

June 15, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Denis R. McDonough
Secretary, U.S. Department of Veterans Affairs
Washington, DC 20420

The Honorable Michael J. Missal
Inspector General, U.S. Department of Veterans Affairs
Washington, DC 20420

RE: VA-OIG Report #21-02076-119

Dear Secretary McDonough and Inspector General Missal:

On March 24, 2022, the Department of Veterans Affairs (“VA”) Office of Inspector General (“OIG”) released a report entitled, *Former Education Service Executive Violated Ethics Rules and Her Duty to Cooperate Fully with the OIG*.¹ The OIG substantiated allegations of ethical violations involving “Charmain Bogue, arising from her spouse’s consulting work with Veterans Education Success (VES),” which were detailed in a letter to the OIG from Senator Charles Grassley.² The Senator’s letter was prompted by whistleblower reports to his office, which were substantially confirmed by the OIG.

In addition to the information initially reported to Senator Grassley’s office, the OIG’s report also detailed new and troubling information about VES’s involvement and the refusal of its President, Carrie Wofford, and its senior communications advisor, Barrett Bogue, to provide testimony to the OIG:

[A]lthough not part of Senator Grassley’s referral, the OIG identified a November 2020 email from the president of VES to a colleague, indicating that Ms. Bogue and her spouse pressured the VES president not to terminate her spouse’s contract with VES immediately in response to media articles alleging a conflict of interest arising from his work for VES. Ms. Bogue denied any such communication. A determination could not be reached as to whether Ms. Bogue violated the prohibition on using her public office for private gain by asking VES to delay termination of her husband’s contract. This was because individuals with personal knowledge of the events, including Ms. Bogue’s spouse and the VES president, did not cooperate with the OIG’s requests for interviews and the OIG lacks authority to compel testimony from individuals who are not VA employees.³

¹ *Former Education Service Executive Violated Ethics Rules and Her Duty to Cooperate Fully with the OIG*, VA-OIG Report #21-02076-119, at i (Mar 24, 2022).

<https://www.oversight.gov/sites/default/files/oig-reports/VA/VAOIG-21-02076-119.pdf>

² *Id.*

³ *Id.* (emphasis added).

The OIG further determined that:

- “Ms. Bogue participated in Education Service matters in which VES or her spouse was, or represented, a party.”⁴
- “Ms. Bogue also failed to consider whether her impartiality could be questioned in VES matters ... such as when her spouse contacted her directly to make requests on behalf of VES.”⁵
- “The OIG cannot substantiate the existence of an actual conflict of interest because of insufficient evidence caused in part by Mr. Bogue’s and VES’s *refusal to fully cooperate*.”⁶
- “Ms. Bogue violated the apparent conflict rule when she participated in the approval of [a Memorandum of Understanding (“MOU”)] *to benefit VES*.”⁷

The details outlined by the OIG regarding VES’s involvement in this MOU are particularly troubling, especially in light of the use of charitable dollars for payments to Ms. Bogue’s spouse. According to the OIG, “VES’s pursuit of the MOU spanned much of Ms. Bogue’s tenure.” It involved a data-sharing project called the National Student Clearinghouse (NSC) under which the VA provided information about student veterans. According to the OIG, “VES received Special Sworn Status from the Census Bureau to access the data and worked to secure funding for the project.”⁸ The OIG detailed multiple communications from the VES president, Ms. Wofford, to Ms. Bogue urging her to help move the MOU forward for approval.⁹ The OIG also cited an email from Ms. Wofford, to “an organization funding the initiative,” in which she requested “the grant be modified to avoid direct payments being made from VES.”¹⁰ She wrote, “[I]t’s not mentioned in the MOU, but [VA officials] would feel more comfortable because a senior VBA official is married to one of my VES staff members and they were worried about conflict of interest.”¹¹

For Ms. Wofford and Ms. Bogue to work to remove VES’s name from the MOU and modify grant agreements to avoid direct payments from VES explicitly due to concerns about conflicts of interest is extremely troubling. They were clearly aware of at least the appearance of a conflict created by VES’s employment of Ms. Bogue’s husband. However, rather than refrain from the conduct that raised legitimate concerns, the OIG report suggests that they sought to obscure how the MOU would “benefit VES” and sought to secure the MOU and grant funding anyway.

The OIG report also outlines instances in which VES’s senior communications advisor, Mr. Bogue, made specific requests to his wife at the VA for information sought by VES.¹²

⁴ *Id* at 3.

⁵ *Id*.

⁶ *Id* at 4.

⁷ *Id* at 7 (emphasis added).

⁸ *Id* at 8.

⁹ *Id*.

¹⁰ *Id* at 9.

¹¹ *Id*.

¹² See generally, “Ms. Bogue Violated the Apparent Conflict Rule When She Took Actions Benefitting Her Spouse’s Employer without Considering How Her Conduct Could Be Perceived to Compromise Her Impartiality.” *Id* at 10–11.

Moreover, the OIG raised questions about VES's payments to Mr. Bogue in conjunction with VES terminating his contract. According to the OIG:

[I]n December 2020, after VES decided to terminate the contract at the end of the year, VES made a lump sum payment of \$35,000 to Mr. Bogue. The OIG analysis of budget materials produced by VES revealed that, inclusive of this lump sum, the total payments by VES to Mr. Bogue in 2020 exceeded the budgeted amount by \$30,000.¹³

According to a letter from VES's counsel to the OIG, VES "made the \$30,000 excess payment in December 2020 'in consideration for [VES's] early termination' of the contract, which was otherwise set to expire in November 2021."¹⁴

However, the OIG questioned that explanation, "Other documentary evidence appears to belie this explanation."¹⁵ The OIG cited discrepancies between that explanation, the terms of the contract itself, correspondence between VES's president and its Board of Directors, and an email from VES President Wofford and Mr. Bogue.¹⁶ According to the OIG, "no consideration for early termination was due under the contract" and "internal VES documents also raise potential inconsistencies that could cause a reasonable person to question whether this and other payments made in 2020 to Mr. Bogue were solely compensation for his work."¹⁷

The OIG cites inconsistent statements in internal VES emails about payments to Mr. Bogue and the value of his work, including a November 2020 email to a "then member of VES's board of directors" and concludes that "[w]ithout clarifying explanatory testimony under oath from Mr. Bogue or the VES president, the OIG could not resolve these seemingly contradictory statements, and both declined requests for OIG interviews."¹⁸

All these circumstances are troubling, but this is our ultimate concern. The OIG report notes multiple times that both VES's president, Ms. Wofford, and Mr. Bogue refused to voluntarily answer the OIG's questions about these matters under oath.¹⁹

That raises serious questions for the VA and the OIG. It remains unclear what steps, if any, you have taken to assess the VA's participation in contracts, grants, data sharing, and other agreements to ensure that the VA does not confer benefits in the future to individuals and entities who refused to cooperate fully with the OIG's oversight work or might have otherwise been involved in allowing ethics violations to have occurred.

¹³ *Id* at 12.

¹⁴ *Id*.

¹⁵ *Id*.

¹⁶ *See, id* at 12–13.

¹⁷ *Id* at 13.

¹⁸ *Id*.

¹⁹ After the completion of this OIG inquiry, Congress passed legislation providing the VA-OIG with subpoena authority to compel certain witness testimony. However, that authority was not available at the time, and it is unclear to what extent it would have applied to VES. "A New Law Will Make It Harder to Escape Investigation By Leaving Federal Service: The measure will allow the Veterans Affairs Department IG to subpoena former feds and contractors," *Gov't Executive* (Jun 7, 2022).

<https://www.govexec.com/oversight/2022/06/new-law-will-make-it-harder-escape-investigation-leaving-federal-service/367881/>

Among the steps that you could take to encourage accountability and enhance future cooperation with inspector general investigations include:

1. Conducting a comprehensive review and audit of contracts, grants, data sharing, and other agreements that may confer benefits on either,
 - a. those who refused to cooperate with the inspector general, or
 - b. former senior leaders who have been sanctioned by VA either through suspension or removal from a position because of wrongdoing or whistleblower retaliation.
2. Re-assessing, in light of its review, whether the VA should continue to allow those individuals and entities to participate in such contracts, grants data sharing, and other agreements in the future.
3. Reviewing the circumstances outlined above in light of the new authorities Congress recently granted to the inspector general (*see*, fn.18) to determine whether additional testimony could be obtained to address some the questions that the OIG could not resolve.

We believe that credible, independent investigations of whistleblower allegations are essential, but inspectors general cannot effectively conduct those investigations without the good faith cooperation of witnesses with information necessary for their inquiry. We hope that you share these concerns and will take appropriate actions to address them. Thank you for your time and attention to these important issues.

Sincerely,

Jason Foster

Founder & President
Empower Oversight,
Whistleblowers & Research

Jacqueline Garrick

President
Whistleblowers of America