



DEPARTMENT OF VETERANS AFFAIRS
INSPECTOR GENERAL
WASHINGTON, DC 20420



April 12, 2023

The Honorable Charles Grassley
Ranking Member
Committee on the Budget
U.S. Senate
Washington, DC 20510

Dear Senator Grassley:

I am writing in response to your March 14, 2023, letter regarding an Office of Inspector General (OIG) report, *Former Education Service Executive Violated Ethics Rules and Her Duty to Cooperate Fully with the OIG* (published March 24, 2022).

The OIG values the testimonial subpoena authority it was provided through the *Strengthening Oversight for Veterans Act of 2021* (the Act) and will use the authority judiciously to conduct vigorous and thorough oversight of VA. Since passage of the Act last June, I have sent four proposed testimonial subpoenas to the Department of Justice (DOJ) for its consideration as required by the statute. DOJ did not object to any of the proposed subpoenas. Each of the four subpoenas was addressed to a former VA employee. The OIG served subpoenas in three instances. In the fourth instance, the former employee agreed to testify voluntarily after being informed the OIG intended to issue a subpoena.

In two of the three instances in which a subpoena was served, testimony was taken without incident and provided helpful additional context in support of a report prepared by our Office of Healthcare Inspections. In the third case, a former VA physician, acting through counsel, accepted service of the subpoena but then refused to provide testimony. After efforts to resolve the issue with his counsel proved unsuccessful, the OIG engaged with the U.S. Attorney's Office for the District of Montana. In December 2022, an Assistant U.S. Attorney filed a subpoena enforcement action in federal district court in Montana. The former employee opposed the government's petition and recently sought leave from the court to file additional papers. The matter is currently pending a decision from the court.

In using our testimonial subpoena authority, the OIG has remained mindful of the limitations Congress placed on the scope of that authority. The Act specifically prohibits the ability of the OIG to issue a subpoena to compel testimony from "any witness as part of any criminal proceeding." As your letter appropriately points out, the conflict of interest and contract-steering allegations at issue in the referenced report may implicate

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criminal violations. Testimony taken in a manner that exceeds the authority granted may result in gathering evidence that is unusable in a criminal prosecution. The OIG must exercise caution in issuing subpoenas to potential witnesses in such situations and should do so only in close coordination with the Department of Justice. I am happy to provide you or your staff a briefing on our use of testimonial subpoena authority.

While we believe a second interview with Ms. Bogue might have yielded additional information, the 2022 report had sufficient support for its findings and does resolve the concerns that were raised. The OIG's focus in its oversight and investigation efforts is on improving VA's current programs and operations. Reconsidering questions concerning the conduct of a former VA employee occurring more than two years ago would not meaningfully address the OIG's mission.

Your letter also raises the possibility of other potential contracting irregularities at VBA. If your office has additional information on these matters, we welcome the opportunity to review these materials.

I appreciate your raising these important issues. We will continue to review all matters of potential wrongdoing and take appropriate action consistent with our resources and legal authority.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Missal", with a large, stylized flourish at the end.

MICHAEL J. MISSAL