Full Effect.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

William T. Speegle President

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Vernon Mario Quilici
Contracting Officer

15B. CONTRACTOR/OFFEROR

(Signature of person authorized to sign)

15C. DATE SIGNED

8/27/2015

16B. UNITED STATES OF AMERICA

Vernon M. Quilici

BY 131117

(Signature of Contracting Officer)

Digitally signed by Vernon M. Quilici
DN: c=us, o=va, ou=internal, cn=people,
ou=23427920030C10001, email=quilici@va.gov,
cn=Vernon M. Quilici 131117
Date: 2015.08.27 11:57:42 -0400

SF-30 CONTINUATION PAGE

The purpose of this modification is to reflect in-scope changes to the Performance Work Statement (PWS) regarding Task One and Task Two.

This modification is at no cost.

CHANGE FROM:

Task One:

The Contractor shall develop, produce and create a testimonial video promoting the Fully Developed Claim process, electronic submission through eBenefits, standard forms or other associated products. The contractor shall also coordinate two VA/NASCAR Partnership events, including coordination, assets, logistical support, promotional collateral, etc.

Deliverables:

- One 3-5 Minute testimonial video featuring Veterans and VSOs using eClaims and the FDC Program. (Distribution via exiting VA channels and partners.)
- NASCAR Partnership Coordination for 2 in-person events. Includes coordination, assets, logistical support, promotional collateral, b-roll filming, photography and/or an event promotional video (1-2 minutes in length).

Note: The above will include travel to appropriate sites for the filming of content.

Task Two:

The Contractor shall develop, design and update fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products. The Contractor shall develop other written content including outreach plans, call scripts, magazines, and newsletter articles for national or VSO publications, blog posts, and targeted content for VBA Facebook and twitter accounts. The Contractor shall support a series of 6-8 NASCAR-VA outreach racetrack activities as requested by BAS. This includes providing associated planning, logistical and promotional support, which may include partner and Veteran engagement, and materials development, press release and media support, branding support, and promotional activities with racetracks. **(Includes: up to 25 new or updated promotional products and other written content, and support for up to 8 NASCAR-VA activities.)**

Deliverables: (TOTAL: up to 25 products + up to 8 NASCAR-VA activities)

- BAS Outreach Plan (including Stakeholder interviews and background research)
- Outreach Toolkit (5-10 topic specific materials to support outreach in ROs)
- Up to 10 Ad Hoc Materials & Web Content Development
- Contract-Specific Outreach/Work plan Updates
- Promotional Media and Marketing Support for up to 8 2016 NASCAR-VA Racetrack Activities (may include Partner and Veteran Engagement, Media Engagement, Branding Support, and support of Promotional Activities with Racetracks)

CHANGE TO:

Task One:

The Contractor shall develop, produce, and create two radio Public Service Announcements (PSA) and implement a targeted Digital PSA placement campaign on select web channels to promote the Fully Developed Claims (FDC) Program, electronic claims submission through eBenefits, or other key-VA topic as determined by BAS. DFC will use targeted demographic and channel analysis to identify appropriate outreach channels to reach Veteran audiences. The contractor shall also provide support services to BAS to execute the scheduled 9/11 NASCAR Outreach Event with Richmond International Raceway (RIR), including outreach coordination, promotional, media and social media strategies, and coordination and promotion of the 9/10 VAMC NASCAR Driver Visit and outreach event, and other related services associated with those two activities as required to ensure successful event execution.

Deliverables:

- Two 30-second radio PSAs, promoting key VA topics, distributed to 3,000 media outlets nationwide
- Targeted digital PSA placement campaign on select web channels to reach Veteran audiences. Includes the creation of a digital outreach plan, and possible placement of electronic banners, print ads, or using existing or repurposed video footage to promote access to and use of VA benefits.
- Outreach coordination supporting BAS for the 9/10 NASCAR outreach event at the Richmond VAMC and one (1), large in-person Outreach Event on September 11, 2015 in Richmond, VA, to include corresponding activities on 9/12. Includes coordination with RIR, NASCAR, NASCAR drivers, media and marketing activities leading up to and through race weekend, outreach coordination with VA staff, pre and post event reporting, and documenting of outreach activities through film (for use in future marketing and outreach activities).

Task Two:

The Contractor shall develop, design, and update up to 20 fact sheets, FAQs, flyers, advertisements, posters, brochures, social media and blog posts, and other informational/promotional materials promoting FDCs, eClaims, eBenefits, and other key VA topics, as indicated by BAS. The Contractor shall develop other written content as part of an "Outreach Toolkit," not to exceed 10 written materials and 75 pages. The contractor shall support up to eight (8) 2016 NASCAR outreach racetrack activities as requested by BAS (the actual number is pending fees associated with potential track events). This includes providing associated planning, contract review and execution, and logistical and promotional support, which may include partner and Veteran engagement, materials development, press release and media support, branding support, and promotional activities with racetracks. The Contractor shall also expand partnership engagement by working with BAS staff on targeted partnership development activities to further leverage existing VA Partners and assist in facilitating the development of new partners to help further expand VA reach into Veteran communities. This may include ongoing outreach to VSOs, SDVAs, military-related associations and organizations as well as research and support to identify and build relationships with national entities such as the U.S.P.S., the national library association or others as directed.

Deliverables:

- Up to 21 Materials & Web Content Development and/or reporting documents on key VA Topics (fact sheets, FAQs, flyers, advertisements, posters, brochures and other informational/promotional materials and outreach planning documents about FDC, eBenefits, standards forms and associated products and reporting one pagers, PowerPoint presentations, etc.)
- Outreach Toolkit (includes the creation of up to 10 written topic-specific materials to support outreach in ROs; not to exceed 75 pages)
- Contract negotiation, coordination, and acquisition of up to eight (8) 2016 NASCAR-VA Racetrack Activities (may include contract review and execution, partner and Veteran engagement, media engagement, branding support, and support of promotional activities with racetracks, as directed by BAS; includes fee and non-fee based advertising at track events, pending track negotiations; not to exceed \$ [REDACTED] in racetrack advertising and marketing fees).
- Targeted partnership engagement and expansion support, including supporting BAS staff on partner engagement, leveraging existing VA Partners (VSOs, associations, SDVAs) and assistance in facilitating the development of new VA Partnerships (not to exceed 275 hours of support).

End of Document

MEMO FOR THE RECORD

In mid-August 2018, I contacted a gentleman named (b)(6) at the Phoenix, AZ ISM Raceway. The reason I contacted him was because I, along with (b)(6); (b)(7)(C) had been assigned to investigate allegations of misconduct submitted to the VA Office of Accountability and Whistleblower Protection (OAWP); one of those allegations was that senior Veterans Benefits Administration (VBA) officials had attended NASCAR events and received VIP benefits. After the OAWP team's interview with Mr. Thomas Murphy, one of the named Persons of Interest in the investigation, I felt the need to contact the Raceway to find out about the benefits received by Mr. Murphy and his spouse during a 2017 NASCAR event they attended together as part of official VBA business.

Mr. (b)(6) told me that the "Hot Pass", which Mr. (b)(6) Murphy received, was similar to a "press pass", affording them unrestricted access to the entire track. This access included the VIP/President's Suite. Mr. (b)(6) stated that he could not assign a dollar value to the "Hot Pass", however, if someone were to reserve the VIP/President's Suite, it would cost approximately \$25,000. Per Mr. (b)(6) as the Suite holds approximately 48 individuals, that would break down to a cost of \$520 per person.

Mr. Murphy's attorney, (b)(6) sent me an email on August 23, 2018 (attached) in which he notified me that he also spoke with Raceway officials. As you will see, whilst he was trying to tell me that what I was told by Mr. (b)(6) was incorrect, he ended up saying the same thing Mr. (b)(6) told me, i.e., "that those passes [Hot Passes] were not available to the public, and as such had no discernable value...akin to a press credential." He continued by stating "the \$520 number was a number he calculated based on the rental cost of the VIP suite for the entire day and divided by the number of possible occupants. However, such individual suite access is not for sale to the general public."

Both Mr. (b)(6) initial information provided to me and Mr. (b)(6) subsequent email provided the rationale for why (b)(6) attendance at the NASCAR event could be determined to be **an appearance of or actual conflict of interest**. Mr. Murphy and (b)(6) had access to the VIP/President's Suite all day due to the Hot Pass credentials. Mr. Murphy (b)(6) only had access to such a suite, whether for a few minutes or all day, due to (b)(6) public position with the federal government.

(b)(6), (b)(7)(C)

From: (b)(6)
To: (b)(6)
Cc: Murphy, Thomas, VBASTL; (b)(6); (b)(7)(C); JACO
Subject: RE: [EXTERNAL] Requested material
Date: Thursday, August 23, 2018 8:20:18 AM

Dear Ms. (b)(6), (b)(7)(C) thank you for your patience as we have looked to address your questions below.

Please be advised that I have spoken to Mr. (b)(6) at the Phoenix Raceway and to Mr. (b)(6) to International Speedway Corporation (parent company for Phoenix Raceway), regarding a telephone conversation I understand you had with Mr. (b)(6). I was told that you contacted Mr. (b)(6) to inquire about the value of the "Hot Pass" used by Mr. Murphy and (b)(6) to gain entry to the VIP suite and the track on their VA related visit to the raceway last November, where they both visited with the track owner briefly in the raceway President's VIP suite and visited the track where Mr. Murphy met with and had photos taken with many Vets, which was an important aspect of the visit to the NASCAR event.

In my discussion with the gentlemen associated with the raceway, I was told that Mr. (b)(6) understood that the Hot Passes referred to were only given as a courtesy to VIP visitors, like Mr. Murphy and (b)(6) and that those passes were not available to the public, and as such had no discernable value. Passes such as the Hot Passes are more for working access (think akin to a press credential) and are not for sale to the general public. Notwithstanding that, I understand the Mr. (b)(6) in his conversation with you, eventually assigned a value of \$520.00 for the access Mr. Murphy received. I understand that Mr. (b)(6) actually believes, and if asked today, would, upon reflection, amend what he communicated to you. Mr. (b)(6) would state that a value could not and cannot be placed on the referenced Hot Passes because, as stated, those passes are for the benefit of the VIPs, not available to anyone but the VIPs and, as such, cannot have a monetary value placed on them. Mr. (b)(6) would state that the \$520 was a number he calculated based on the rental cost of a VIP suite for the entire race day and divided by the number of possible occupants. However, such individual suite access is not for sale to the general public. Moreover, Mr. Murphy spent only a few minutes in the suite as I stated in the first paragraph.

If you have further questions on this matter, I am told by Mr. (b)(6) that you are free to call him directly and he will be pleased to confirm what I have stated above. If you have further questions on this matter, please let me know.

In response to your inquiry regarding whether Mr. Murphy sought an official ethics opinion the answer, in light of the above, is no. As the Hot Passes had no discernable value, his and (b)(6) use of them was expected and part of the planned outreach exercise at this important outreach event.

As always, if there are further issues, please be in touch with me.

Regards,

(b)(6)

Bonner Kiernan Trebach & Crociata
1233 20th Street, NW, 8th Floor
Washington, DC 20036

T 202-712-7000

F 202-712-7100

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BONNER KIERNAN

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From: (b)(6); (b)(7)(C) [mailto:(b)(6); (b)(7)(C)@va.gov]
Sent: Tuesday, August 14, 2018 2:03 PM
To: (b)(6)
Cc: Murphy, Thomas, VBASTL; (b)(6); (b)(7)(C) VACO
Subject: RE: [EXTERNAL] Requested material

Good afternoon,

Following up on the below questions...

From: (b)(6) [mailto:(b)(6)@bonnerkiernan.com]
Sent: Friday, August 10, 2018 1:34 PM
To: (b)(6); (b)(7)(C)@va.gov>
Cc: Murphy, Thomas, VBASTL <(b)(6)@va.gov>; (b)(6); (b)(7)(C) VACO
(b)(6); (b)(7)(C)@va.gov>
Subject: RE: [EXTERNAL] Requested material

Dear Ms. (b)(6); (b)(7)(C)

Thank you for this. I will look into this request and will get a response to you as soon as possible, by the first of the week.

Have a good weekend.

Regards,

(b)(6)

From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C)@va.gov]
Sent: Friday, August 10, 2018 1:19 PM
To: (b)(6)
Cc: Murphy, Thomas, VBASTL; (b)(6), (b)(7)(C) VACO
Subject: RE: [EXTERNAL] Requested material

Mr. (b)(6)

You indicated below that (b)(6) joined (b)(6) "in the meetings in the VIP suite and in the pit, as it is often thought, as here, the (b)(6) presence adds a very personal touch to these personal contact outreach events." Was there someone who told Mr. Murphy that his (b)(6) presence was recommended for the reason you propose? If so, who? Did Mr. Murphy request an official ethics opinion from the VA's OGC Ethics Office regarding (b)(6) (b)(6) accompanying him to all the NASCAR race day events, including the meetings in the VIP suite and meet-and-greet with the drivers on the track?

We appreciate the additional insight you can provide us regarding this matter.

Regards,

(b)(6), (b)(7)(C)

From: (b)(6) [mailto:(b)(6)@bonnerkiernan.com]
Sent: Friday, July 27, 2018 11:06 AM
To: (b)(6), (b)(7)(C) <(b)(6), (b)(7)(C)@va.gov> (b)(6), (b)(7)(C) VACO <(b)(6), (b)(7)(C)@va.gov>
Cc: Murphy, Thomas <(b)(6)@va.gov>
Subject: [EXTERNAL] Requested material

Dear Ms. (b)(6), (b)(7)(C) and Ms. (b)(6), (b)(7)(C)

As you requested, please find attached the BAS contract along with the two relevant modifications. We trust that these are the documents you referenced. If not, please be in touch. Also, please be advised that the POC would be the then Deputy Under Secretary of Disabilities Assistance, who was the Director of BAS, Rob Reynolds.

As Mr. Murphy and I reviewed the transcript of the interview, we see at pages 33-47 that you inquired whether he visited "a suite" while he was at the NASCAR event (page 47). As he replied yes, please let Mr. Murphy make it clear that as part of this important VA outreach effort he had a valuable meeting in the owner's suit, the VIP suite, with the owner, and he

later met veterans in the pit with the drivers for meeting and photo opportunities. Mr. Murphy (b)(6) who had accompanied him on this business trip to Phoenix at zero cost to the government, joined him in the meetings in the VIP suite and in the pit, as it is often thought, as here, the (b)(6) presence adds a very personal touch to these personal contact outreach events.

As we have said before, we are looking forward to assisting you in this investigation. If you have additional questions on the above matters or on any other, please be in touch. Thank you for your attention to these important matters.

Best regards,

(b)(6)

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Office of Government Ethics

§ 2635.203

(1) Accept a gift in return for being influenced in the performance of an official act;

(2) Solicit or coerce the offering of a gift;

(3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in § 2635.204(a) on de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials; and

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; or

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the

procurement of supplies and services for the Government, except pursuant to § 2635.204(1).

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992, as amended at 62 FR 48747, Sept. 17, 1997]

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Agency* has the meaning set forth in § 2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

(1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

NOTE: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-53.

(8) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(9) Anything for which market value is paid by the employee.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

(d) *Prohibited source* means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

NOTE: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

Example 2: Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2).

Office of Government Ethics

§ 2635.204

Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) *Vendor promotional training* means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

[57 FR 35042, Aug. 7, 1992, as amended at 60 FR 51667, Oct. 3, 1995; 63 FR 69993, Dec. 18, 1998; 64 FR 2422, Jan. 14, 1999; 72 FR 16986, Apr. 6, 2007]

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and

separate item in order to accept those items aggregating \$20 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at § 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at § 2635.204(b) for gifts based on a personal relationship.

Example 4: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of \$20 or less accepted under § 2635.204(a) is a gift to

Dr. Paul Lawrence
Under Secretary for Benefits
c/o (b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Avenue, NW
Washington, DC 20420

I write this letter in response to the Notice of Proposed Disciplinary Action for the alleged violation of 5 CFR 2635.202: General Prohibition on Solicitation or Acceptance of Gifts. Received from Margarita Devlin, Principal Deputy Under Secretary for Benefits, dated February 25, 2019.

The charge is that I received a "Gift" in the form of a pass for my wife and that the gift had more than a *de minimus* value, meaning more than \$20 per CFR 2635.204(a). If that were true, I would be writing a letter of apology right now and taking my punishment. This is simply not the case.

In the following pages I will show you the evidence that proves this was not a gift. But rather a "press pass", given to her and I both, in order to access the areas of the racetrack where veteran's events occurred. Most of this evidence is already in the investigation file from OAWP.

OAWP WORK HISTORY

I have to start with the erroneous statement in the second paragraph of the Background section of the proposal letter. It says, "You have been a federal civilian employee for 29 years since your first Excepted Service Appointment on September 24, 1989."

The facts are that I resigned from government service on November 19, 1999. I worked in the private sector until I was appointed again on August 2, 2009, when I joined the VA. See Attachment 1.

The years of federal service are not the issue here. The issue is the investigators didn't even take the time to read the file in front of them and made an assumption about my service. Given this fact, why would anyone believe that they took the time to thoroughly and completely review all evidence in front of them with the rest of this case.

My personal experience with OAWP, on cases where I was the proposing or deciding official, have proven to me that they routinely investigate to prove guilt and stop. On more than one occasion I was pushed to discipline employees based on their conclusion. Instead, I took the time to read the complete evidence file and found proof that their conclusions were wrong. I even pointed this out to the OAWP director at the time, asking that his investigators stop acting like prosecutors that gather evidence to prove guilt. And act like impartial gatherers of all the evidence and deliver it to leadership to draw their own conclusion.

RETALIATION

When I was first contacted by (b)(6); (b)(7)(C) OAWP Investigator, and told why I was being investigated, I told her that this was a clear case of retaliation by a former employee that was terminated for cause. She threatened me during her termination discussion. See Attachment 2

I told the Secretary, Deputy Secretary, VA Chief of Staff, and OAWP Director, that I would do the right thing on this individual's case, without telling them what that was, but that when I did, there would be retaliation and allegations for years to come.

That same individual has not stopped yet and has a case with the MSPB (as of a few months ago) and currently has an active EEO complaint against VA.

INFORMED SENIOR LEADERSHIP

During the time of this event, I was reporting directly to the Secretary and answered to the Deputy Secretary for day to day operations. We met 3 or more times per week as a management team with at least one of those sessions with just the Secretary, Deputy Secretary, Chief of Staff, and the three Under Secretaries (acting). During several of those meetings we discussed what each person in the room was doing for Veteran's Day. The Secretary was tapped by the Whitehouse to accompany the Vice President to Arlington National Cemetery. I briefed that I was attending the VA's outreach event at Phoenix Raceway over Veteran's Day weekend, that it was part of an outreach contract we had with Duty First, and that (b)(6) was attending the outreach with me. I also briefed on the fact that NASCAR was very veteran friendly and that this event led to comments in the President's Speeches in the past. "And last year, through a tremendous partnership with the VA, they helped more than 5,300 veterans, servicemembers, and their families access the benefits that they have earned." Barak Obama, September 28, 2016.

THE GIFT THAT WASN'T

To say that I accepted a gift for (b)(6) to attend a race in Phoenix couldn't be further from the truth. I was provided access to the places we needed to be in order to participate in VA's outreach event. These events included a multitude of Veteran specific activities noted below; plus, meeting with the contractor, visiting the VA Mobile Vet Clinic/booth, meeting various government officials such as Arizona Secretary of State Ms. Michele Reagan, and various NASCAR executives to include one of the founders of NASCAR racing on the west coast, Mr. (b)(6) as well as the President of Phoenix Raceway and his staff.

I attended Veteran specific events and meetings with a group of 6 specially selected Veterans that were getting the VIP treatment from NASCAR. They talked with (b)(6) who gave them photo opportunities and autographed their Hot Passes. They were given access to the top of the car hauler to see the track like the management team does during the race. They attended the driver's meeting in a special tent set up for that purpose. Only the drivers, their crew chiefs, and very few select others were allowed in the meeting. This included our 6 veterans and one of the few living Navajo Code talkers from WWII. They went to pit row and were allowed in the individual car pit areas to talk with the crew and sit on top of the Crew Chief's crows nest. They were shown all the technology and car data used in making racing decisions. Then they got to watch the crews in action during time trial, and later, after we left the track, were allowed to stay and watch the race from the pits.

Almost all of these places are not open to the public at any price. You cannot buy your way in. This is what Mr. (b)(6) was trying to tell (b)(6); (b)(7)(C) in Attachment O of the original evidence file. Her comment was, "Mr. (b)(6) told me that the "Hot Pass", which Mr. (b)(6) Murphy received, was similar to a "press pass", affording them unrestricted access to the entire track. This access included the

VIP/President's Suite." Of course it included access to the President's Suite. On race weekends, that is where the track executives and NASCAR officials operate from.

The other very relevant fact that was omitted by OAWP here is that the passes we were provided only allowed us access to the areas we needed to be at and the times we needed to be there. For example, I did not have access to the bleachers where fans and most veterans sat to watch the various races. See Attachment 3. It's written on the bottom of the Hot Pass. Nor did I have access to the Presidents Suite on Sunday. See Attachment 4. It shows the other part of the pass that granted access to the VIP/President Suite level. It had the words "Saturday November 11".

Friday night is the Camping World Series, Lucas Oil 150 truck race. Saturday was the Xfinity Series, Galaxy 200 race. Both days had nearly empty bleachers with very few fans in attendance. The big event was on Sunday. It was the Monster Energy NASCAR Cup Series. This is the big nationally televised race. This is the one that people pay \$25,000 for a VIP Suite to see. We had no access because we had no business need to be there.

The only veteran's activity on Sunday was meeting some of our 6 VIP veterans in the pits before the race. Then we left the track. The attached photo has a picture of (b)(6) and I leaving the raceway on Sunday, November 12, 2017 at 12:58 PM. The race started at 12:30 PM. See Attachment 5.

My point in all this being that, I wasn't there to watch a race. I was there doing my job of supporting a major veteran's outreach event. I was given access to the time and place I needed to be for (b)(6) and I both. Then left the area. Each Day. Therefore, there was no gift and no violation of CFR 2635.202.

REGULATIONS

Now, let's assume you do not believe the assertion that there was no gift and that there was something of value received. The specific regulation quoted in the proposal letter is CFR 2635.202(b) which states, "an employee may not, directly or indirectly: (1) Accept a Gift from a prohibited source; (2) Accept a gift because of the employee's official position." And CFR 2635.202 (f) which states "a gift which is solicited or accepted directly includes: (1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee". See attachment F in the original evidence file.

CFR 2635.202 also clearly defines exactly what a gift is and provides very detailed and specific exclusions of circumstances when items received are specifically NOT gifts. This is spelled out in CFR 2635.203 (b) (8) (iii) which states; "

"(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term excludes the following:

(8) Free attendance to an event provided by the sponsor of the event to:

(iii) The spouse or one other guest of the presenting employee on any day when the employee is presenting, provided that others in attendance will generally be accompanied by a spouse or other guest, the offer of free attendance for the spouse or other guest is unsolicited, and the agency designee, orally or in writing, has authorized the presenting employee to accept;

PROPOSED PENALTY

If for some reason, you read this and still decide that there was a violation of the gift policy (CFR 2635.202), I would ask that you reconsider the penalty here. In a case where an individual knowingly and intently violated this policy for personal gain or benefit, there should consequences. In a case where, I discussed it with the Secretary and Deputy Secretary beforehand, where I and (b)(6) represented the VA in the best possible light, at a VA outreach event that has been ongoing for nearly a decade, with thousands of veterans and their families in attendance, it would be unjust to do anything more than an admonishment for failing to contact OGC Ethics beforehand.

Thank you for your consideration on this matter and I look forward to hearing your just decision. I would like nothing more than to put this whole thing behind me and get back to doing what we do, "to care for him who shall have born the battle and his widow and his orphan"

Respectfully,

Thomas J. Murphy
District Director, Northeast
9700 Page Avenue
St Louis, MO 63132

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) MURPHY THOMAS J					2. Social Security Number [REDACTED]		3. Date of Birth [REDACTED]		4. Effective Date 11-19-99		
FIRST ACTION					SECOND ACTION						
5-A. Code 317					5-B. Nature of Action RESIGNATION						
5-C. Code RPM					5-D. Legal Authority REG 715.202						
5-E. Code					5-F. Legal Authority						
7. FROM: Position Title and Number SUPPLY MANAGEMENT OFFICER TG08735099					15. TO: Position Title and Number						
8. Pay Plan GS		9. Occ. Code 2003		10. Grade or Level 11		11. Step or Rate 07		12. Total Salary \$47,951.00		13. Pay Basis PA	
12A. Basic Pay \$45,292		12B. Locality Adj. \$ 2659		12C. Adj. Basic Pay \$47,951		12D. Other Pay \$ 0		16. Pay Plan		17. Occ. Code	
12E. Basic Pay		12F. Locality Adj.		12G. Adj. Basic Pay		12H. Other Pay		18. Grade or Level		19. Step or Rate	
20A. Basic Pay		20B. Locality Adj.		20C. Adj. Basic Pay		20D. Other Pay		20. Total Salary/Award		21. P Basis	
14. Name and Location of Position's Organization TAG COLORADO/HRO 6848 S. REVERE PARKWAY ENGLEWOOD, CO 80112-6703 CENTENNIAL TRAINING SITE FT CARSON CO					22. Name and Location of Position's Organization						
EMPLOYEE DATA											
23. Veterans Preference 1 - None 2 - 5-Point 3 - 10-Point/Disability 4 - 10-Point/Compensable 5 - 10-Point/Other 6 - 10-Point/Compensable/30% (b)(6)				24. Tenure 0 - None 1 - Permanent 2 - Conditional 3 - Indefinite (b)(6)				25. Agency Use		26. Veterans Pref for YES <input type="checkbox"/> N <input type="checkbox"/>	
27. FEGLI WAIVED B0				28. Annuity Indicator 9 NOT APPLICABLE				29. Pay Rate Determinant U			
30. Retirement Plan FERS AND FICA- N RESERVE TECH				31. Service Comp. Date (Leave) 08-17-88				32. Work Schedule F FULL TIME			
33. Part-Time Hours Biweekly Pay Period				34. Position Occupied 1 - Competitive Service 2 - Excepted Service 3 - SES General 4 - SES Career Reserved 2				35. FLSA Category E - Exempt N - Nonexempt E			
36. Appropriation Code 1921				37. Bargaining Unit Status 0190				38. Duty Station Code 08-0859-041			
39. Duty Station (City - County - State or Overseas Location) EL PASO FORT CARSON CO				40. AGENCY DATA 131G93110 W8AZA4 59891A 1921 DFAS, DENVER, CO				41. Remarks			

FORWARDING ADDRESS:

LUMP-SUM PAYMENT TO COVER HOURS ENDING

REASON FOR RESIGNATION: CAREER ADVANCEMENT.

SF-8 ISSUED.

HEALTH BENEFITS COVERAGE IS EXTENDED FOR 31 DAYS DURING WHICH YOU ARE ELIGIBLE TO CONVERT TO AN INDIVIDUAL POLICY (NONGROUP CONTRACT).

46. Employing Department or Agency DEPARTMENT OF THE ARMY			47. Agency Code ARNG		48. Personnel Office ID 3340		49. Approval Date 10 -99		50. Approving Official PERSONNEL ASSISTANT	
TURN OVER FOR IMPORTANT INFORMATION										

From: [Murphy, Thomas, VBASTI](#)
To: (b)(6) - (b)(7)(C)
Cc: [VACO](#)
Subject: RE: Notice of OAWP Investigation
Date: Monday, June 25, 2018 11:51:00 AM
Importance: High

(b)(6) in cooperation with (b)(6) of WoA. There is no doubt of the connection. I have the emails to prove it.

Add this to the fact that (b)(6) threatened to get me in front of a witness as (b)(6) left my office after (b)(6) was terminated.

As for IG report, I have no idea where that one came from. But it cannot possibly be taken serious. Congress has given the VBA tens of millions of dollars annually in the normal operating budget and as an additional line item to specifically address production and backlog reduction. We routinely brief the 8 corners and OMB on our budget to include the use of OT. (Senate and House, Veterans Affairs and Appropriation, Both Parties) Add this to the fact that the OT budget for 2017 and 2018 are significantly lower than previous years and the backlog hit the lowest number in recorded history in May of this year.

We even sent an all employee email telling them that.

May 10, 2018

VBA Employees and Partners:

Today is a seminal day in VBA history - we hit 70,953 claims in backlog, the lowest number since we defined the backlog.

Our prior record low was 71,240 on October 1, 2016, after our major backlog production push in 2015. With this victory, we've dropped the number of claims pending more than 125 days down more than 88% from a high point of 611,000 back in March of 2013.

In the first half of this year, you worked mandatory overtime and focused efforts on backlog prevention to reach this milestone. This accomplishment shows how well you have succeeded through the challenges of new automation, new processes, and new standards. And I am confident you will succeed in bringing the number of Veterans waiting more than 125 days for a decision down even further; much further.

I want to salute the entire VBA team for your efforts. This is hard work worth celebrating, especially during Public Service Recognition Week. Keep up the great work and thank you for your constant dedication to what I consider the greatest mission in government – taking care of our Veterans.

Thomas J. Murphy

Executive in Charge

I will give you all the detail you need to prove every charge on this list wrong. After you see it, you need to close the investigation and call it what it is. A disgruntled former employee attacking VA leadership for holding her accountable.

From: (b)(6), (b)(7)(C)
Sent: Monday, June 25, 2018 11:04 AM
To: Murphy, Thomas <(b)(6)@va.gov>
Cc: (b)(6), (b)(7)(C); VACO <(b)(6), (b)(7)(C)@va.gov>
Subject: RE: Notice of OAWP Investigation
Importance: High

Mr. Murphy,

Thank you for your response. I will wait to hear from Mr. (b)(6) in order to schedule your interview. In the meantime, who is the "former employee" you reference below? And which complaint(s) are you alleging she submitted – the OIG Hotline about overtime or the letter sent from WoA, or both?

We look forward, as well, to getting all the facts in this case and bringing it to closure.

Thank you, again, for your assistance and cooperation with this investigation.

(b)(6), (b)(7)(C)

From: Murphy, Thomas
Sent: Monday, June 25, 2018 8:18 AM
To: (b)(6), (b)(7)(C) <(b)(6), (b)(7)(C)@va.gov>
Cc: (b)(6), (b)(7)(C); VACO <(b)(6), (b)(7)(C)@va.gov>
Subject: RE: Notice of OAWP Investigation
Importance: High

This is the clearest case of a former employee trying to attack the person that terminated her that I have ever seen. It is exactly what I told the Secretary, Deputy Secretary, and Chief of Staff of VA would happen. I look forward to the opportunity to show you the facts in this case.

But I take no chances in situations like this and have therefore retained (b)(6)

(b)(6) of Bonner, Kiernan, Trebach, and Crociata as council. He will be contacting you shortly.

Regards,
Tom Murphy

From: (b)(6); (b)(7)(C)
Sent: Thursday, June 21, 2018 10:44 AM
To: Murphy, Thomas (b)(6) @va.gov>
Cc: (b)(6); (b)(7)(C) VACO (b)(6); (b)(7)(C) @va.gov>
Subject: Notice of OAWP Investigation
Importance: High

Good morning, Mr. Murphy:

This is notification that the Director of Investigations, VA Office of Accountability and Whistleblower Protection (OAWP), has appointed an administrative investigation to determine the underlying facts and circumstances surrounding the allegations contained in the attached Charge Memo. Also attached are the OIG Hotline Non Case Referral as well as the letter from the Whistleblowers of America (WoA) which provide the basis for the Charge Memo.

The investigation team includes me as well as (b)(6); (b)(7)(C) also an Administrative Investigator with OAWP. We would like to schedule your telephonic interview for **either Monday, July 2 or Tuesday, July 3**. We anticipate your interview taking approximately 60 minutes. Please let us know what times you are available on either of those days and I will send you an Outlook calendar request with the call-in number and access code.

Since it will be necessary to request information and documentation in response to the allegations brought forward by the OIG Hotline and WoA letter, I would appreciate you letting us know who can be our point of contact in your office for requesting this information/documentation, e.g., meeting agendas, overtime records, TAP contract information, travel documents, etc.

Thank you in advance for your assistance and cooperation with our investigation. If you have any questions, please don't hesitate to contact me or Ms. (b)(6); (b)(7)(C)

Respectfully,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Administrative Investigator

VA Office of Accountability and Whistleblower Protection (OAWP)

(b)(6); (b)(7)(C)

Office

Cell

PHOENIX RACEWAY

HOT



GARAGE & PITS

NOVEMBER 2017

Thomas Murphy

Duty First VA

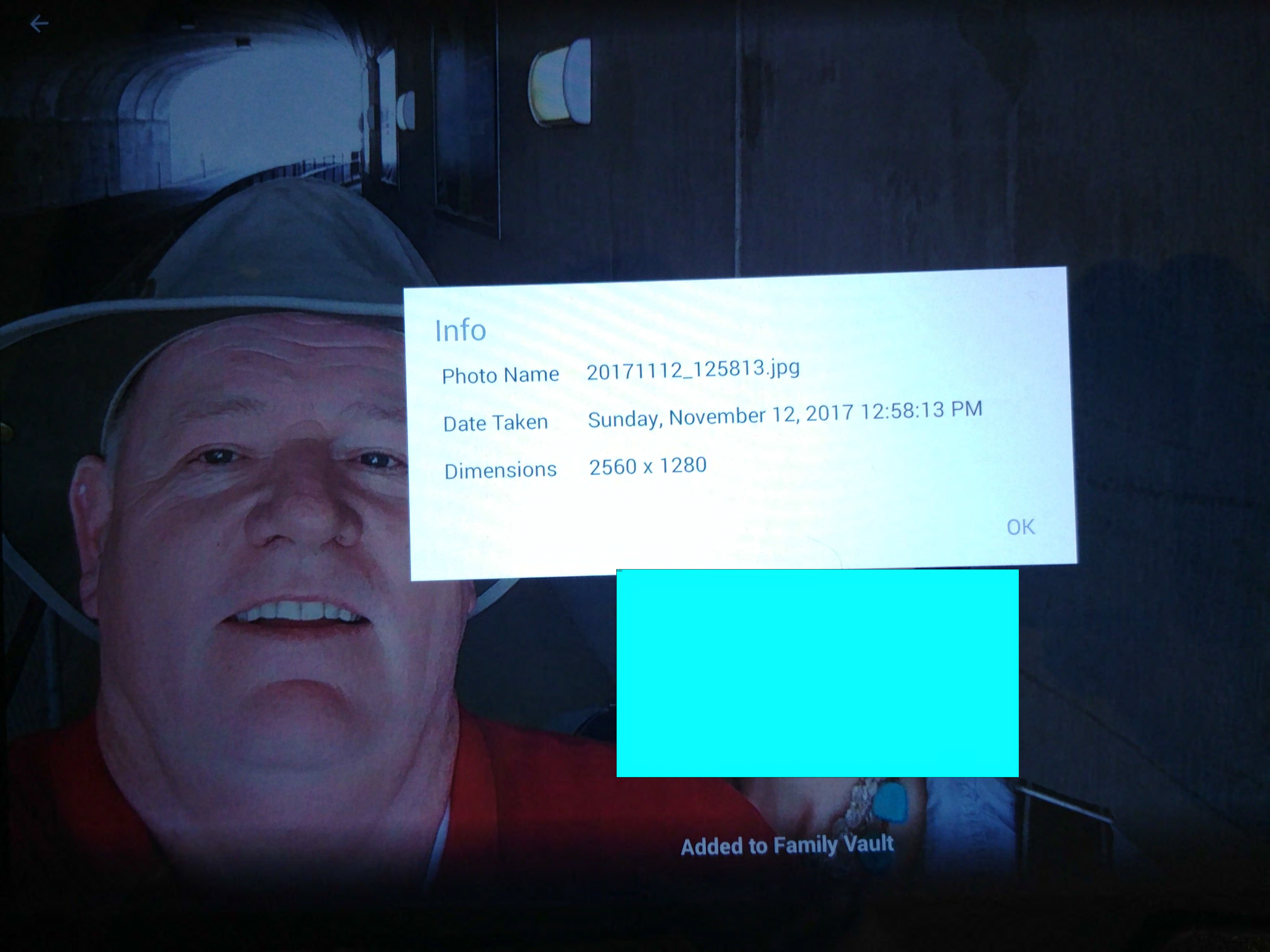
NAME

NO. 7420

AFFILIATION

This pass is not transferable and is revocable for cause.
NOT GOOD FOR GRANDSTAND SEATING. VALID DURING OPEN GARAGE HOURS

(21-08490-F) - 000520



Info

Photo Name 20171112_125813.jpg

Date Taken Sunday, November 12, 2017 12:58:13 PM

Dimensions 2560 x 1280

OK

Added to Family Vault



THE UNDER SECRETARY OF VETERANS AFFAIRS FOR BENEFITS
WASHINGTON, D.C. 20420

March 18, 2019

Thomas Murphy
Director
Midwest District Office
Veterans Benefits Administration
9700 Page Avenue, Suite 301
St. Louis, MO 63132

In accordance with 38 U.S. C. §713, this is an Initial Decision on the notice of Proposed Suspension of 10 days issued to you on February 25, 2019. My decision is to uphold the charges and specifications as written and uphold the penalty of suspension of 10 days from your position as Director of the Midwest District Office, Veterans Benefits Administration, Department of Veterans Affairs.

By letter dated February 25, 2019, Ms. Margarita Devlin, Principal Deputy Under Secretary for Benefits, served you with written notice of her proposal to suspend you for 10 days from your position as Director of the Midwest District Office, Veterans Benefits Administration. The Proposed Suspension set forth one charge. Specifically, the charge was Violation of 5 CFR 2635.202: General Prohibition on Solicitation or Acceptance of Gifts.

You were notified in the Proposed Suspension that you had seven business days to provide a written response to me. On March 6, 2019, you submitted a written response to me.

After carefully reviewing the Proposed Suspension and the documentary evidence supporting the proposed action, as well as your written response to the Proposed Suspension, I find that substantial evidence supports the proposed charge. Furthermore, I find that even if preponderant evidence was required to support the charge, preponderant evidence supports the proposed charge as well. I find that the appropriate penalty for the sustained charges for the misconduct is a 10-day suspension. Your suspension will be effected within the next 60 days (March 19 – May 18, 2019.) Please identify when within this time-period the consecutive business days for your suspension to Ms. (b)(6)

DISCUSSION

In reaching my decision, I have considered the charges against you and your response. I have also considered the nature of your position, and your responsibilities and duties as a member of the Senior Executive Service (SES).

I find that you violated 5 C.F.R. § 2635.202, General Prohibition on Solicitation or Acceptance of Gifts when (b)(6) received free attendance at the NASCAR event at Phoenix Raceway in November 2017, based on your official position.

In your written reply you contend that (b)(6) received the same "press pass" that was given to you "in order to access the areas of the racetrack where veteran's events occurred." You stated that you and (b)(6) only had access to the places you needed to be, and at the times you needed to be there, in order to participate in VA's outreach event. I find this demonstrates that (b)(6) received the free attendance based on your official position. You contend that the "hot pass" was not for sale and could not be bought. However, the fact remains that (b)(6) was granted an "item having monetary value," 5 C.F.R. § 2635.203 – a pass granting attendance to these events – based on your official position and free of charge.

Based on my understanding of the rule against gifts, in order for (b)(6) free attendance to be excluded from the definition of gift, it must be determined that (1) others in attendance will be accompanied by a spouse or guest; (2) the offer of free attendance was unsolicited; and (3) the agency designee authorized the employee to accept the free attendance orally or in writing. 5 CFR 2635.203(b)(8)(iii).

Despite your contention that you informed the Secretary and other leadership that you and (b)(6) would attend the event at Phoenix Raceway, I find that it does not satisfy the requirement that an agency designee authorize you to accept the free attendance of (b)(6). You do not state that the Secretary authorized (b)(6) to attend free of charge, you merely state that you told the Secretary that you and (b)(6) were attending the event. Thus, I find that this does not qualify as authorization to bring (b)(6). In addition, you did not state in your reply that others brought their (b)(6) or guests to the outreach event. I find there is no evidence that this requirement was satisfied either.

You also raise concerns about your history with the Office of Accountability and Whistleblower Protection (OAWP) and the source of the allegations. You raised the concern that the source made the allegations in retaliation for an action in which you served as the Deciding Official. I considered the concerns you raise, but they do not affect my decision. As the Deciding Official in this case, I have objectively reviewed the evidence and find that the charge is sustained. I have not been pressured by OAWP to make a particular decision, and I am not aware of any evidence that the investigation was not carried out impartially. My understanding is that OAWP must look into all allegations regardless of their source, to determine whether they have merit.

With respect to the level of penalty, a review of the documents before me reveals an ethical lapse that sets an unwelcome example for those you lead. You are a Senior Leader for the VBA with 9 years as a member of the SES and 20 years as a federal employee. In each of those years, you have had ethics training in some format. You admitted that you did not seek guidance from an ethics official prior to the event. I am disappointed by the fact that you made no attempt to contact VA's Ethics Team for

assistance in making the determination whether you should have accepted a "hot pass" ticket for (b)(6)

I have considered whether suspension is the appropriate penalty for your misconduct. The severity of your violation of ethics rules and your unwillingness to accept responsibility for your actions leads me to conclude that a suspension of 10 days is the proper penalty.

As stated above, after carefully reviewing the Proposed Suspension and evidence file as well as your written reply, I sustain the charge as contained in the Proposed Suspension.

APPEAL RIGHTS

You may:

- a. grieve this decision in accordance with CSEMO Letter 006-17-1
- b. file a discrimination complaint with the Office of Resolution Management (ORM)

If you choose to grieve this action you must submit your written grievance to the Grievance Official within seven (7) business days from the date you received this Initial Decision. Your written grievance must contain the following information:

- a. the specific action on which the grievance is based, the date the action occurred, and the date you first learned of the action (if appropriate);
- b. the reasons you believe that the action was not supported by the substantial evidence; is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law; or obtained without procedures required by a provision of law having been followed; and
- c. the corrective action you desire.

If your written grievance does not include the above information, the Grievance Official will consider your grievance as written, along with the developed record. If you do not grieve this action, or your grievance is untimely filed, this Initial Decision will become final and conclusive as the Final Decision in this matter. Otherwise, the Grievance Official will submit a recommendation to the Secretary who will issue the Final Decision in this matter. The Final Decision is subject to judicial review in accordance with 38 U.S.C. §713(b)(4)-(6).

Your written grievance should be addressed to Mr. Daniel Sitterly, Assistant Secretary for HRA and Ops Security & Preparedness. You may submit your written grievance to Mr. Sitterly at (b)(6)@va.gov and (b)(6) Employee

Relations Specialist, Advisory and Analysis Division, Office of Accountability and Whistleblower Protection, (b)(6) @va.gov. "Business days" refers to weekdays, which are Monday through Friday in Washington, D.C., except when such a day is designated as a Federal holiday by the Office of Personnel Management.

If you believe this action is based on discrimination on the basis of race, color, religion, sex, national origin, age, or handicap, you may file a complaint of discrimination. If you elect to file a complaint of discrimination, you may do so by contacting the Office of Resolution Management (ORM) at 1-888-737-3361. Your complaint will be processed in accordance with EEOC regulations at 29 C.F.R. Part 1614. Your initial contact with the ORM office must be done within 45 calendar days of the effective date of this action.

A further explanation of your appeal rights may be obtained by consulting Ms. (b)(6) at (b)(6) @va.gov or (b)(6)

(b)(6)

Paul R. Lawrence, Ph.D.
Under Secretary for Benefits

**Department of
Veterans Affairs**

Memorandum

Date: April 16, 2019
From: Assistant Secretary for Human Resources and Administration/
Operations, Security, and Preparedness
Subj: Grievance Recommendation
To: Secretary, Department of Veterans Affairs

Issue

On March 18, 2019, Thomas Murphy, Director, Midwest District Office, Veterans Benefits Administration (VBA), was served an initial notice of the decision to suspend him for 10 days under the authority of 38 U.S.C. § 713. On March 27, 2019, Mr. Murphy submitted a written grievance regarding the initial decision to suspend him for 10 days.

Background

An Administrative Investigation (AI) was convened on June 20, 2018, to investigate allegations made against Mr. Murphy for: financial and administration improprieties relating to the VA's Transition Assistance Program (TAP), Prohibited Personnel Practices (PPP), misusing funds for mandatory overtime in relation to reducing benefits cases backlog, and misusing the VA contract with NASCAR to attend NASCAR events.

The AI took sworn testimony via telephone or taped transcript between July 12 and September 24, 2018. The AIB also followed up several issues with Mr. Murphy via email. The AI did not sustained allegations into financial and administration improprieties relating to the VA's Transition Assistance Program (TAP), Prohibited Personnel Practices (PPP), and misusing funds for mandatory overtime in relation to reducing benefits cases backlog. The AI, however, found that Mr. Murphy inappropriately accepted a gift on behalf of (b)(6).

Mr. Murphy's testimony and emails showed that, consistent with a VA NASCAR contract, Mr. Murphy attended a NASCAR event in his official capacity as Acting Under Secretary of VBA. Mr. Murphy also testified to bringing (b)(6) with him to the NASCAR event as well as receiving a "Hot Pass" into the NASCAR event.

Initial Decision on Suspension

Mr. Murphy replied to the proposed suspension timely, providing a written reply. Mr. Murphy argued that (b)(6) received the same "press pass" that was given to him "in order to access the areas of the racetrack where veteran's events occurred." Mr. Murphy also stated he and (b)(6) only had access to the places he needed to be, and at the times Mr. Murphy needed to be there, in order to participate in VA's outreach event.

GRIEVANCE OFFICIAL RECOMMENDATION
REGARDING INITIAL DECISION TO SUSPEND MR. THOMAS MURPHY FOR 10 DAYS
BY DANIEL R. SITTERLY

PAGE 1 OF 3

Mr. Murphy also makes the argument that he did not accept a gift for (b)(6) as (b)(6) (b)(6) was entitled to attend the event under provision 5 CFR 2635.203 (b)(8)(iii). 5 CFR 2635.203 (b)(8)(iii) states:

“(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term excludes the following:

(8) Free attendance to an event provided by the sponsor of the event to:

(iii) The spouse or one other guest of the presenting employee on any day when the employee is presenting, provided that others in attendance will generally be accompanied by a spouse or other guest, the offer of free attendance for the spouse or other guest is unsolicited, and the agency designee, orally or in writing, has authorized the presenting employee to accept;”

The deciding official, Dr. Paul Lawrence, Under Secretary for Benefits, took all the evidence, including that which was presented during the reply period, into consideration before making his decision. On March 18, 2019, Dr. Lawrence issued Mr. Murphy the Initial Decision to sustain the charge and effect the proposed penalty of a 10-day suspension.

Grievance

Mr. Murphy timely filed his written grievance on March 27, 2019. In his written grievance, Mr. Murphy restated the above arguments, mentioned in his written reply to Dr. Lawrence, in addition to stating that the accepted pass was not worth the assessed value of \$520, as stated to investigators by a Phoenix Raceway Official; but, rather was worth either nothing or the lowest value of ticket offered that day for raceway access (\$35).

Analysis

I have reviewed the grievance of Mr. Thomas Murphy, Director Midwest District Office, VBA, in accordance with CSEMO letter 006-17-1 dated 7 July 2017.

After thoroughly reviewing all evidence presented to me, it is clear to me that pursuant to 5 CFR 2635.202 (1-1-18 Edition), the acceptance of a gift from a prohibited source or any gift given because of the employee’s official position is prohibited. However, it is not clear to me that (b)(6) receipt of a “hot pass” for the Phoenix NASCAR event was for the purpose of entering the NASCAR event as a spectator; or, as a guest to accompany (b)(6) (b)(6) to an official VA function that happens to have been held at the NASCAR event.

All the statements by Mr. Murphy and other witnesses describe (b)(6) activities as that of a part of the official party of VA representatives – Mr. Murphy, (b)(6) and the Executive Assistant. At no time did (b)(6) act as a “public spectator” – there to enjoy the NASCAR event as would be expected of someone who purchased a ticket to such an event.

Senior Executives are often asked to perform official duties on nights and weekends and to be away from their families. In this case, Mr. Murphy purchased (b)(6) airline tickets and, to my knowledge, did nothing to otherwise obligate the government to any expenses regarding (b)(6) travel or accommodation for the Phoenix event. I do not think it reasonable to expect Mr. Murphy to have purchased a “hot pass” for (b)(6) to accompany him to an official VA function – even had such a purchase been available, which it was not.

The fact that the investigation dealt with three separate instances of VA executives at NASCAR events suggests that while this contract appears to have been in place for some time, the rules on participation are not clear, and we should provide additional guidance on what is or is not acceptable attendance to these events. I do not believe Mr. Murphy set out to do “the wrong thing”.

The rules are, however, clear and the VA annual Ethics Training is clear – that officials should seek advice from an agency ethics official when there are any questions on acceptance of gifts.

Recommendation

As Grievance Official for this matter, in providing a fair, impartial, and objective analysis of the charge and its related specifications and known facts involved, I carefully reviewed and considered the written documentary evidence file and the written grievance evidence file. I also considered whether this action was supported by substantial evidence and was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law.

In light of the evidence reviewed, it is my recommendation that the charge, and proposed 10-day suspension, should not be upheld as it not supported by substantial evidence. Instead, it is my recommendation that Mr. Murphy be admonished for not seeking an OGC opinion on (b)(6) accompanying him to the NASCAR/VA outreach event.

(b)(6)

Daniel R. Sitterly
Grievance Official

GRIEVANCE OFFICIAL RECOMMENDATION
REGARDING INITIAL DECISION TO SUSPEND MR. THOMAS MURPHY FOR 10 DAYS
BY DANIEL R. SITTERLY

PAGE 3 OF 3

Department of
Veterans Affairs

Memorandum

Date: April 30, 2019
From: Assistant Secretary for Accountability and Whistleblower Protection
Subj: Grievance Decision
To: Secretary, Department of Veterans Affairs

Per the attached memorandum, Assistant Secretary Daniel Sitterly recommends that you grant the grievance filed by Thomas Murphy, Midwest District Office, Veterans Benefits Administration. Specifically, Mr. Sitterly recommends that you set aside Mr. Murphy's 10-day suspension and replace it with an admonishment for failing to seek ethics advice regarding (b)(6) attendance at a NASCAR event. The Proposed Suspension, Mr. Murphy's response, the Initial Decision, Mr. Murphy's grievance, and Mr. Sitterly's recommendation are attached. If you would like to review the underlying evidence, it will be provided to you electronically or in hard copy at your request.

If you agree with Mr. Sitterly's recommendation, please sign the "approve" line below. If you disagree with Mr. Sitterly's recommendation, please sign the "disapprove" line below. If you disapprove, you may also mitigate the penalty in this matter in a different manner by listing the appropriate action below.

DECISION:

Approved:


Robert L. Wilkie

5/7/19

Disapproved:

Robert L. Wilkie

Penalty:

Murphy

Ten Day suspension

(b)(7)(D)



Parise, Ruthann

From: (b)(6) (CIV) (b)(6)@usdoj.gov>
Sent: Thursday, March 14, 2019 8:46 AM
To: (b)(6) OGC; Cordeiro, Hansel (OGC); (b)(6) (OGC)
Cc: (b)(6) (CIV)
Subject: [EXTERNAL] FW: Review of draft 713 decision
Attachments: Hawkins - Murphy 713 Decision Draft.docx

(b)(5), (b)(6)

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Tuesday, March 12, 2019 11:32 AM
To: (b)(6) (CIV) (b)(6)@CIV.USDOJ.GOV>; (b)(6) (CIV) (b)(6)@civ.usdoj.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov>; Cordeiro, Hansel (OGC) (b)(6)@va.gov>
Subject: Review of draft 713 decision

Good morning (b)(6) and (b)(6)

(b)(5)

(b)(5), (b)(6)

(b)(5)

(b)(5)

Please let me know if you have any questions or would like to discuss.

Thank you for your assistance.

(b)(6)

Attorney

Personnel Law Group | Office of General Counsel

U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell

(b)(6)@va.gov

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Parise, Ruthann

From: (b)(6)
Sent: Thursday, March 14, 2019 2:07 PM
To: Lawrence, Paul R., VBAVACO
Cc: (b)(6) VBAVACO; (b)(6) (OGC) (b)(6) (OGC)
Subject: Final Version Murphy
Attachments: T Murphy Decision Final.docx

Dr. Lawrence,
Good afternoon.

Attached is the finalized DOJ Murphy Decision for your review. The decision language has been updated but I can update it further for you to better reflect your thoughts and words.

V/R

(b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420
(b)(6)

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Parise, Ruthann

From: (b)(6)
Sent: Friday, June 21, 2019 2:06 PM
To: (b)(6) (OGC)
Cc: (b)(6)
Subject: FW: Murphy Case file
Attachments: Written Grievance; Response to Proposed Action; Grievance decision Murphy.pdf; Murphy_Thomas PROPOSAL.pdf; Signed Murphy_Thomas.pdf; T Murphy Decision Final.signed.pdf

(b)(6)

Good afternoon.

I broken them up by action to make it easier to keep everything together.

V/R

(b)(6)

A/A Specialist
Department of Veterans Affaris
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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From: (b)(6)
Sent: Monday, June 17, 2019 11:52 AM
To: (b)(6)@va.gov>
Subject: Murphy Case file

(b)(6)

Good morning.

Attached is the Murphy Case file. As the responses to the proposal and the initial decision are multiple documents, I included the original emails so they were stay separated. I noticed that some of the titles in each email were similar.

V/R

(b)(6)

A/A Specialist
Department of Veterans Affaris
Office of Accountability and Whistleblower Protection

810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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Parise, Ruthann

From: (b)(6)
Sent: Friday, June 21, 2019 2:06 PM
To: (b)(6) (OGC)
Subject: RE: Action Requested: Request for Discovery

Certainly.

V/R

(b)(6)
A/A Specialist
Department of Veterans Affairs
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420
(b)(6)

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From: (b)(6)
Sent: Friday, June 21, 2019 2:04 PM
To: (b)(6) (OGC) (b)(6)@va.gov; (b)(6)@va.gov
Subject: RE: Action Requested: Request for Discovery

Thanks for following up (b)(6) can you please forward to (b)(6) what you sent me?

Thanks,

(b)(6)
Director, Advisory and Analysis Division, OAWP
(b)(6)

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From: (b)(6) (OGC)
Sent: Friday, June 21, 2019 2:00 PM

To: (b)(6)@va.gov; (b)(6)@va.gov>

Subject: RE: Action Requested: Request for Discovery

Hi (b)(6)

Checking on the status on this.

Thanks,

(b)(6)

Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell: (b)(6)

(b)(6)@va.gov

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From: (b)(6)

Sent: Monday, June 17, 2019 8:33 AM

To: (b)(6) (OGC) (b)(6)@va.gov>

Subject: RE: Action Requested: Request for Discovery

Hi (b)(6)

I'll ask (b)(5) to gather the documents so I can get them to you. Manker's action was rescinded, would you like those documents as well?

Thanks,

Brigette

(b)(6)

Director, Advisory and Analysis Division, OAWP

(b)(6)

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From: (b)(6) (OGC)

Sent: Monday, June 17, 2019 11:23 AM

To: (b)(6)@va.gov>

Subject: Action Requested: Request for Discovery

Good morning (b)(6)

(b)(5); (b)(6)

Please call if you have any questions.

Thanks,

(b)(6)

Attorney

Personnel Law Group | Office of General Counsel

U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell:

(b)(6)

[@va.gov](mailto:(b)(6)@va.gov)

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Parise, Ruthann

From: (b)(6) VBAVACO
Sent: Thursday, March 7, 2019 11:57 AM
To: (b)(6) (OGC); (b)(6)
Cc: (b)(6), VBAVACO
Subject: RE: Change

Importance: High

Sorry, just read everyone's response. We will set up a VANTS line and send it out in the meeting invite.

R/s

(b)(6)
Executive Management Officer
Under Secretary for Benefits

Email: (b)(6)@va.gov



From: (b)(6)
Sent: Thursday, March 07, 2019 11:53 AM
To: (b)(6) (OGC); (b)(6)@va.gov; (b)(6) VBAVACO <(b)(6)@va.gov>; (b)(6)
(b)(6)@va.gov
Subject: RE: Change

Thank you. I believe we will all need to be telephonic for the meeting. Can there be a VANTS line?

(b)(6)
Director, Advisory and Analysis Division, OAWP
(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 07, 2019 11:47 AM
To: (b)(6) VBAVACO; (b)(6)@va.gov; (b)(6)@va.gov; (b)(6)
(b)(6)@va.gov
Subject: RE: Change

Works for me. Thanks (b)(6)

(b)(6)
Attorney
Personnel Law Group | Office of General Counsel

U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell:

(b)(6)@va.gov

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From: (b)(6) VBAVACO

Sent: Thursday, March 07, 2019 8:43 AM

To: (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov; (b)(6)

(b)(6)@va.gov>

Subject: RE: Change

Importance: High

Thank you for your patience. I just spoke with Dr. Lawrence. Tomorrow at 11:30 will work, before he departs.

Again, he is still reviewing the materials, but would like to discuss an ask for your guidance/advice.

If that time works with you all for tomorrow, I will send out the calendar invitation with directions to our office. Please advise.

R/s

(b)(6)
Executive Management Officer
Under Secretary for Benefits

Email: (b)(6)@va.gov



From: (b)(6)

Sent: Thursday, March 07, 2019 11:25 AM

To: (b)(6) (OGC) (b)(6)@va.gov; (b)(6) VBAVACO <(b)(6)@va.gov> (b)(6)

(b)(6)@va.gov>

Subject: RE: Change

I also agree that we meet tomorrow or this afternoon if possible. OAWP will be offsite in Houston next week for our all hands so the availability that (b)(6) and I have will be very limited next week.

(b)(6)
Director, Advisory and Analysis Division, OAWP
(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 07, 2019 11:21 AM
To: (b)(6), VBAVACO (b)(6) @va.gov; (b)(6) @va.gov>
Cc: (b)(6) @va.gov>
Subject: RE: Change

Good morning (b)(6)

I am available at that time.

Given the short time frame we have for these decisions, I propose we meet tomorrow if at all possible.

Thanks,

(b)(6)
Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell: (b)(6)
(b)(6) @va.gov

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From: (b)(6) VBAVACO
Sent: Thursday, March 07, 2019 8:19 AM
To: (b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov; (b)(6) @va.gov>
Subject: RE: Change
Importance: High

Good Morning (b)(6)

Dr. Lawrence would like to set up an office meeting to discuss the three proposals. Do you and (b)(6) have time on Monday at 2pm?

R/s

(b)(6)
Executive Management Officer
Under Secretary for Benefits
Email: (b)(6) @va.gov



From: (b)(6)
Sent: Thursday, March 07, 2019 6:43 AM

To: Lawrence, Paul R., VBAVACO <(b)(6)@va.gov>

Cc: (b)(6) (OGC) (b)(6)@va.gov; (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6)

<(b)(6)@va.gov>; (b)(6) VBAVACO <(b)(6)@va.gov>

Subject: Change

Dr. Lawrence,

Good morning.

(b)(6) the OGC attorney assigned to the Murphy, Manker, and Reynolds cases (b)(6)

(b)(6) is going to step in and assist from here forward.

V/R

(b)(6)

Office of Accountability and Whistleblower Protection

810 Vermont Ave, NW

Washington, DC

20420

(b)(6)

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Parise, Ruthann

From: (b)(6) VBAVACO on behalf of Lawrence, Paul R., VBAVACO
Sent: Friday, March 8, 2019 12:44 PM
To: (b)(6) Lawrence, Paul R., VBAVACO
Cc: (b)(6) (OGC); (b)(6)
Subject: RE: Disciplinary action.

Good afternoon (b)(6)

Yes, this is correct.

Thank you,

Paul Lawrence
USB

From: (b)(6)
Sent: Friday, March 08, 2019 12:22 PM
To: Lawrence, Paul R., VBAVACO; (b)(6)@va.gov>
Cc: (b)(6) (OGC); (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: Disciplinary action.

Dr. Lawrence

Good afternoon

I just wanted to confirm our discussion since I was driving.

(b)(5); (b)(6)

(b)(6)

Sent with BlackBerry Work
(www.blackberry.com)

Parise, Ruthann

From: (b)(6)
Sent: Thursday, March 14, 2019 10:23 AM
To: (b)(6) VBAVACO
Cc: (b)(6) (OGC) (b)(6) (OGC)
Subject: RE: Disciplinary Actions

Ms. (b)(6)
I just checked (b)(6) calendar (she is presenting right now) and she has another call at 4:00 so 4:30 is best for us. I am checking to see if the other specialist can switch with us. Hopefully I will know here in a few minutes
V/R

(b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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From: (b)(6) VBAVACO
Sent: Thursday, March 14, 2019 10:19 AM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov> (b)(6) (OGC) (b)(6)@va.gov>; (b)(6) (OGC) (b)(6)@va.gov>
Subject: RE: Disciplinary Actions

Ok. Apologies. I'll move it back to 430 if everyone is not available.

R/s

(b)(6)
Executive Management Officer
Under Secretary for Benefits
Email: (b)(6)@va.gov



From: (b)(6)
Sent: Thursday, March 14, 2019 10:11 AM
To: (b)(6) VBAVACO (b)(6)@va.gov>

Cc: (b)(6)@va.gov; (b)(6) (OGC); (b)(6)@va.gov; (b)(6) (OGC)

<(b)(6)@va.gov>

Subject: RE: Disciplinary Actions

Ms (b)(6)

I am not sure we are available at 4:00. I need to speak with (b)(6)

V/R

(b)(6)

Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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From: (b)(6) VBAVACO

Sent: Thursday, March 14, 2019 9:47 AM

To: (b)(6)@va.gov

Cc: (b)(6)@va.gov; (b)(6) (OGC); (b)(6)@va.gov; (b)(6) (OGC)

(b)(6)@va.gov

Subject: RE: Disciplinary Actions

Importance: High

Good Morning (b)(6)

Please let me know if you all would be available to start the call at 4pm instead of 430pm today? We have had a change in schedule and Dr. Lawrence is now available for the earlier call.

(b)(5)

If you all are available at 4, we will update the invite.

R/s

(b)(6)

Executive Management Officer
Under Secretary for Benefits

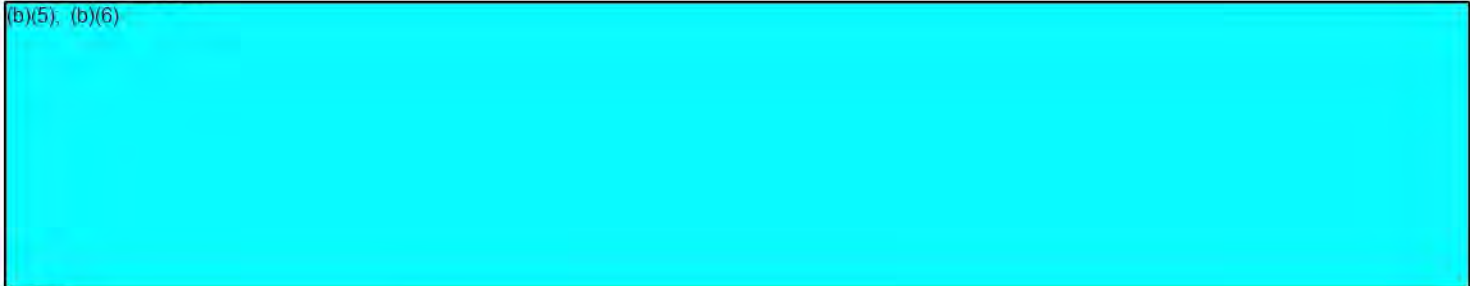
Email: (b)(6)@va.gov



From: (b)(6)
Sent: Wednesday, March 13, 2019 2:59 PM
To: Lawrence, Paul R., VBAVACO (b)(6) @va.gov>; (b)(6) VBAVACO (b)(6) @va.gov>
Cc: (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Subject: Disciplinary Actions

Dr. Lawrence,
Good afternoon.

(b)(5), (b)(6)



V/R

(b)(6)

Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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Parise, Ruthann

From: (b)(6) (OGC)
Sent: Thursday, March 7, 2019 1:40 PM
To: (b)(6) (OGC) (b)(6) (OGC)
Subject: RE: Ethics opinion on Gift

Is someone going to call and conference in the others? I am on (b)(6)

From: (b)(6) (OGC)
Sent: Thursday, March 07, 2019 1:38 PM
To: (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: RE: Ethics opinion on Gift

Now's good.

(b)(6)
From: (b)(6) (OGC)
Sent: Thursday, March 07, 2019 12:36 PM
To: (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: RE: Ethics opinion on Gift

I am available now as well, if you are (b)(6)

(b)(6)
Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell (b)(6)
(b)(6)@va.gov

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From: (b)(6) (OGC)
Sent: Thursday, March 07, 2019 10:20 AM
To: (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: FW: Ethics opinion on Gift

I am now available if that works, given that (b)(6) has a call at 4:00

From: (b)(6) (OGC)
Sent: Thursday, March 07, 2019 1:12 PM
To: (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: RE: Ethics opinion on Gift

Just got back to my desk and I have someone coming in so 3:30-4:30 would be better for me.

(b)(6)
From: (b)(6) (OGC)
Sent: Thursday, March 07, 2019 12:22 PM
To: (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: RE: Ethics opinion on Gift
Thank (b)(6) and (b)(6)

(b)(5)

I think we will have to have a discussion with the OAWP rep – Gari, so I'll leave it up to you whether you just want to have one discussion all together, or if you'd like to have a discussion with me first. Want to be mindful of your time. I am available today with the exception of 1:00-2:00 (EST) and 3:30-4:30 (EST). If you want to just have one meeting altogether, I'll send out a meeting invite based on everyone's calendar availability. Thanks,

(b)(6)

Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell:

(b)(6) @va.gov

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From: (b)(6) (OGC)

Sent: Thursday, March 07, 2019 6:55 AM

To: (b)(6) (OGC) (b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>

Subject: FW: Ethics opinion on Gift

(b)(6)

(b)(5); (b)(6)

(b)(5)

From: (b)(6)

Sent: Thursday, March 07, 2019 6:50 AM

To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6) OGC (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>

Cc: (b)(6) @va.gov>

Subject: RE: Ethics opinion on Gift

Mr. (b)(6)

Good morning.

Only one itinerary or sort of itinerary was provided. I have attached those documents here. These are the only ones I know of in the file.

V/R

(b)(6)

Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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From: (b)(6) (OGC)

Sent: Wednesday, March 06, 2019 5:58 PM

To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6) OGC (b)(6) @va.gov> (b)(6) (OGC) (b)(6) @va.gov>

Cc: (b)(6) @va.gov>

Subject: RE: Ethics opinion on Gift

Hi (b)(6)

(b)(5); (b)(6)

(b)(6)

Attorney

Personnel Law Group | Office of General Counsel

U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell

(b)(6)@va.gov

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From: (b)(6) (OGC)

Sent: Wednesday, March 06, 2019 2:52 PM

To: (b)(6) (OGC) (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov;

Cc: (b)(6) (OGC) (b)(6)@va.gov; (b)(6)@va.gov;

Subject: RE: Ethics opinion on Gift

(b)(5)

(b)(6)

From: (b)(6) (OGC)

Sent: Wednesday, March 06, 2019 3:02 PM

To: (b)(6) (OGC) (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov;

Cc: (b)(6) (OGC) (b)(6)@va.gov; (b)(6)@va.gov;

Subject: Ethics opinion on Gift

Importance: High

Good afternoon Mr. (b)(6) and Mr. (b)(6)

(b)(5)

Thank you and best regards,

(b)(6) Esq.

Staff Attorney, Personnel Law Group

Office of the General Counsel

U.S. Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

(b)(6)

(b)(6)@va.gov



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Parise, Ruthann

From: (b)(6) (OGC)
Sent: Monday, April 8, 2019 3:50 PM
To: (b)(6) (OGC); (b)(6) (OGC)
Cc: (b)(6) (OGC)
Subject: RE: Grievance for T. Murphy

(b)(6)

I am available to speak with Rory/Mr. Sitterly.

(b)(5); (b)(6)

(b)(6)

From: (b)(6) (OGC)
Sent: Monday, April 08, 2019 3:05 PM
To: (b)(6) (OGC); (b)(6) @va.gov>; (b)(6) (OGC); (b)(6) @va.gov>
Subject: RE: Grievance for T. Murphy

(b)(6)

(b)(5); (b)(6)

(b)(6)

From: (b)(6) (OGC)
Sent: Monday, April 08, 2019 12:37 PM
To: (b)(6) (OGC); (b)(6) @va.gov>
Subject: FW: Grievance for T. Murphy

(b)(5)

(b)(5) (b)(6)

(b)(6)

From: (b)(6) (OGC)
Sent: Monday, April 08, 2019 11:46 AM
To: (b)(6) (OGC) <(b)(6)@va.gov>
Cc: (b)(6) (OGC) <(b)(6)@va.gov>
Subject: RE: Grievance for T. Murphy

(b)(6)

(b)(5)

(b)(5)

(b)(6)

From: (b)(6) (OGC)
Sent: Monday, April 08, 2019 11:34 AM
To: (b)(6) (OGC) <(b)(6)@va.gov>
Subject: FW: Grievance for T. Murphy
Importance: High

Can you respond please?

From: (b)(6) (OGC)
Sent: Monday, April 08, 2019 10:45 AM
To: (b)(6) (OGC) <(b)(6)@va.gov>
Subject: FW: Grievance for T. Murphy
Importance: High

Good morning Ms. (b)(6)

(b)(5)

Thank you and best regards,

(b)(6) Esq.
Staff Attorney, Personnel Law Group
Office of the General Counsel
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

(b)(6)
(b)(6) @va.gov



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From: Sitterly, Daniel
Sent: Saturday, April 06, 2019 6:10 PM
To: (b)(6) @va.gov
Cc: (b)(6) (OGC) (b)(6) @va.gov; (b)(6) @va.gov; Hunter, Todd B. (b)(6) @va.gov; Gruntmeir, Doris (OGC) (b)(6) @va.gov; (b)(6) (HRA/OSP) (b)(6) @va.gov; Sitterly, Daniel (b)(6) @va.gov
Subject: RE: Grievance for T. Murphy

(b)(5), (b)(6)

(b)(5), (b)(6) Thanks team. Am traveling this coming week but up on comms so I can make my recommendation to SECVA soonest. Thanks, Dano

Parise, Ruthann

From: (b)(6)
Sent: Thursday, March 14, 2019 5:02 PM
To: (b)(6) (OGC) (b)(6) (OGC)
Cc: (b)(6)
Subject: RE: Manker and Murphy

Cool Thanks for pitch hitting.

V/R

(b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 5:01 PM
To: (b)(6) @va.gov; (b)(6) (OGC) (b)(6) @va.gov
Cc: (b)(6) @va.gov
Subject: RE: Manker and Murphy

Now that (b)(6) back and we've had the call with the DO, I'll let him take it from here!

Thanks,

(b)(6)
Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell: (b)(6)
(b)(6) @va.gov

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From: (b)(6)
Sent: Thursday, March 14, 2019 1:59 PM
To: (b)(6) (OGC) (b)(6) @va.gov <(b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) @va.gov
Subject: RE: Manker and Murphy

Wrong Manker. Forgot to save it before attaching. This one is right.

V/R

(b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420
(b)(6)

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From: (b)(6)
Sent: Thursday, March 14, 2019 4:58 PM
To: (b)(6) (OGC) (b)(6) @va.gov <(b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) @va.gov
Subject: Manker and Murphy

(b)(6) and (b)(6)

(b)(5); (b)(6)

V/R

(b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420
(b)(6)

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Parise, Ruthann

From: (b)(6) (OGC)
Sent: Wednesday, March 13, 2019 2:20 PM
To: (b)(6)
Cc: (b)(6) (OGC)
Subject: RE: Murphy and Reynolds

H (b)(6)

(b)(5) (b)(6)

(b)(6)

Attorney

Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell:

(b)(6) @va.gov

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From: (b)(6)
Sent: Wednesday, March 13, 2019 11:16 AM
To: (b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) @va.gov> (b)(6) OGC (b)(6) @va.gov>
Subject: RE: Murphy and Reynolds

(b)(6)

Good afternoon.

(b)(6) and I would be available at 1:00 pm to 2:00ish tomorrow. And on Friday from around 1 pm to 3 pm tomorrow (and (b)(6) will be available later.) We can also do in the evenings after 6:00pm (all of these times are in EST)

(b)(5)

V/R

(b)(6)

Office of Accountability and Whistleblower Protection
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Washington, DC
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(b)(6)

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From: (b)(6) (OGC)
Sent: Wednesday, March 13, 2019 2:05 PM
To: (b)(6) @va.gov>
Cc: (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: Murphy and Reynolds

Hi (b)(6)

Is there a particular time tomorrow or Friday for you and (b)(6) to have a call on this case?

Since you and (b)(6) are busy at the conference, in the interest of time, I'd like to reach out to Dr. Lawrence's assistant to get us on his schedule. (b)(5)

(b)(5)

(b)(5)

Thanks,

(b)(6)

Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell (b)(6)

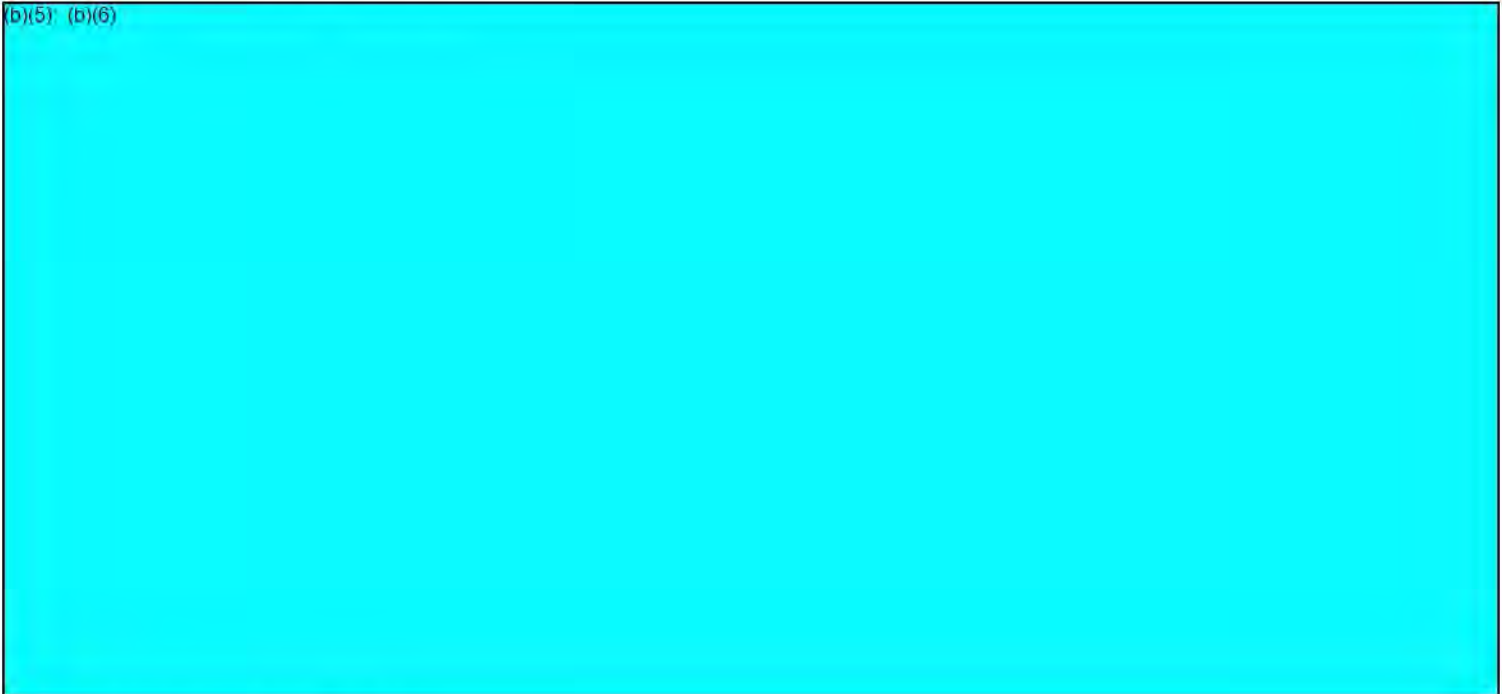
(b)(6) @va.gov

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From: (b)(6) (OGC)
Sent: Tuesday, March 12, 2019 9:47 AM
To: (b)(6) @va.gov>
Cc: (b)(6) @va.gov>
Subject: RE: Murphy and Reynolds

Thanks (b)(6) appreciate the responses.

(b)(5); (b)(6)



Hope the conference is going well.

(b)(6)
Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell: (b)(6)
(b)(6) @va.gov

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From: (b)(6)
Sent: Tuesday, March 12, 2019 9:23 AM
To: (b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) @va.gov>
Subject: RE: Murphy and Reynolds

(b)(6)
Good morning (still morning here in Houston.)

(b)(5), (b)(6)



V/R

(b)(6)



Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)



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From: (b)(6) (OGC)
Sent: Tuesday, March 12, 2019 12:12 PM
To: (b)(6) <@va.gov>
Cc: (b)(6) <@va.gov>
Subject: RE: Murphy and Reynolds

Hi (b)(6)



(b)(5)



Let me now if you have any questions.

Thanks,

(b)(6)



Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell (b)(6)
(b)(6)@va.gov

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From: (b)(6)
Sent: Tuesday, March 12, 2019 7:42 AM
To: (b)(6) (OGC) <(b)(6)@va.gov>
Cc: (b)(6)@va.gov
Subject: Murphy and Reynolds

(b)(6)
Good morning.

(b)(5); (b)(6)

Let me know if you have any questions.

V/R

(b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420
(b)(6)

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Parise, Ruthann

From: (b)(6)
Sent: Monday, March 11, 2019 7:01 PM
To: (b)(6) (OGC); (b)(6)
Subject: RE: Murphy Decision

Thanks for your quick review (b)(6) I'll work with (b)(6) now that we are both in Houston to get these revised tomorrow.

Thanks

(b)(6)

Sent with BlackBerry Work
(www.blackberry.com)

From: (b)(6) (OGC) (b)(6) @va.gov>
Date: Monday, Mar 11, 2019, 5:44 PM
To: (b)(6) @va.gov>
Cc: (b)(6) @va.gov>
Subject: RE: Murphy Decision

Hi (b)(6)

(b)(5)

Let me know if you'd like to discuss anything.

Thanks,

(b)(6)

Attorney

Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell

(b)(6) @va.gov

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From: (b)(6)
Sent: Monday, March 11, 2019 12:34 PM
To: (b)(6) (OGC) (b)(6) @va.gov>

Cc: (b)(6)@va.gov>

Subject: Murphy Decision

(b)(6)

Good afternoon.

(b)(5)

V/R

(b)(6)

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Parise, Ruthann

From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 2:25 PM
To: (b)(6) (OGC)
Cc:
Subject: RE: Review of draft 713 decision

(b)(5)

(b)(6)

Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell (b)(6)
(b)(6) @va.gov

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From: (b)(6)
Sent: Thursday, March 14, 2019 11:22 AM
To: (b)(6) (OGC) (b)(6) @va.gov > (b)(6) (OGC) (b)(6) @va.gov >
Cc: (b)(6) @va.gov >
Subject: RE: Review of draft 713 decision

(b)(6)

Okay.

(b)(5)

V/R

(b)(6)

Office of Accountability and Whistleblower Protection
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Washington, DC
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(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 2:20 PM
To: (b)(6) @va.gov <(b)(6) (OGC) <(b)(6) @va.gov>
Cc: (b)(6) @va.gov
Subject: RE: Review of draft 713 decision

Hi (b)(6)

(b)(5)

(b)(6)
Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell: (b)(6)
(b)(6) @va.gov

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From: (b)(6)
Sent: Thursday, March 14, 2019 11:15 AM
To: (b)(6) (OGC) <(b)(6) @va.gov>; (b)(6) (OGC) <(b)(6) @va.gov>
Cc: (b)(6) @va.gov
Subject: RE: Review of draft 713 decision

(b)(6)

Good afternoon.

I just accepted your changes. (b)(5)

V/R

(b)(6)

Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
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(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 1:19 PM
To: (b)(6) @va.gov <(b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) @va.gov
Subject: RE: Review of draft 713 decision

Good afternoon,

We have made a few more edits to Version C.

From: (b)(6)
Sent: Thursday, March 14, 2019 11:17 AM
To: (b)(6) (OGC) (b)(6) @va.gov <(b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) @va.gov
Subject: RE: Review of draft 713 decision

(b)(6)

Good morning.

Welcome back. I have updated the document based on your comments.

V/R

(b)(6)

Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
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(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 11:03 AM
To: (b)(6) (OGC) (b)(6) @va.gov <(b)(6) @va.gov>
Cc: (b)(6) @va.gov
Subject: RE: Review of draft 713 decision

Good morning,

(b)(5) (b)(6)

From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 10:59 AM
To: (b)(6) (OGC) (b)(6) @va.gov <(b)(6) @va.gov>

Cc: (b)(6)@va.gov>

Subject: RE: Review of draft 713 decision

(b)(6)

(b)(6)

Attorney

Personnel Law Group | Office of General Counsel

U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell: (b)(6)

(b)(6)@va.gov

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From: (b)(6) (OGC)

Sent: Thursday, March 14, 2019 7:54 AM

To: (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov>

Cc: (b)(6)@va.gov>

Subject: RE: Review of draft 713 decision

I am currently reviewing and editing the Manker decision.

From: (b)(6)

Sent: Thursday, March 14, 2019 10:53 AM

To: (b)(6) (OGC) (b)(6)@va.gov>

Cc: (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov>

Subject: RE: Review of draft 713 decision

(b)(6)

Good morning.

I am fine with their changes. I will merge the comments with the actual Murphy document. Do you have an ETA on Manker?

V/R

(b)(6)

Office of Accountability and Whistleblower Protection

810 Vermont Ave, NW

Washington, DC

20420

(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 10:27 AM
To: (b)(6) @va.gov>
Cc: (b)(6) @va.gov> (b)(6) (OGC) (b)(6) @va.gov>
Subject: FW: Review of draft 713 decision

Good Morning,

(b)(5)

(b)(6)
Attorney
Personnel Law Group | Office of General Counsel
U.S. Department of Veterans Affairs (VA)
Tel: (b)(6)
Cell (b)(6)
(b)(6) @va.gov

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From: (b)(6) (CIV) (b)(6) @usdoj.gov>
Sent: Thursday, March 14, 2019 5:46 AM
To: (b)(6) (OGC) (b)(6) @va.gov>; Cordeiro, Hansel (OGC) (b)(6) @va.gov (b)(6) (OGC) (b)(6) @va.gov>

Cc: (b)(6) (CIV) (b)(6) @usdoj.gov>

Subject: [EXTERNAL] FW: Review of draft 713 decision

(b)(6) - Thanks for sharing this with us. (b)(5)

(b)(5)

(b)(6)

From (b)(6) (OGC) (b)(6) @va.gov>

Sent: Tuesday, March 12, 2019 11:32 AM

To: (b)(6) (CIV) (b)(6) @CIV.USDOJ.GOV> (b)(6) (CIV) (b)(6) @civ.usdoj.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>; Cordeiro, Hansel (OGC) (b)(6) @va.gov>

Subject: Review of draft 713 decision

Good morning (b)(6) and (b)(6)

(b)(5)

Can you return your comments to us no later than Thursday?

Please let me know if you have any questions or would like to discuss.

Thank you for your assistance.

(b)(6)

Attorney

Personnel Law Group | Office of General Counsel

U.S. Department of Veterans Affairs (VA)

Tel: (b)(6)

Cell

(b)(6)

[@va.gov](#)

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Parise, Ruthann

From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 1:59 PM
To: (b)(6)
Cc: (b)(6) (OGC); (b)(6)
Subject: RE: Updated Murphy

Certainly. Thank you.

From: (b)(6)
Sent: Thursday, March 14, 2019 1:58 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov> (b)(6)@va.gov>
Subject: RE: Updated Murphy

I have accepted the change. If you are cool I will move it to final version, pull off the watermark and send it back to Lawrence for our conference call today.

V/R

(b)(6)
Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420
(b)(6)

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From: (b)(6) (OGC)
Sent: Thursday, March 14, 2019 1:55 PM
To: (b)(6)@va.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov> (b)(6)@va.gov>
Subject: RE: Updated Murphy

One minor edit.

From: (b)(6)
Sent: Thursday, March 14, 2019 11:25 AM
To: (b)(6) (OGC) (b)(6)@va.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov> (b)(6)@va.gov>
Subject: Updated Murphy

(b)(6)

Good morning.
Attached is Murphy.

(b)(5)

V/R

(b)(6)

Office of Accountability and Whistleblower Protection
810 Vermont Ave, NW
Washington, DC
20420

(b)(6)

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CREDENTIAL POLICY

Please read below content prior to submitting a Credential Application

ISM Raceway welcomes all members of the media to request credentials. Please submit your application and any required materials according to credential policy.

PLEASE NOTE:

- All credential requests must be received by the established deadline for consideration. Credential requests not received by the deadline risk not being processed, not being filled as requested or the request being denied.
- All credential requests are reviewed by ISM Raceway and NASCAR with regards to broadcast (radio & television) licensing and agreements that will be in place for the event. Efforts will be made to honor all requests, but ISM Raceway and NASCAR reserves the right to change or deny any media requests. All credential applications are subject to verification.
- Credentials will be issued **only** to recognized newspapers, news/wire services, motorsports publications and internet sites that regularly cover motorsports; as well as national and local news television and radio networks. The requests must be submitted by the editor, sports editor, sports director, photography editor, station manager, or producer. ISM Raceway reserves the right to make all decisions regarding who will be granted credentials and the number of credentials issued per news organization. Every attempt will be made to accommodate the request based upon the representative's function and any supporting information provided.
- Credentials will be issued to authorized personnel only for the purpose of providing timely coverage of the event. Freelance media must be on assignment and included on the application submitted by the media outlet's requestor.
- The representative issued a credential is considered on assignment. No autographs of drivers, racing personalities or celebrities are allowed. The representative will have their credential confiscated and risk losing future approval. In addition, solicitation for business prospects is strictly prohibited. Any misuse of a credential will result in immediate forfeiture of the credential and all privileges associated with it.

- Credentials are **NON-TRANSFERABLE** and may only be used by the person to whom it was issued.

- **Company representatives must be at least 18 years old.**

- It is strongly suggested that the media outlet advises the Credential Manager in advance if a representative will not be attending. Otherwise, the media outlet risks future credential requests not being processed as requested or the request being denied.

How to Apply:

ISM Raceway Communications Staff encourages **all applicants** (returning & first time) to submit credential requests via the ISM Raceway website where there is useful information for the requestor and a link to start your application (Select “Media and Press” Web Page).

Media Outlets applying for the first time should complete the Media Application Form and upload a letter of request on company letterhead with a brief description of your outlet and examples of previous work.

Those who possess the sanctioning body **Annual Hard Card** are required to submit a credential application if requesting media center access, a parking pass, or to reserve a seat in the media center. The parking pass and access sticker will be mailed if time allows. Otherwise, the items will be held for pick-up at the Track Credential Office.

Approved Credentials:

Upon review and approval of the credential application, appropriate media credentials will be arranged and confirmation will be e-mailed. Each person receiving a credential must provide a picture ID and sign for their credential. Credentials **will not** be mailed.

ALL PHOTOGRAPHERS/VIDEOGRAPHERS MUST ATTEND A MANDATORY PHOTO MEETING.

Please check with ISM Raceway Communications Staff for meeting times and location. Note that selling of photography is a commercial venture and is prohibited.

There is not a specific event dress code; however, we suggest that media dress appropriately and professionally as a member of the working media representing your media outlet. In addition, all working photographers & videographers must wear closed-toed shoes and pants.

From: (b)(6) [mailto:(b)(6)@iscmotorsports.com]
Sent: Wednesday, August 22, 2018 4:59 PM
To: (b)(6)
Subject: RE: draft email to VA investigator

(b)(6)

Take a look at the attached. I talked to (b)(6) after we chatted and reworked your email for some additional accuracy (based on information I didn't have at the time). Let me know what you think of the attached. This accurately reflects the Raceway's position

(b)(6)

International Speedway Corporation
International Motorsports Center
One Daytona Boulevard
Daytona Beach, FL 32114
(b)(6)
(386) 947-6884 fax

From: (b)(6) (OGC)
To: (b)(6), (b)(7)(C)
Cc: VACO; (b)(6) (OGC)
Subject: RE: Request for Ethics Opinion
Date: Tuesday, July 24, 2018 3:15:02 PM
Attachments: [NASCAR Outreach Event 11.9-11.2017.pdf](#)
[NASCAR Phoenix.pdf](#)

(b)(6)
(b)(7)(C)

I could not find any advice concerning Mr. Murphy's acceptance of free attendance on behalf of himself and (b)(6) at the Veterans Day Weekend at NASCAR Phoenix. Based upon his official participation in events during the race I could see a basis for our approving his acceptance of free attendance for himself, but I do not necessarily see a basis for his acceptance of same for (b)(6) unless it was de minimis, \$20 or less. Do you know what the cost of the Hot Pass was?

I include below advice I provided in 2012 to VBA as to acceptance of free attendance at NASCAR venues for the purpose of conducting outreach.

Please call me if you would like to discuss this further.

(b)(6)

Senior Ethics Attorney/
Deputy Ethics Official

(b)(6)

From: (b)(6)
Sent: Thursday, July 26, 2012 10:47 AM
To: (b)(6) VBAVACO; (b)(6) VBAVACO
Cc: Szybala, Renee (SES) OGC; (b)(6)
Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

I note that the Under Secretary and Deputy Under Secretary are the officials who would be approving the acceptance of the gifts offered in connection with this outreach, e.g. free VIP passes, radio and TV airtime.

(b)(6)

From: (b)(6)
Sent: Thursday, July 26, 2012 10:43 AM
To: (b)(6) VBAVACO; (b)(6) VBAVACO
Cc: Szybala, Renee (SES) OGC; (b)(6)
Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

NASCAR Outreach Event
at Phoenix International Raceway
November 9-11, 2017



U.S. Department
of Veterans Affairs

Purpose: To honor and support our nation's past and present military members and their families during the Veterans Day weekend at the Phoenix VAMC & the Phoenix International Raceway (PIR) NASCAR Outreach Event.

Travelers: **Mr. Thomas Murphy**, Acting Under Secretary for Benefits
Executive Assistant: (b)(6)

Contacts:
(b)(6) Duty First Consulting, cell – (b)(6)
(b)(6) Duty First Consulting, cell (b)(6)
(b)(6) PIR, cell – (b)(6)

Itinerary: Thursday, November 9, 2017

Location: Carl T. Hayden VA Medical Center
650 E Indian School Rd, Phoenix, AZ 85012

Thursday, November 9, 2017	
12:45 PM	Arrive at Carl T Hayden VA Medical Center; text Nicole Carey (240-535-2945) (See Map A for parking location)
1:00 PM – 1:45 PM	Attend NASCAR Driver Autograph Session with Veterans and Family Members
1:50 PM – 2:45 PM	Tour of the Phoenix VAMC facility, including the Community Living Center, with medical center personnel and NASCAR drivers
2:45 PM – 3:00 PM	Additional Picture and Media Opportunities (e.g. with the Drivers or Pace Car)

Itinerary: Friday, November 10-11, 2017

Location: Phoenix International Raceway
7602 S Avondale Blvd, Avondale, AZ 85323

- **Note:** Mr. Murphy, (b)(6) and his EA will be given Hot Pass credentials, meaning you will be able to navigate through the infield both before and during the race. Phoenix Raceway to provide the following:
 - President's Suite Access // Friday & Saturday



NASCAR Outreach Event
at Phoenix International Raceway
November 9-11, 2017



- ***Note:** While Mr. Murphy will be able to access the track through Sunday's Monster Energy Cup Race, he will not have Presidential Suite access on Sunday. However, grandstand tickets are available in a section set aside for Veterans associated with VA for that day.*

- Credentials // Valid all weekend
- Parking // Valid all weekend

The Pedestrian Tunnel to get to the infield is located at Gate 8, and can be found next to the **white** stars on Maps A, B, and C. A photo ID is required to pick up credentials from the credentialing office (Gate 1, **yellow** star on Map A). You will receive your parking pass for the Competitor Lot (**blue** star on Map B) along with your credentials.

Friday, November 10, 2017	
2:00 PM	Presidential Suite Opens
2:00 PM – 5:00 PM	Pick Up Credentials at Credentialing Office at Phoenix International Raceway inside Gate 1 (photo ID required) (See Map B with yellow star for location) (b)(6) to meet group at credential office, please text when on Avondale Blvd. (b)(6)
(after picking up credentials)	Park in Competitor Lot (See Map B with blue star for location)
2:00 PM -5:00 PM	Visit VA Mobile Vet Center in Zoomtown, USA and Other Track Activities (See Map A with green star for location)
5:30 PM	Meet (b)(6) at Gate 8 to be escorted into infield; Text (b)(6) (602-721-6322) to alert arrival (See Map B with red star for location)
5:59 PM-6:25 PM	Driver Introductions during Pre-Race Ceremony (On Pre-Race Stage)
6:25 PM – End of Night	Escort to PIR suite to view Truck Series Qualifying and Lucas Oil 150 Race
6:30 PM	NASCAR Camping World Truck Series Race Begins



NASCAR Outreach Event
at Phoenix International Raceway
November 9-11, 2017

VA



U.S. Department
of Veterans Affairs

Saturday, November 11, 2017	
9:00 AM	Presidential Suite Opens
	Park in Competitor Lot, text (b)(6) upon arrival (b)(6) (See Map B with <i>blue star</i> for location)
10:45 AM	Meet (b)(6) in the Presidential Suite, (b)(6) to escort to infield
11:00 AM	Kurt Busch Hauler Meet & Greet with Troops to the Track Participants
11:15 AM	(b)(6) to escort Mr. Murphy from the hauler to the Driver's Meeting location
11:45 AM	Driver's Meeting, Mr. Murphy to be introduced
	Escort to Pre-Race Ceremonies by PIR Representative
12:57 PM	Driver Introductions during Pre-Race Ceremony. Mr. Murphy to be introduced (On Pre-Race Stage)
1:45 PM	Green Flag – Ticket Galaxy 200 Watch several laps on Pit Road
2:00 PM	(b)(6) to escort Mr. Murphy back to the Presidential Suite
1:30 PM-3:30 PM	Ticket Galaxy 200, NASCAR XFINITY Series Race

Note: While Mr. Murphy will be able to access the track through Sunday's Monster Energy Cup Race, he will not have Presidential Suite access on Sunday. However, grandstand tickets are available in a section set aside for Veterans associated with VA for that day.



NASCAR Outreach Event
at Phoenix International Raceway
November 9-11, 2017



MAP A: Carl T Hayden VA Medical Center

PHOENIX VA
HEALTH CARE SYSTEM

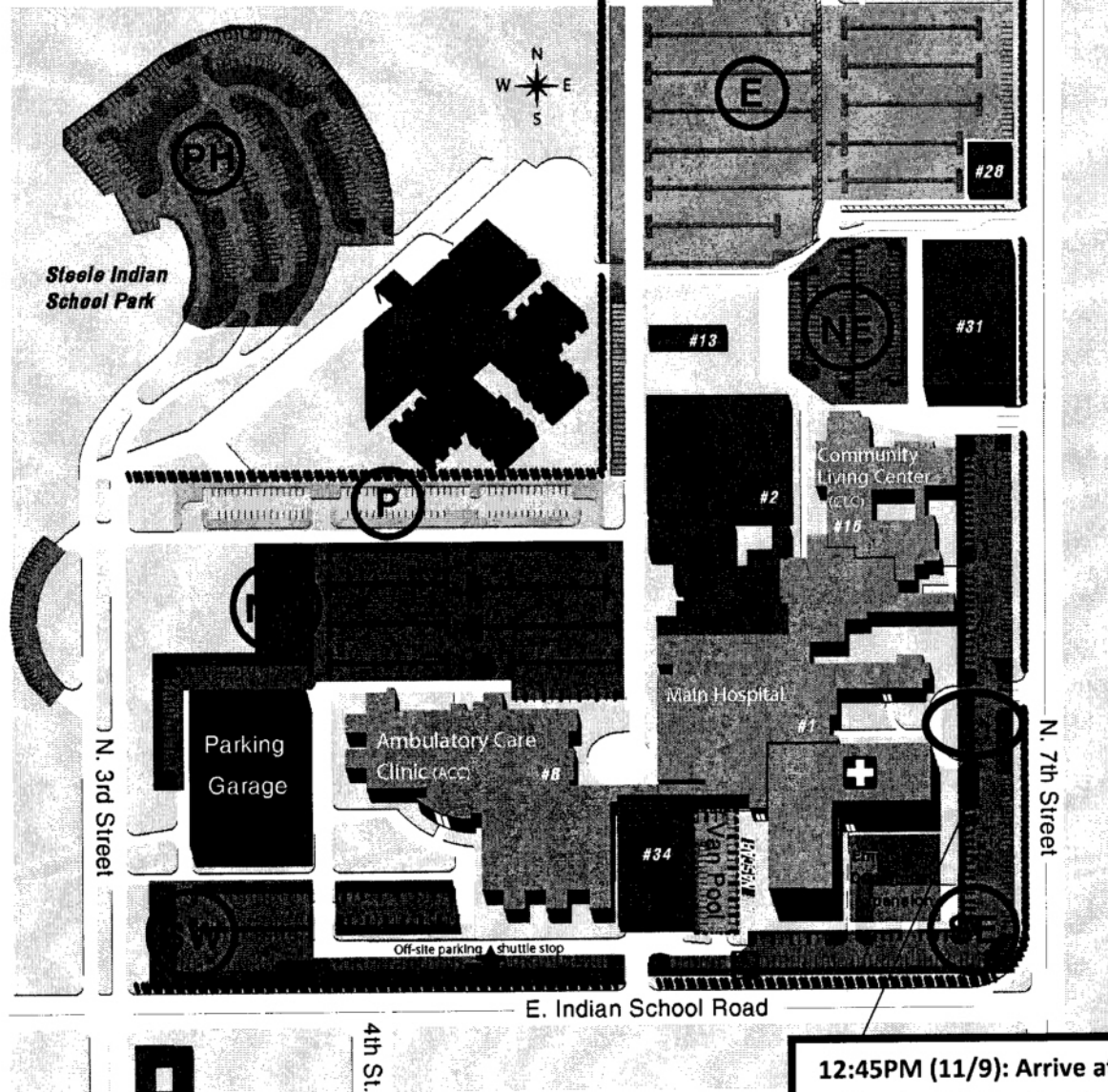
650 E. INDIAN SCHOOL RD. • PHOENIX, AZ 85012 • 800-554-7174

PARKING MAP



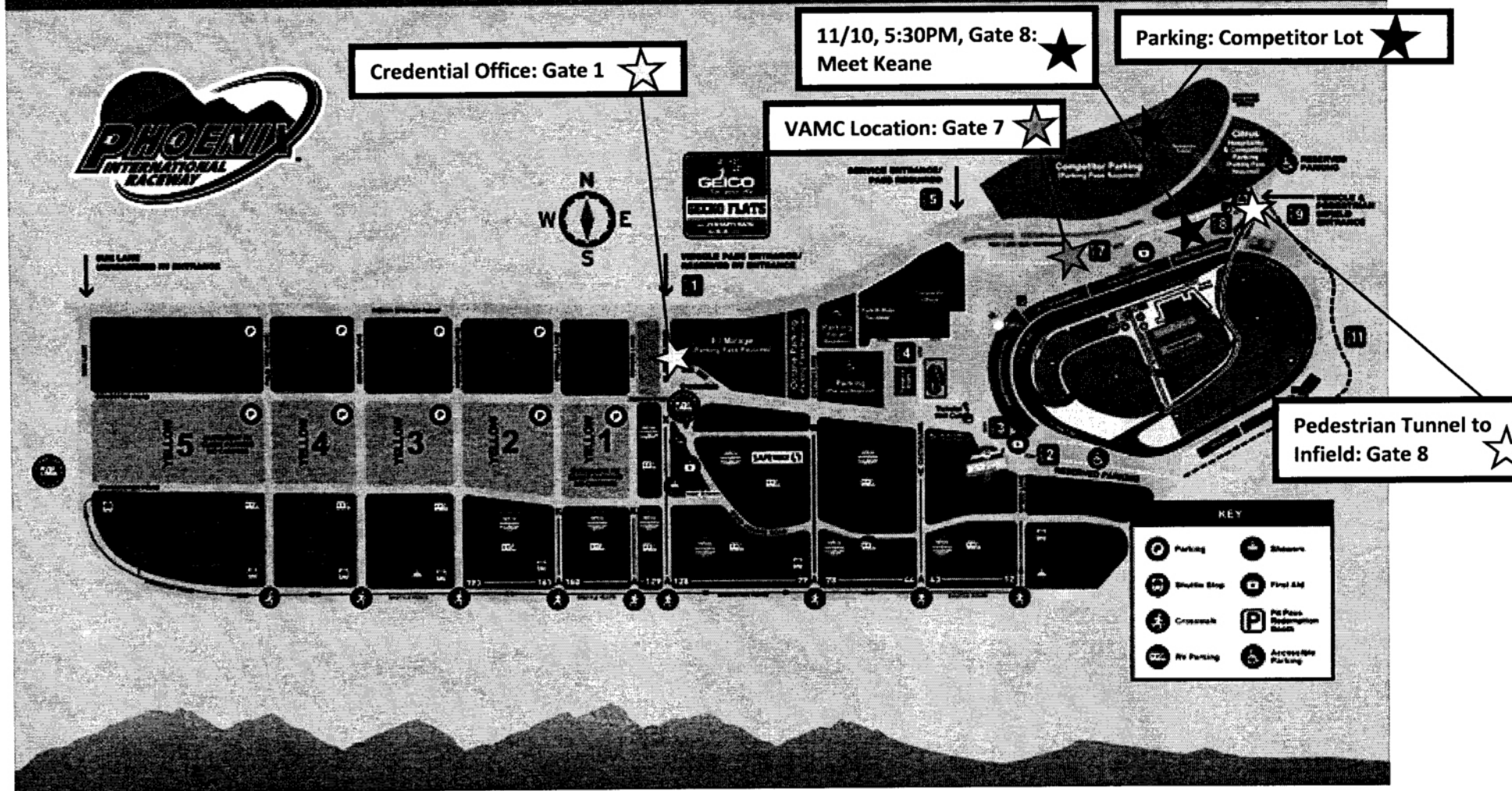
Veteran Parking Areas

- P** Physician Parking Area
- E** Employee Parking Areas
- PH** City of Phoenix



MAP B: Zoomtown, USA

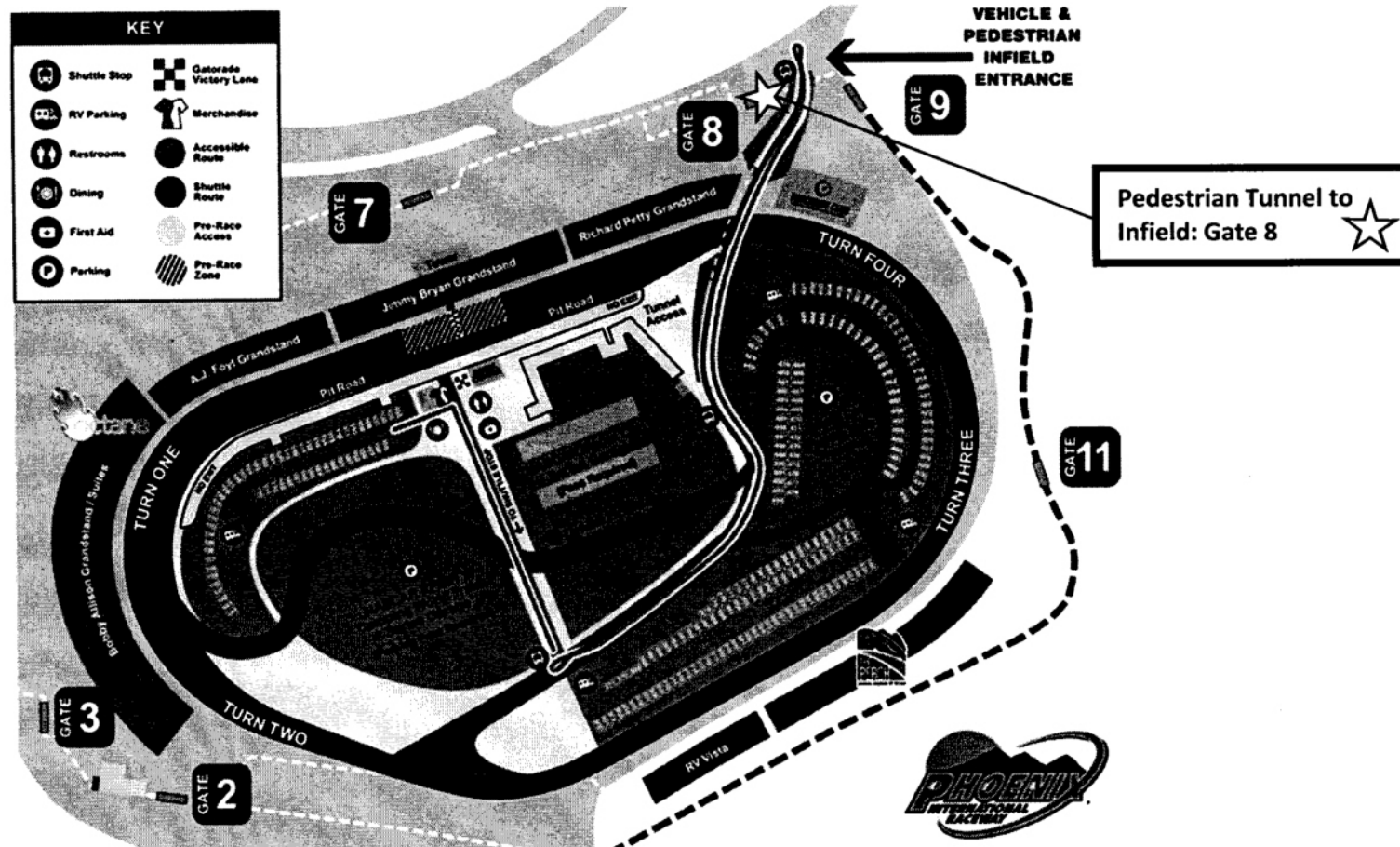
Official Map of ZOOMTOWN, U.S.A.®



NASCAR Outreach Event at Phoenix International Raceway
November 10-11, 2016



Map C: Track Map/Infield Map



(21-08490-F) - 000599

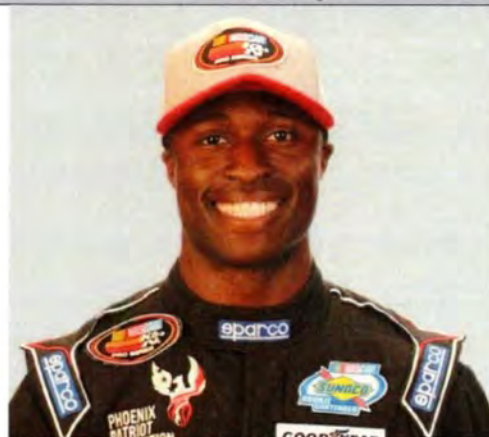
PHOENIX VAMC NASCAR EVENT: September 9, 2017
NASCAR Driver Profiles

Corey LaJoie



Monster Energy Series
(part-time in XFINITY Series)
No. 83 Camry for BK Racing
Son of two-time NASCAR Champion Randy
LaJoie
Rank (MES): 34

Jesse Iwuji



K&N Pro Series - West
Lieutenant, U.S. Navy
No. 36 for Patriot Motorsports Group (owns)
Attended U.S. Naval Academy, played football
and track and field

Justin Haley



World Truck Series (part-time)
No. 24 Chevrolet Silverado for GMS Racing
Won 2016 K&N Pro Series - East
Championship
Age: 18

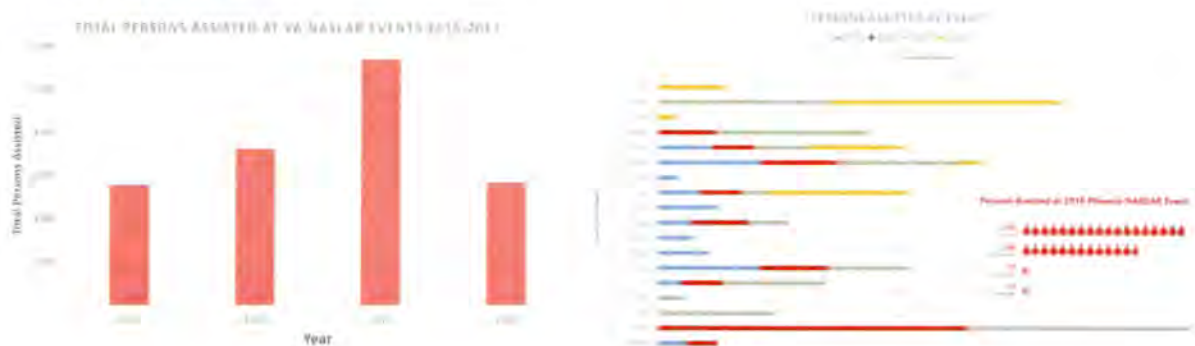
Cassie Gannis



K&N Pro Series – West
Camping World Truck Series
Phoenix native

June 2018

NASCAR Statistics:



NASCAR Overview

BAS has engaged in strategic outreach at NASCAR races over the last several years. NASCAR is an effective way of reaching the Veteran population because:

- NASCAR is the #1 spectator sport, having 5 of the 10 most attended sporting events in the United States;
- There are approximately 75 million NASCAR fans in the United States;
- 55% of NASCAR fans are age 44+ and 80% of Veterans are age 44+;
- 37% of Veterans and Servicemembers are NASCAR fans; and
- NASCAR fans are 70% more likely to have served or currently serve in the military.

The purpose of outreach at NASCAR races is to promote greater awareness and access to all VA benefits and services through information and counseling support, reach out to Veterans where the live and socialize to “bring VA home” to them, and empower Veterans and family members to learn about the benefits they have earned and deserve.

Connecting with Veterans

VA promotes all of its outreach events at NASCAR tracks through VBA Social Media channels, including Facebook, Twitter and Instagram, as well as sending out email blasts to Veterans who live near the NASCAR track events. Each email blast promoted VA's presence at the race and contained instructions on where to find discount tickets offered by each track for Veterans and their family members. The NASCAR outreach landing page also provides information about VA's NASCAR presence and Richmond Raceway (formerly Richmond International Raceway – RIR) Pole Qualifying Outreach Event for those who were reached through social media and web promotions.

ISM Raceway

ISM Raceway, formerly known as Phoenix International Raceway (PIR) is a 1-mile track in Avondale, AZ, near Phoenix. It opened in 1964 and currently hosts two NASCAR race weekends per year.

In January 2017, it was announced that the track would be renovated (ideal completion in November 2018). The new amenities include:

- Grandstand seating capacity: 45,000;
 - The current Grandstand *and* general admission seating capacity is 51,000
 - There is a "Hillside" seat selection, where guests are encouraged to watch the race outdoors from the chairs and blankets they bring from home
- 32 renovated suites and 19 new suites;
- New escalators and elevators, souvenir areas, First Aid and EMS location, restrooms, and more;
- New infield Fanzone and DC solar fan midway; and
- Track updates, such as moving the start/finish line and reconfiguration of pit road.
- Sneak peek video of the renovation project: <https://www.ismraceway.com/The-New-ISM-Raceway/Sneak-Peek-Video.aspx>

Partnership Outline

- Major event weekend: Can-Am 500 Weekend (November 9-12, 2017)
- VAMC event (November 9, 2017): PIR secured NASCAR drivers to participate
- Display activation: One 50' x 20' midway display (Mobile Vet Center)
- Signage: One 23' x 14' Bryan grandstand banner
- Consideration: \$20,000 (signage production and installation included)

Phoenix VAMC and NASCAR Race Outreach Events (11/9-11/12)

To increase awareness of and access to VA benefits and services, BAS looks to foster partnerships with organizations like NASCAR that can reach Veterans where they live, work and socialize. Throughout the 2017 NASCAR race season, VA conducted outreach at tracks to help "Drive VA Benefits and Services Home" to Veterans. In addition to VA's presence at 11 races, the 2017 season featured two large scale outreach events at Richmond International Raceway and Phoenix International Raceway, including an event at the VA Medical Center in Phoenix, AZ.

Leading up to the Can-Am 500 at Phoenix International Raceway (PIR), four drivers visited the Phoenix VAMC on Thursday, November 9 to sign autographs and personally meet Veterans, wounded warriors, and their families. Corey LaJoie, Jesse Iwuji, Justin Haley, and Cassie Gannis generously donated their time to tour the Carl T. Hayden VA Medical Center in Phoenix, AZ. VA also worked with PIR to have Under Secretary of Benefits, Tom Murphy visit the VAMC during the driver outreach event and appear on stage during the driver introduction ceremony on November 11 to honor all those who have bravely served our country.



Under Secretary of Benefits Tom Murphy (center) pictured with NASCAR drivers (from left) Corey LaJoie, Justin Haley, Jesse Iwuji, and Cassie Gannis at the Phoenix VAMC on November 10 as part of the PIR/VA Partnership during Veterans Day weekend.

In addition to events at the VAMC, Veterans were able to participate in on-track outreach events through Troops to the Track. The *NASCAR Troops to the Track* Program is a year-round recreational group therapy program that honors service men and women, Veterans, and military families at NASCAR races throughout the country. Troops from local military installations across the country and Veterans are treated to customized VIP experiences at race events, which include garage tours, driver meet-and-greets and recognition during the drivers' meeting, among many other special-access activities.

Feedback from Veteran participants who attended shared that it was an opportunity of a lifetime for many. VA hopes to expand VA and Veteran presence in the Troops to the Track Program during race events in 2018.



Veterans participating in the Phoenix Troops to the Track event on November 12, 2017 take photos from the top of NASCAR Champion Kurt Busch's pit box.

The Phoenix outreach events at the track resulted in over **2,250 Veteran interactions** regarding VA benefits and health services.

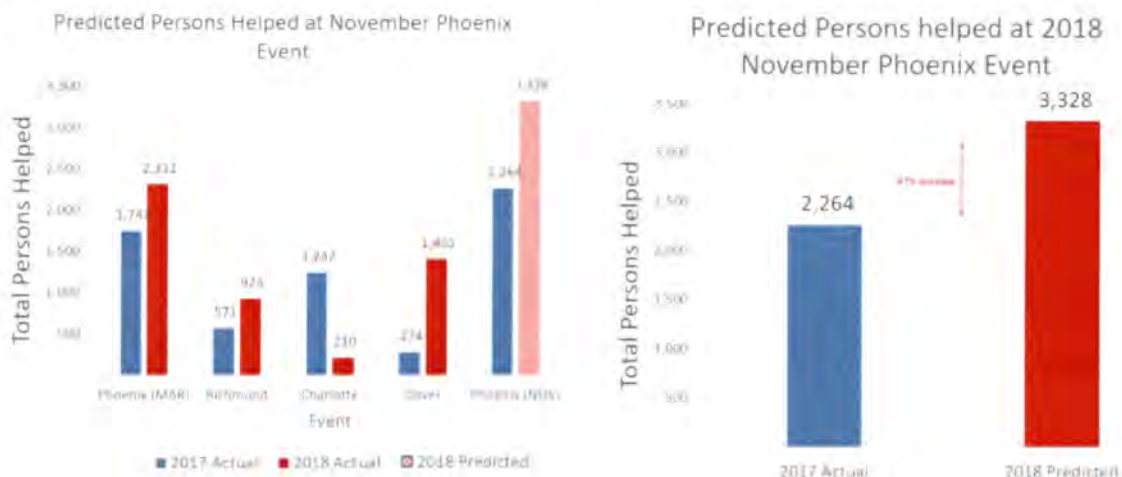
Duty First Consulting (DFC) Activities

- Created and disseminated informational 30-second radio reads to local Phoenix radio stations for free air time
- Connected with PIR staff to organize driver participation of the VAMC event
- Organized and participated in the VAMC event, including a driver autograph session during a health fair, tours of the facility, meet and greets with Veterans, and more

- Organized activities for Mr. Jamie Manker, Acting Principal Deputy Under Secretary for Benefits, to participate in, including: attending the VAMC event, being introduced at the Drivers' Meeting, shaking hands with drivers on stage during the Driver Introductions during Pre-Race Ceremony, and talking to Veterans, Servicemembers, families and advocates at the Mobile Vet Center (MVC)
- Coordinated with Troops to the Track and the VAMC to recruit Veteran participation and took them to activities
- Created promotional content, including: GovDelivery blasts, updated banners, a poster/elevator display, social media graphics, and social media posts for Facebook and Twitter
- Created talking points and driver profiles for VA staff
- Created "driver asks" and itineraries for VA staff and NASCAR driver participants

November 2018 Phoenix Race Weekend Projections

Based on the current trend from 2017 to 2018, the Phoenix NASCAR race will surpass the number of Veterans, Servicemembers, families and advocates touched during the race weekend.



Given that our appropriations lawyers view this event as an appropriate outreach expense, I am confirming my advice below-

(b)(6)

From: (b)(6)
Sent: Wednesday, July 25, 2012 4:03 PM
To: (b)(6) VBAVACO
Cc: Szybala, Renee (SES) OGC (b)(6); Worley, Robert (SES), VBAVACO; (b)(6)
VBAVACO; Westerfeld, Steve, VBAVACO
Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

(b)(6)

(b)(5)

(b)(6)

(b)(6)

Deputy Ethics Official/Senior Ethics Attorney
Ethics Specialty Team
Office of the General Counsel
Department of Veterans Affairs

(b)(6)

Fax (202) 273-6403

From: (b)(6) VBAVACO
Sent: Wednesday, July 25, 2012 3:03 PM
To: (b)(6) Westerfeld, Steve, VBAVACO
Cc: Szybala, Renee (SES) OGC; (b)(6); Worley, Robert (SES), VBAVACO; (b)(6)
VBAVACO
Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

Let me back up because my last answer was too quick

(b)(5); (b)(6)

(b)(5); (b)(6)

(b)(6)

From: (b)(6)

Sent: Thursday, July 26, 2012 9:56 AM

To: (b)(6) McCallum, Deborah (SES) (b)(6)

Cc: Szybala, Renee (SES) OGC; (b)(6) VBAVACO; Westerfeld, Steve, VBAVACO

Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

(b)(6)

(b)(5)

(b)(6)

(024K)

Senior Attorney, PSG IV, Appropriations/Fiscal Law
VA Office of General Counsel

(b)(6) (T, W, Th)
(M, F)

From: (b)(6)

Sent: Wednesday, July 25, 2012 3:25 PM

To: McCallum, Deborah (SES) (b)(6)

Cc: Szybala, Renee (SES) OGC; (b)(6) VBAVACO; Westerfeld, Steve, VBAVACO;

(b)(6)

Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

Debbie, (b)(6)

I note that VBA official is scheduled to travel to Indianapolis this Friday.

I have included the attachment which details the outreach activities.

(b)(6)

From: (b)(6)

Sent: Wednesday, July 25, 2012 3:15 PM

To: McCallum, Deborah (SES) (b)(6)

Cc: Szybala, Renee (SES) OGC; (b)(6) VBAVACO; Westerfeld, Steve, VBAVACO;

(b)(6)

Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697
Importance: High

Debbie, (b)(6)

(b)(5)

Thanks for the follow up.

(b)(6)

From: (b)(6)
Sent: Wednesday, July 25, 2012 2:58 PM
To: (b)(6) VBAVACO; Westerfeld, Steve, VBAVACO
Cc: Szybala, Renee (SES) OGC (b)(6)
Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

(b)(6)

(b)(5)

(b)(6)

From: (b)(6) VBAVACO
Sent: Wednesday, July 25, 2012 2:56 PM
To: (b)(6); Westerfeld, Steve, VBAVACO
Cc: Szybala, Renee (SES) OGC (b)(6)
Subject: RE: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

VA is paying

From: (b)(6)
Sent: Wednesday, July 25, 2012 2:52 PM
To: Westerfeld, Steve, VBAVACO (b)(6) VBAVACO
Cc: Szybala, Renee (SES) OGC; (b)(6)
Subject: FW: OGC opinion/guidance on VBA NASCAR type event this Saturday-GCLaws 32697

Steve, (b)(6)

(b)(5)

Thanks for the follow up.

(b)(6)

(b)(6)

Deputy Ethics Official/Senior Ethics Attorney
Ethics Specialty Team
Office of the General Counsel
Department of Veterans Affairs

(b)(6)

Fax (202) 273-6403

From: Szybala, Renee (SES) OGC

Sent: Wednesday, July 25, 2012 2:08 PM

To: (b)(6)

Subject: FW: HOT: OGC opinion/guidance on VBA NASCAR type event this Saturday

(b)(6)

(b)(5)

From: Westerfeld, Steve, VBAVACO

Sent: Wednesday, July 25, 2012 9:46 AM

To: Szybala, Renee (SES) OGC

Cc: (b)(6) VBAVACO

Subject: FW: HOT: OGC opinion/guidance on VBA NASCAR type event this Saturday

(b)(5)

From: (b)(6) VBAVACO

Sent: Wednesday, July 25, 2012 9:42 AM

To: Worley, Robert (SES), VBAVACO; (b)(5) VBAVACO; Skeens, Leigh Ann, VBAVACO;

(b)(5) VBAVACO; (b)(5) VBAVACO; Westerfeld, Steve, VBAVACO

Subject: FW: Per Terry Lyles -

Attached is the original scheduled prepared for Curt

(b)(5) and (b)(5) are aware Curt was only going to attend Saturday

(b)(5)

From: (b)(6); (b)(7)(C)
Sent: Tuesday, July 24, 2018 2:44 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Cc: (b)(6); (b)(7)(C) VACO <(b)(6); (b)(7)(C)@va.gov>
Subject: RE: Request for Ethics Opinion

(b)(6) would you like me and (b)(6) to set up a call with you, or can you tell us your opinion via email regarding the information previously provided?

Thanks,

(b)(6);
(b)(7)(C)

From: (b)(6) (OGC)
Sent: Tuesday, July 24, 2018 1:06 PM
To: (b)(6); (b)(7)(C)@va.gov>
Cc: (b)(6) (OGC) <(b)(6)@va.gov>
Subject: FW: Request for Ethics Opinion
Importance: High

(b)(6);
(b)(7)(C)

I will be your Ethics Team point of contact.

(b)(6)

Senior Ethics Attorney/
Deputy Ethics Official

(b)(6)

From: (b)(6); (b)(7)(C)
Sent: Monday, July 23, 2018 4:23 PM
To: (b)(6) (OGC); Mitrano, Catherine (SES) (OGC)
Cc: (b)(6); (b)(7)(C), VACO
Subject: FW: Request for Ethics Opinion
Importance: High

Good afternoon,

I received Mr. (b)(6) OOO for this week so I am resending the below to both of you for assistance.

Thank you in advance for your guidance.

(b)(6); (b)(7)(C)

Administrative Investigator

VA Office of Accountability and Whistleblower Protection (OAWP)

(b)(6); (b)(7)(C)

Office

Cell

From: (b)(6); (b)(7)(C)

Sent: Monday, July 23, 2018 3:09 PM

To: (b)(6) <[redacted]@va.gov>

Cc: (b)(6); (b)(7)(C) VACO; (b)(6); (b)(7)(C) <[redacted]@va.gov>

Subject: Request for Ethics Opinion

Importance: High

Good afternoon, Mark,

(b)(6); (b)(7)(C)

and I are conducting an OAWP investigation and have come across a situation that we felt was appropriate for an ethics consultation/opinion from your office. I am not sure if you or someone else should assist us but I wanted to start with you.

(b)(5), (b)(6)

Please let me know if you can assist or if there is someone else we should reach out to. Also, if you would prefer to set up a call, please let me know a day and time this week that works for you.

Thank you in advance for your assistance!

(b)(6), (b)(7)(C)

Administrative Investigator

VA Office of Accountability and Whistleblower Protection (OAWP)

(b)(6), (b)(7)(C)

Office

Cell

From: (b)(6) @bonnerkiernan.com]

Sent: Wednesday, July 18, 2018 3:57 PM

To: (b)(6), (b)(7)(C) @va.gov>; Murphy, Thomas <(b)(6) @va.gov>

Cc: (b)(6), (b)(7)(C) VACO (b)(6), (b)(7)(C) @va.gov>

Subject: [WARNING: ATTACHMENT UNSCANNED][EXTERNAL] RE: Follow-Up Request for Information

Dear Ms. (b)(6), (b)(7)(C) and Ms. (b)(6), (b)(7)(C)

I have attached documents relating to the NASCAR event in Phoenix we discussed and a VBA Watch Officer Activity Brief which comes out daily and which sets out a notice of a NASCAR event to occur in Richmond, VA, which is more indication on how important the NASCAR relationship is to reaching out to veterans. As you will see the NASCAR Phoenix attachments discuss the event and its successes and shows Mr. Murphy in a photo with others at the very important outreach event. If you have any additional questions relating to that Phoenix event and Mr. Murphy's involvement there, please let us know.

You also requested the name of anyone who when to a NASCAR event while Mr. Murphy was Acting Principal Deputy Under Secretary. Please be advised that during that time, Mr. Jamie Manker attended at least one such NASCAR event.

At our interview you inquired about the email exchange Mr. Murphy mentioned showing the relationship between (b)(6) and (b)(6). While you did not specifically request it in you July 12th email, we have attached it here.

You also requested a copy of the BAS contract. Mr. Murphy does not have it but believes he can obtain it. As soon as he does, we will provide it to you. If you have already obtained it, I would appreciate your letting me know.

I trust this responds to your July 12th requests. If you need or want other material, we will be pleased to provide it. Thank you for keeping us informed as your investigation progresses.

Best regards,

(b)(6)

Bonner Kiernan Trebach & Crociata
1233 20th Street, NW, 8th Floor
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BONNER KIERNAN

BONNER KIERNAN TREBACH & CROCIATA LLP

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From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C)@va.gov]

Sent: Thursday, July 12, 2018 12:33 PM

To: Murphy, Thomas

Cc: (b)(6), (b)(7)(C) VACO

Subject: Follow-Up Request for Information

Mr. Murphy,

Thank you again for your time today. As a follow up to your interview, we would like to request the following documents/information:

1. A copy of the BAS contract and detailed agenda for your Phoenix NASCAR visit.
2. You indicated that there are 3 NASCAR events per year. Since you stated you only went to the Phoenix event, who went to the other NASCAR events during the time you were the Acting Principal Deputy Under Secretary?

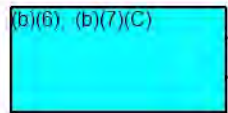
Thank you,

(b)(6), (b)(7)(C)

Administrative Investigator

VA Office of Accountability and Whistleblower Protection (OAWP)

(b)(6), (b)(7)(C)



Office
Cell

Mr. Daniel Sitterly
Assistant Secretary for HRA and Ops Security & Preparedness
810 Vermont Avenue, NW
Washington, DC 20420

On March 18, 2019, I received a Final Decision Letter from Paul Lawrence, Under Secretary for Benefits, in the allegation that I violated 5 CFR § 2635.202, General Prohibition on Solicitation or Acceptance of Gifts when my wife attended a VA outreach event with me at Phoenix Raceway in November of 2017.

In light of the evidence below, that shows the passes provided were of no monetary value, therefore not a gift, but rather were access to a VA outreach event, I ask that all charges be dropped, and the case dismissed.

I believe this decision to be arbitrary, capricious, and an abuse of discretion. The decision on this case was made by Dr. Lawrence for one reason alone as stated by him, "However, the fact remains that (b)(6) was granted an 'item having monetary value,' ". This is simply wrong. The arbitrarily assigned value of the pass in question was made in error and the attached emails from the racetrack's deputy general counsel state just that.

The investigators in this case were provided this information by my attorney and yet chose not to follow up.

VA Outreach Event - Not NASCAR Race

Duty First Consulting is the contractor hired by VA to sub-contract with NASCAR for up to 8 VA/NASCAR Outreach Events annually for the last 8+ years. They arranged for the passes as was required in their contract. The contract specifically called for them to *"providing associated planning, contract review and execution, and logistical and promotional support, which may include partner and Veteran engagement, materials development, press release and media support, branding support, and promotional activities with the racetrack."* Logistical support would clearly be access to the right areas of the racetrack, at the right time.

NASCAR uses the "Hot Pass" for individuals accessing the track in support of such events. These passes are provided, at no cost, to various event participants and are therefore not for sale. See Attachment 101 to see which types of tickets are offered for sale.

"Hot Pass" Passes were acquired by Duty First Consulting for the two Duty First Consultants, three VA employees manning the RV/Booth, and the three of us from the Under Secretaries office. Pictures of the "Hot Pass", previously submitted as evidence, even have the name Duty First/VA printed right on the ticket.

The specific event in Phoenix was a 4-day VA outreach event over Veteran's Day weekend that was part of the newly minted "Veteran's Month". It started on Thursday, November 8, 2017 and went thru Sunday, November 11, 2017. It started at the Carl T. Hayden VA Medical Center where the Phoenix Suns basketball team, 4 NASCAR drivers, and a race car visited veterans. I accompanied the players and

drivers as they stood in the lobby for photo opportunities and then walked from room to room throughout the hospital visiting veterans in their beds. See Attachments 102 and 103.

The weekend events continued at the Phoenix Raceway on Friday, Saturday, and Sunday, where VA accompanied the six identified VIP Veterans and their families through the various pre-race activities. After which, the veterans stayed to watch the races and we left the track.

If I attended the race and watched it with the track management and the six VIP veterans, a case could be made for accepting a gift for my spouse. But as previously submitted evidence shows, I attended VA's scheduled events and left the track. If you read 5 CFR 2635.204 (G) Widely Attended Gatherings, every one of the six examples included in the section involves attendance at an event.

The Value of A "HOT PASS"

The investigators in this case concluded that there was a value to the "Hot Pass" received to allow access to the necessary areas of the track. How this value was arrived at is important.

In OAWP's conversation with Mr. (b)(6) they were told there was no value. That these passes were given to people to do exactly what we were there to do. After pushing Mr. (b)(6) to determine a value based on access to the President's Suite, he backed into the \$520 figure by dividing the cost of the suite for the entire weekend by the number guests it would hold. The cost of spending the weekend in a VIP suite was used despite the fact that Mr. (b)(6) stated (Attachment 107) that "both visited with the track owner briefly in the raceway President's VIP suite".

I say backed into this figure because there is no such thing as buying a "Hot Pass". Renting a suite gets the individual the Infield Wristbands. These are clearly listed on the price sheet as shown in Attachment 101. The prices are \$35 each day for Friday and Saturday, and \$89 for Sunday.

OAWP was informed by my attorney at the time, Mr. (b)(6), that Mr. (b)(6) had misspoke and that Mr. (b)(6) would be pleased to confirm that fact. This is clearly stated in the email from my attorney to Ms. (b)(6); (b)(7)(C) on August 23, 2018. The following are quotes from Mr. (b)(6) contained in that email;

"I understand that Mr. (b)(6) actually believes, and if asked today, would, upon reflection, amend what he communicated to you. Mr. (b)(6) would state that a value could not and cannot be placed on the referenced Hot Passes because, as stated, those passes are for the benefit of the VIPs, not available to anyone but the VIPs and, as such, cannot have a monetary value placed on them."

"If you have further questions on this matter, I am told by Mr. (b)(6) that you are free to call him directly and he will be pleased to confirm what I have stated above. If you have further questions on this matter, please let me know."

Attachments 107, 108 and 109 are Mr. (b)(6) comments to my attorney and relayed to the OAWP investigators. 107 is the email edited by Mr. (b)(6) 108 is the document properties box showing Mr.

(b)(6) as the last editor. 109 is the email between my attorney and Mr. (b)(6) stating this is the racetracks official position on the matter.

Despite the fact that OAWP was informed that the comments were made in error, there is no record of a follow-on conversation. A decision was made on a case where the evidence used to substantiate the decision was recanted by the witness who made them. Yet it was used as evidence in the decision, and was clearly stated in both the Notice of Proposed Disciplinary Action, issued by Margarita Devlin on February 25, 2019, and the Final Decision, issued by Paul Lawrence on March 18, 2019.

What's important here is why Mr. (b)(6) statements are incorrect. Why did he say the "Hot Pass" has no value. To further explain the reason why the "Hot Pass" has no value, please review the following:

See Attachment 104. When a suite is rented for an event, the following is provided;

- Suite Admission pass
- Designated preferred parking
- The INfield access
- Access to a rooftop viewing area
- Closed-circuit television
- High-end catering options
- A private restroom
- Souvenir programs

There are specific differences between the Infield pass and the "Hot Pass". See Attachment 105. When you look at the Infield Access, you see the following;

Introducing The INfield, now with convenient access from the Midway granting you access to an open-air interactive garage getting you closer to your favorite teams and drivers than ever before. Plus get a live look into

Gatorade Victory Lane, Driver's meetings, interactive activities and more!

- **CONVENIENT ACCESS:** With our new conveniently located Pedestrian tunnel you'll be able to access the infield quicker than ever.
- **SEE UNDER THE HOOD AND BEHIND-THE-SCENES:** Watch the crew work live on the cars from inside one of the five new garages – no glass, just you and your favorite teams.
- **DRIVER ACCESS LIKE NEVER BEFORE:** Watch your favorite Drivers walk the red carpet to the Driver's Meeting or be introduced during Driver Introductions in the new crescent area between pit road and the track.
- **A TASTE OF VICTORY:** After the race, be a part of the celebration within Gatorade Victory Lane.
- **LEAVE YOUR MARK:** Sign the start/finish line on the track (Saturday and Sunday Only).

* Please Note: The INfield wristband must be accompanied by a daily admission ticket*

The Infield pass doesn't get the access the "Hot Pass" provides. For example, it only lets the fan watch the driver walk the red carpet to the driver's meeting, as stated above. But our 6 VIP veterans sat with the drivers in the meeting, and we sat alongside them. Also, with the "Hot Pass" we were provided back stage and on-stage access to the driver area for introductions. The Infield pass only allows access to the crescent area between pit row and the track. There are others. But this illustrates the point that the "Hot Pass" is a working access. It is provided to those that participate in the event. Not attend it.

Access

What is not being considered here is the fact that this is NASCAR. There are 100,000 to 120,000 people walking around during a race. The way access is controlled is thru 'credentials'. Everyone wears a pass of some kind. Track officials, track management, employees, vendors, race crew, press, fans, everyone. The pass you wear dictates where and when you have access. The only ones buying the pass are the fans. Everyone else is given a pass to access the parts of the track they need to be in order to do their job. That pass is called a "Hot Pass". It's the equivalent of a PIV card at VA. It gets you access to the places you need to be to do your job.

Mr. (b)(6) for International Speedway Corporation (parent company for Phoenix Raceway) said, "Passes such as the Hot Passes are more for working access (think akin to a press credential) and are not for sale to the general public." These passes are provided free of charge to the press to access the raceway to cover the event. Track policy clearly states that the bearer is on assignment and working.

See Attachment 106, ISM Raceway Credential Policy, defines exactly what is meant by saying hot passes are akin to press passes. Here are quotes from the attachment verifying that fact;

"Credentials will be issued to authorized personnel only for the purpose of providing timely coverage of the event."

"The representative issued a credential is considered on assignment. No autographs of drivers, racing personalities or celebrities are allowed. The representative will have their credential confiscated and risk losing future approval."

"Credentials are NON-TRANSFERABLE and may only be used by the person to whom it was issued."

Secretary VA Approval

Dr. Lawrence, in his Final Decision Letter stated that "You do not state that the Secretary authorized (b)(6) to attend free of charge, you merely state that you told the Secretary that you and (b)(6) were attending the event." I find this comment disturbing and lacking in the understanding of the environment at the time. No one told that secretary what they are going to do. Especially a career employee serving as an Acting Under Secretary for Benefits.

You briefed him on your plan. The implied task here, when briefing the Secretary of VA, is that the plan is briefed to, then approved by, the senior leadership team to include the Secretary of Veteran's Affairs, Deputy Secretary of Veteran's Affairs and the Chief of Staff of Veteran's Affairs. It is

unfortunate for me that none of these individuals are with the VA any longer to corroborate my story. But it seems intuitive to me that the person that has the authority to appoint the designated agency official, has the authority to approve in lieu of the designated agency official. I executed this event in good faith believing I was doing so with the permission and approval of the Secretary of Veteran's Affairs.

Conclusion

I stated at the top of this letter that I was seeking complete dismissal of all charges because it was based on facts proven to be untrue. If you should see that not to be the case, I believe an admonishment would be appropriate given the circumstances in the case. A 10 day suspension amounting to a fine of over \$7,000 because of what could at worst, be described as an administrative error, is unduly harsh.

Regards,

Thomas J. Murphy
Director, Northeast District
9700 Page Avenue
St Louis, MO 63132