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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 (202) 224-5225 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:

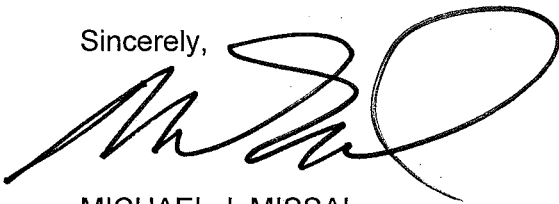
- ***Mitigation of Disciplinary Penalties for Certain Senior VA Officials.*** Your letter requested that the OIG review and report on the reasons why VA allegedly mitigated penalties recommended in disciplinary actions of specific senior-level VBA employees. VA's Office of Accountability and Whistleblower 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 flourish at the end.

MICHAEL J. MISSAL

Exhibit B



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE CHAIR

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?

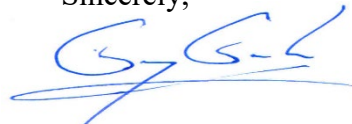
The Office of Government Ethics (OGE) provides guidance and leadership to all federal agencies in order to prevent conflicts of interest by government employees, including conflicts related to the misuse of nonpublic information and the misuse of position. The SEC does not provide guidance to other federal 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 (202) 551-2100, or have a member of your staff contact Kevin Burris, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010 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>.