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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 11, 2022

VIA ELECTRONIC TRANSMISSION

Denis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

On April 2, 2021, I sent corresponding letters to the Department of Veterans Affairs (VA) and its Office of Inspector General (OIG) regarding allegations of potential conflicts of interest and whistleblower reprisal at VA.¹ Quickly after I sent my letter to VA OIG, VA OIG began conducting an investigation into alleged conflicts of interest. On March 24, 2022, the VA OIG released a report titled, “Former Education Service Executive Violated Ethics Rules and Her Duty to Cooperate Fully with the OIG.”² Because the scope of VA OIG’s work did not encompass all of the allegations presented to my office, I also continued to seek information directly from VA. Since April 2, 2021, I have written three additional letters reiterating requests for answers to my questions, and asked that the VA begin producing documents to my office. Since then, the VA has produced hundreds of pages of records – to the public, through Freedom of Information Act (FOIA) requests. On June 21, 2022, after more than a year of requests, the Department provided a paltry 96 pages of documents to me. For more than a year, you have failed to answer a single question in my April 2, 2021 letter – despite the fact that a response was drafted and approved but never delivered to my office. Now, I may know why.

The VA OIG substantiated allegations of a conflict of interest between a senior-level VA official, Mrs. Charmain Bogue, and a company that employed her husband, Veterans Education Services (VES). The VA OIG issued the following four findings as part of its report:

1. Mrs. Bogue Participated in Matters Involving Her Spouse’s Employer without Considering an Apparent Conflict of Interest and Acted Contrary to Ethics Guidance She Received;

¹ Letter from Charles E. Grassley, Ranking Mem., S. Jud. Comm, to Denis McDonough, Sec’y., U.S. Dep’t. of Veterans Aff. (Apr. 2, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_dept.ofveteransaffairsvbaethicsmarketinfoleaks.pdf; Letter from Charles E. Grassley, Ranking Mem., S. Jud. Comm, to Michael J. Missal, Inspector Gen., U.S. Dep’t. of Veterans Aff. Off. of Inspector Gen. (Apr. 2, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_va_inspector_general_ethics_market_info_leaks.pdf.

² U.S. DEP’T. OF VETERANS AFF., OFF. OF INSPECTOR GEN., #21-02076-119, FORMER EDUCATION SERVICE EXECUTIVE VIOLATED ETHICS RULES AND HER DUTY TO COOPERATE FULLY WITH THE OIG (2022), <https://www.va.gov/oig/pubs/VAOIG-21-02076-119.pdf>.

2. Mrs. Bogue's Interactions with the VES President Violated the Apparent Conflict Rule but the OIG Cannot Substantiate Whether She Used Her Public Office for Private Gain;
3. Mrs. Bogue Provided Insufficient Detail about Her Spouse's Business in 2019 and 2020 Public Financial Disclosures but Remedied It; and
4. Mrs. Bogue Refused to Cooperate Fully in the OIG's Investigation.³

All of these issues were not just presented to my office. Whistleblowers brought these allegations first to the VA, which ignored them. In fact, one of the employees that raised the concerns may have been a victim of whistleblower reprisal – something I have been attempting to get to the bottom of since last year. The VA has an obligation to act as a good steward of taxpayer money, and to root out waste, fraud, and abuse where it occurs. It has a duty to fully investigate concerns raised by VA employees in good faith. Thankfully in this case the VA OIG took these allegations seriously, and unfortunately its work revealed that the facts of the matter were far worse than I suspected.

Mrs. Bogue Participated in Matters Involving Her Spouse's Employer without Considering an Apparent Conflict of Interest and Acted Contrary to Ethics Guidance She Received

Federal law states that an executive branch employee may not participate personally or substantially in a particular matter that, to the employee's knowledge, could directly and predictably affect their financial interest, or that of their spouse, unless they receive a written waiver or the financial interest is exempt.⁴ Mrs. Bogue told the OIG that she received and completed annual ethics training that covered this topic, including trainings on annual public disclosure reports for VA senior executives.⁵ The trainings included advice about seeking additional guidance before taking action in an official VA capacity.⁶ Further, Mrs. Bogue received guidance from VA ethics counsel and her then-supervisory chain of command concerning her duty to ensure no conflict of interest existed with her spouse's business activity.⁷

Despite Mrs. Bogue's apparent extensive training and guidance regarding conflicts of interest and the rules required of senior federal employees, the VA OIG found that, during the period in which her spouse worked for VES, Mrs. Bogue nevertheless participated in VA matters in which VES or her spouse was, or represented, a party.⁸ In fact, Mrs. Bogue participated in VES matters on more than one occasion. The VA OIG found that Mrs. Bogue participated in the

³ U.S. DEP'T. OF VETERANS AFF., OFF. OF INSPECTOR GEN., #21-02076-119, FORMER EDUCATION SERVICE EXECUTIVE VIOLATED ETHICS RULES AND HER DUTY TO COOPERATE FULLY WITH THE OIG (2022), *supra* note 1, at iv.

⁴ 18 U.S.C. § 208; 5 C.F.R. § 2635.402(a), (d); 5 C.F.R. § 2640(B), (C).

⁵ U.S. DEP'T. OF VETERANS AFF., OFF. OF INSPECTOR GEN., #21-02076-119, FORMER EDUCATION SERVICE EXECUTIVE VIOLATED ETHICS RULES AND HER DUTY TO COOPERATE FULLY WITH THE OIG (2022), *supra* note 1, at 3, 5.

⁶ *Id.* at 5

⁷ *Id.*

⁸ *Id.* at 3.

approval of a memorandum of understanding (MOU) that benefitted VES.⁹ An email reviewed by VA OIG reflected that Mrs. Bogue, in 2019, negotiated the terms of an MOU between the Veterans Benefits Administration (VBA) and an outside entity, “in which VES was intended to be a named party.”¹⁰ After learning that VES was to be a named party in the MOU, Mrs. Bogue did not recuse herself from the matter.¹¹ Further, Mrs. Bogue purportedly advised the VES president that if VES was not named at all, she could then clear the MOU with her supervisor.¹² Mrs. Bogue was a signatory of the MOU.¹³ VES was not named in the MOU, which was eventually cleared by Mrs. Bogue’s supervisors.¹⁴ In total, VA OIG found email exchanges between VES and Mrs. Bogue regarding the MOU from at least December 2018 to January 2020.¹⁵ Further, Mrs. Bogue interacted directly with her husband, Barret Bogue, on multiple occasions as it related to VA matters with VES.¹⁶ The VA OIG report stated that the circumstances “indicated that [Mr. Bogue] was trading on his access to Mrs. Bogue. . . .”¹⁷

VES paid Mr. Bogue \$5,000 a month between November 2018 and November 2020, as well as a lump sum payment to Mr. Bogue in the amount of \$35,000 to terminate his contract, despite the fact that the contract between VES and Mr. Bogue only had two months left.¹⁸ This represented an excess of \$30,000 more than what VES owed Mr. Bogue in the event that VES elected to keep Mr. Bogue’s services until the end of the contract.¹⁹ Despite all this, it appears that VES did not believe Mr. Bogue provided substantial enough value based on what VES was paying Mr. Bogue. In fact, VES’s president stated that Mr. Bogue was working less than 20 hours per week on behalf of VES and that Mr. Bogue – whom VES employed for strategic communications – was not “particularly savvy media-wise.”²⁰ It is clear that VES did not believe Mr. Bogue was performing well at his duties, so it is unclear why VES elected to keep Mr. Bogue under contract for as long as it did, and why VES elected to pay Mr. Bogue \$30,000 to cancel their contract, despite the fact that there was no termination clause in their contract.²¹

The VA OIG could not determine whether an actual conflict of interest existed because Mrs. Bogue and VES both refused to cooperate with the OIG’s investigation.²² Further, VA OIG could not determine the basis for VES’s final, excess payment to Mr. Bogue.²³

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 7-9.

¹³ *Id.* at 9.

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

¹⁸ *Id.* at 12.

¹⁹ *Id.*

²⁰ *Id.* at 13.

²¹ *Id.*

²² *Id.* at 4.

²³ *Id.* at 13.

Mrs. Bogue's Interactions with the VES President Violated the Apparent Conflict Rule but the OIG Cannot Substantiate Whether She Used Her Public Office for Private Gain

During the course of VA OIG's investigation, it identified two additional issues involving Mrs. Bogue and VES not raised in my April 2, 2021 letter.²⁴ In a November 2020 email reviewed by VA OIG, the VES president indicated that both Mr. and Mrs. Bogue asked the VES president not to terminate Mr. Bogue's contract in response to media reports alleging that a conflict of interest existed.²⁵ In her initial interview with VA OIG, Mrs. Bogue denied this communication, and she denied asking her husband to communicate this to VES. VA OIG could not investigate this matter further because Mr. Bogue and VES refused to cooperate with the VA OIG's investigation.²⁶

On a separate occasion in late November 2020, Mrs. Bogue provided her personal resume to the VES president, who subsequently endorsed Mrs. Bogue for a presidentially appointed position within VA.²⁷ After receiving Mrs. Bogue's resume, the VES president responded that she would "send this in for now."²⁸ The VA OIG found that after Mrs. Bogue forwarded her resume to VES, the VES president and VES staff forwarded Mrs. Bogue's resume to several U.S. Senators and a subcommittee for the U.S. House of Representatives Committee on Veterans Affairs.²⁹ In December 2020, one month after giving Mrs. Bogue's husband a lump sum payment of \$30,000, the VES president forwarded a link to a job application for President Joe Biden's transition team website.³⁰ Mrs. Bogue stated that she sent her resume to VES for feedback and that she never applied for a presidentially appointed position.³¹

Mrs. Bogue Provided Insufficient Detail about Her Spouse's Business in 2019 and 2020 Public Financial Disclosures but Remedied It

In my April 2, 2021 letter, I asked if Mrs. Bogue listed her husband, or his company, on her financial disclosure.³² The VA OIG found that, although VA certified Mrs. Bogue's 2019 and 2020 annual public financial disclosure reports, Mrs. Bogue "failed to report some required information concerning her husband's business."³³ Mrs. Bogue stated in her financial disclosure reports that her husband was "self-employed (consulting firm)" and that his income type was "salary, consulting fees."³⁴ Mrs. Bogue failed to report the income amount as well as the income source. After my April 2, 2021 letter, Mrs. Bogue emailed VA ethics counsel to verify that she was not missing any important information.³⁵ VA ethics clarified that if her spouse owned or

²⁴ *Id.* at 14.

²⁵ *Id.*

²⁶ *Id.* at 14-15.

²⁷ *Id.* at 14.

²⁸ *Id.* at 16.

²⁹ *Id.*

³⁰ *Id.*, at 17.

³¹ *Id.*

³² See Letter from Charles E. Grassley to Denis McDonough (Apr. 2, 2021), *supra* note 2.

³³ *Id.* at 19.

³⁴ *Id.* at 20.

³⁵ *Id.*

operated an LLC, then this needed to be reported as a business, and to comply with disclosure rules, Mrs. Bogue needed to report the business name and type of business.³⁶ Mrs. Bogue stated that, prior to the allegations, she believed she was properly reporting information related to her husband's business.³⁷

Mrs. Bogue Refused to Cooperate Fully in the OIG's Investigation

According to 5 U.S.C. App. 3. § 6 (a)(3), inspectors general may request information necessary to carry out their duties, which includes obtaining sworn testimony from federal employees.³⁸ Moreover, VA regulation also instructs VA employees to furnish information and testify freely and honestly in matters involving employment and discipline.³⁹ The VA OIG conducted an initial interview of Mrs. Bogue on April 15, 2021.⁴⁰ VA OIG also requested a follow-up interview with Mrs. Bogue on December 8, 2021.⁴¹ VA OIG was unable to complete its line of questioning during this second session, and informed Mrs. Bogue that another interview session would be necessary.⁴² VA OIG noted that, at this second interview, Mrs. Bogue repeatedly refused to answer questions and was uncooperative at many points in the interview.⁴³ A third interview session was scheduled for December 27, 2021.⁴⁴ Mrs. Bogue submitted her resignation on December 21, 2021, to be effective on January 15, 2022.⁴⁵ On December 23, 2021, by way of counsel, Mrs. Bogue informed VA OIG that she would refuse further voluntary participation in the VA OIG investigation into her conduct.⁴⁶ After being advised of her duty as a federal employee to cooperate, Mrs. Bogue's counsel asserted that Mrs. Bogue would not participate unless VA OIG provided immunity from criminal prosecution by issuing Mrs. Bogue a *Kalkines*⁴⁷ warning.⁴⁸ Because of Mrs. Bogue's refusal to cooperate with VA OIG's investigation, Mrs. Bogue neglected her duty as a federal employee to fully cooperate with an OIG investigation.

VA must stop hindering Congressional oversight

It is extremely troubling to me that, given the nature and seriousness of the allegations posed to my office, and given the egregious conduct that VA OIG uncovered in the course of its

³⁶ *Id.*

³⁷ *Id.*

³⁸ See 5 U.S.C. App. 3. § 6 (a)(3).

³⁹ 38 C.F.R. § 0.735-012(b); Dep't. of Veterans Aff., VA Handbook 5025, *Legal*, Pt. I.4.b (Mar. 25, 2022).

⁴⁰ *Id.* at 21.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 22.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Kalkines v. U.S.*, 473 F.2d 1391 (Ct. Cl. 1973). A *Kalkines* warning advises an employee that the investigation is purely administrative in nature, and that any information provided cannot and will not be used against the witness in any subsequent criminal proceedings. Granting immunity from prosecution is a Department of Justice decision.

⁴⁸ U.S. DEP'T. OF VETERANS AFF., OFF. OF INSPECTOR GEN., #21-02076-119, FORMER EDUCATION SERVICE EXECUTIVE VIOLATED ETHICS RULES AND HER DUTY TO COOPERATE FULLY WITH THE OIG (2022), *supra* note 1, at 22.

investigation, VA would continue to stonewall my investigation into additional wrongdoing. The VA has not disputed a single sentence of this VA OIG report. In fact, it concurred, without comment, with all of VA OIG's findings.⁴⁹ The VA OIG findings are consistent with whistleblower disclosures made to my office. However, as I am sure you know, the VA OIG investigation did not encompass the entirety of the allegations that I presented in my April 2, 2021 letter.⁵⁰

To that end, it is important to note yet again that my investigation into this matter is separate and distinct from the VA OIG investigation. The allegations made to my office also include allegations of whistleblower reprisal. As I noted in my November 17, 2021 letter, FOIA documents obtained by a government watchdog show that Thomas Murphy, Acting Undersecretary of Benefits – a subject of my April 2, 2021 letter – disclosed to you the identity of the person he believed contacted my office and bragged about terminating that person.⁵¹ Despite this conduct – conduct that I found unbecoming of a federal employee – Mr. Murphy remains in his federal position, and it is unclear if he has been reprimanded for his actions. Further, allegations made to my office include mishandling of market-sensitive information that may have affected investors. None of these questions or concerns were addressed by the VA OIG report, and the VA has refused to answer them.

On November 30, 2021, VA General Counsel Richard Sauber spoke with my staff and made a commitment to be transparent and to produce documents in a timely manner pursuant to my requests. As previously stated, your office has provided a paltry 96 pages of documents. However, your office has still failed to produce VA's response to my April 2, 2021 letter, which was released in redacted form to a third party via FOIA. I have made countless good faith efforts to work with the VA to obtain information that is critical to my investigation, yet the VA continues to stonewall.

On June 15, 2022, Whistleblowers of America and Empower Oversight, two non-profit whistleblower and government accountability groups, wrote to you as well as VA OIG, encouraging VA to conduct an extensive review of contracts and grants to screen and identify individuals who refused to cooperate with VA OIG investigations, or former senior leaders who have been sanctioned through suspension or removal because of wrongdoing or whistleblower reprisal.⁵² Further, the groups encouraged VA to consider whether VA should continue to allow these individuals or entities to participate in future VA business.⁵³ This information would be critical in informing the Congress on whether VA would allow individuals who have engaged in previous wrongdoing to continue to benefit from future work with VA. Snuffing out

⁴⁹ *Id.* at ii.

⁵⁰ See Letter from Charles E. Grassley to Denis McDonough (Apr. 2, 2021), *supra* note 2.

⁵¹ Letter from Charles E. Grassley, Ranking Mem., S. Jud. Comm, to Denis McDonough, Sec'y., U.S. Dep't. of Veterans Aff. (Nov. 17, 2021) (on file with author).

⁵² See Letter from Jason Foster, Founder & President, Empower Oversight, Whistleblowers & Research, & Jacqueline Garrick, President, Whistleblowers of Am., to the Hon. Denis R. McDonough, Sec'y, U.S. Dep't of Veterans Aff., & the Hon. Michael J. Missal, Inspector Gen., U.S. Dep't of Veterans Aff. (June 15, 2022), <https://empowr.us/wp-content/uploads/2022/06/2022-06-15-EO-WoA-to-VA-VES.pdf>.

⁵³ *Id.*

wrongdoing and prohibiting taxpayer dollars to flow into the pockets of well-connected parties who engage in wrongdoing should be critical to VA's stewardship of taxpayer dollars.

To that end, I reiterate my request for answers in my April 2, 2021, and November 17, 2021 letters. In addition to the questions in my above-referenced letters, and in light of the VA OIG findings, I request that VA answer the following questions and provide the previously requested documents no later than July 25, 2022.

1. Why has the VA refused to transmit the completed response to my April 2, 2021 letter, which it has already released, albeit in redacted form, via FOIA?
2. Who made the determination to not transmit the completed draft response to my office?
3. It is clear that there were several lapses in how the VA monitors and prevents potential conflicts of interest. Since the conclusion of the VA OIG's investigation, what steps has the VA taken to ensure their officials are properly documenting information in public financial disclosures to adequately allow VA ethics officials to identify and mitigate potential conflicts of interest?
 - a. Further, has the VA engaged in any substantive review of agency officials' compliance with public financial disclosure requirements to ensure that these officials properly understand their responsibility to prevent and mitigate conflicts of interest? If not, why not?
4. After Mrs. Bogue refused to cooperate with VA OIG during the course of its investigation, what has the VA done to properly inform VA employees of their duty to comply with OIG investigations?
5. Please provide all records regarding communications between Mrs. Bogue and any individual who worked at, or was employed by, VES.
6. The VA OIG noted that VES refused to cooperate with its investigation. Does VES have any current contracts, grants, or MOUs with the VA? Has VES's lack of cooperation with OIG affected its ability to contract with the federal government on future contracts in any way? If not, why not?

The time has come for the VA to comply with my many requests for information. Should you have any questions, contact my Committee staff at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member
Committee on the Judiciary