

# Exhibit B

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**From:** Terrell, Brandye, VBAVACO  
**To:** [REDACTED] Hogan, Michael R. (OGC); [REDACTED] (OGC); Jaynes, Mark T. (OGC); Cordeiro, Hansel (OAWP); Parise, Ruthann; [REDACTED]; [REDACTED] Calhoun, Eric K.; [REDACTED] Christy, Phillip (SES); [REDACTED]  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** RE: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD) DRAFT ENCLOSURE  
**Date:** Monday, April 19, 2021 2:55:00 PM  
**Attachments:** 4890714 Enclosure with Consolidated (OGC VBA) vba2.docx

Additional information from VBA included. More context can be provided on today's collab call.

-Brandye-

**From:** [REDACTED] [REDACTED]@va.gov>  
**Sent:** Friday, April 16, 2021 3:49 PM  
**To:** Hogan, Michael R. (OGC) [REDACTED]@va.gov> [REDACTED] (OGC) [REDACTED]@va.gov>; Jaynes, Mark T. (OGC) [REDACTED]@va.gov>; Cordeiro, Hansel (OAWP) [REDACTED]@va.gov>; Parise, Ruthann [REDACTED]@va.gov> [REDACTED] [REDACTED]@va.gov>; Terrell, Brandye, VBAVACO [REDACTED]@va.gov>; Johnson-Clark, Carrie [REDACTED]@va.gov>; Calhoun, Eric K. [REDACTED]@va.gov> [REDACTED] [REDACTED]@va.gov>; Christy, Phillip (SES) [REDACTED]@va.gov> [REDACTED] [REDACTED]@va.gov>  
**Cc:** [REDACTED] [REDACTED]@va.gov>; [REDACTED] [REDACTED]@va.gov>  
**Subject:** Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD) DRAFT ENCLOSURE  
**Importance:** High

Hello,

This attached document is the current (incomplete) version of the enclosure that we will use/review during the Collab call. Please limit the circulation of this document to people who need to know.

[REDACTED]  
 Executive Writer  
 Office of the Executive Secretary  
 Department of Veterans Affairs  
 810 Vermont Avenue NW  
 Washington, DC 20420  
 [REDACTED] mobile

**Department of Veterans of Affairs(VA) Responses to Questions from  
Senator Charles Grassley**

**Question 1: Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?**

**VA Response:**

**Question 1a: If so, was Mr. Murphy ever suspended?**

**VA Response:**

**Question 1b. Was a recommendation for suspension ever overturned? If so, why and by who?**

**VA Response:**

**Question 2: Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?**

**VA Response:**

**Question 2a. If so, was Mr. Reynolds ever suspended?**

**VA Response:**

**Question 2b. Was a recommendation for suspension ever overturned? If so, why and by who?**

**VA Response:**

**Question 3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?**

**VA Response:**

**Question 3a. If so, was Mr. Manker ever suspended?**

**VA Response:**

**Question 3 b. Was a recommendation for suspension ever overturned? If so, why and by who?**

**VA Response:**

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**Question 4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.**

**VA Response:** Please see copies of Ethics Specialty Team responses.

**Question 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?**

**VA Response:** VA follows existing law, procedures and standard practices in all actions and activities related to GI Bill program approval and reviews. VA does not undertake any special steps to specifically address retail investors and publicly traded companies.

In the case of Perdoceo Education Corporation (formerly Career Education Company), which owns American InterContinental University and Colorado Technical University, the Federal Trade Commission (FTC) referred preliminary findings regarding allegations of erroneous, deceptive, or misleading advertising, sales, or enrollment practices to VA on December 10, 2019. By law (38 U.S.C. § 3696(c)), VA is required to take appropriate action within 90 days after such a referral. The Department followed the process detailed in agency rules (38 CFR §§ 21.4210(d) – 21.4210(f)) with regard to the initial determination made by the Regional Processing Office Directors on March 9, 2020 (89 days after the FTC referral), required notifications to the educational institution and GI Bill beneficiaries, as well as the subsequent determination that Perdoceo Education Corporation had undertaken sufficient corrective actions. These same regulatory processes were also applied concurrently to the University of Phoenix, Bellevue University and Temple University, none of which were publicly traded, regarding similar concerns.

**Question 5a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?**

**VA Response:** VA routinely deals with sensitive information regarding ongoing investigations, litigation and settlements undertaken by Federal law enforcement agencies, as well as pending enforcement actions to be undertaken by the Department and by other Federal agencies that may impact Veterans benefits and services. The knowledge of such information is limited to those with a “need to know” in order to prevent harm to beneficiaries, third parties, other Federal agencies, or the integrity of VA. With regard to VA enforcement actions, the timing of, and target audience for, the release of such information is dictated by an approved communications plan. In general, selected Congressional and Veteran Service Organization (VSO) staff are notified of VA’s decision prior to notification of the school(s), GI Bill beneficiaries, and the public at large. Congressional and VSO staff are explicitly told that the information is embargoed and may not be shared until after any schools and GI Bill beneficiaries have been

notified. VA is not aware that the steps failed in this instance; however, VA will continue to critically analyze which individuals and organizations are provided advance notice and reiterate the requirement to keep such information close-hold.

**Question 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.**

**VA Response:** Not applicable. VA is not aware of the release of embargoed information prior to appropriate notification to affected parties/institutions.

**Question 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?**

**VA Response:** On December 7, 2017, the OGC Ethics Specialty Team (EST) advised Mrs. Bogue to recuse from any involvement in source selection for the Vet Tech Pilot. Mrs. Bogue's husband was employed by Student Veterans in America, an organization that may have decided to compete for the Vet Tech Pilot

**Question 7a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with ? If not, why not?**

**VA Response:**. An EST attorney advised Mrs. Bogue that:

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.

EST further opined that if Student Veterans in America would be a bidder, then Mrs. Bogue should recuse from market research shaping the procurement. Other employees in her office could work on the matter; however, Mrs. Bogue was not to be consulted.

On September 9, 2019, EST certified Mrs. Bogue's 2019 Public Financial Disclosure. She was advised:

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.

On July 29, 2020, EST certified Mrs. Bogue's 2020 Public Financial Disclosure Report and advised:

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.

**Question 8: Please provide all records relating to any written ethics opinion by VA attorneys regarding Ms. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Ms. Bogue's recusal obligations with respect to her husband's companies.**

**VA Response:** Please see copies of the email exchanges provided in response to #7 attached.

**\*NOTE: Empower Oversight has redacted the name.**

In March 2018, former VBA employee [REDACTED] reported connecting with Mrs. Bogue regarding the Vet Tech Pilot. Mrs. Bogue and Rob Worley (project sponsor) did not feel there was any conflict of interest with the Vet Tech Pilot as Student Veterans in America was not going to be bidding directly. Student Veterans in America was not going to engage in market research or support other bidders. The EST opinion was to be shared with the project sponsor as the former VBA employee was concerned he did not understand the notion of recusal versus conflict of interest. Ms. Bogue did not respond to EST when she was again advise of the need to recuse from VA activities involving her spouse's consulting firm. See response to #10. However, a filer is not required to acknowledge cautions provided by the reviewer.

**Question 9: Did Mrs. Bogue engage in, participate in, or contribute to VA business with her ? If so, why did VA allow Mrs. Bogue to participate?**

**VA Response:** Education Service, the office that Ms. Bogue oversees, hosts a monthly stakeholder meeting which includes VSOs and other advocacy groups. This meeting serves as an opportunity for VA Education Service to provide regular updates to our VSO and advocacy partners. Ms. Bogue often participates in the stakeholder meetings. The meetings are informational, are not part of a governance structure, nor function as

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a decision-making forum. Highly sensitive and/or embargoed information is not discussed in this forum.

**Question 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 Mrs. Bogue list her husband?**

**VA Response:** Mrs. Bogue was a new entrant Public Financial Disclosure filer in 2019. She was not required to file before that time. She filed timely in 2019 and 2020. Mrs. Bogue is required to report her spouse's assets and source of income related to employment. Reportable positions include those of an officer, director, general partner, limited partner with an active role, proprietor, representative, executor, trustee, employee or consultant of any for-profit, non-profit, governmental or other entity.

**Question 10a. 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?**

**VA Response:** Mrs. Bogue reported her spouse was "self-employed (consulting firm)". With self-employment, she was required to report the type of business being conducted. If the business has a name, that is to be provided. Its name was not reported. consulting firm.

**Question 10b. 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?**

**VA Response:** Mrs. Bogue included income type as "salary, consulting fees". Mrs. Bogue was not required to report the actual amount of income. She would be required to report any equity interest her spouse had in his business. Mrs. Bogue did not report any value for her husband's

**Question 10c: Please provide Mrs. Bogue's financial reports dating back five (5) years.**

**VA Response:** Copies of Public Financial Disclosure Reports from 2019 and 2020 are provided.

**Question 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? If not, why not?**

**VA Response:** Per response to #10, Mrs. Bogue reported her spouse was self-employed with his own consulting firm in 2019 and 2020. She was not required to file a financial disclosure report prior to that time. Based on these reports, Mr. Bogue was not an employee of VES.

Under 18 U.S.C. § 208, a VA employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to her knowledge, she or any person whose interests are imputed to her has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The interests of one's spouse, which would include a LLC owned by one's spouse, are imputed to the employee.

Further, the Standards of Ethical Conduct prohibit an employee, unless authorized, from participating in a particular matter involving specific parties which is likely to affect the financial interest of a person with whom the employee has a covered relationship, if a reasonable person with knowledge of the relevant facts would question the employee's impartiality. 5 C.F.R. § 2635.501. An employee has a covered relationship with a person for whom the employee's spouse serves as a consultant, contractor or employee. 5 C.F.R. § 2635.502. If Mr. Bogue was/is a consultant for VES, Mrs. Bogue's participation in particular matters to which that organization is a party created/creates the appearance of a conflict. Unless authorized, she was/would be prohibited from participating in matters to which VES is, or represents, a party. In 2017, Mrs. Bogue was informed of this prohibition related to her then spouse's employer, Student Veterans of America and the potential Vet Tech Pilot.

**Question 12: Why has the VA attempted to block FOIA requests seeking information regarding these matters?**

**VA Response:** In the litigation cited in your letter, Pomares v. United States Department of Veterans Affairs, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021), the first cause of action is based on an allegation that the Veterans Benefits Administration (VBA) did not provide a determination to the requester's FOIA request (Number 21-00931-F); the VA Office of General Counsel (OGC), Information and Administrative Law Group (IALG) is addressing the litigation with regard to that first cause of action. (The second cause of action involves a request to VA's Office of Inspector General (OIG) and is being handled by OIG.) In the process of responding to the Complaint filed in the litigation, the OGC determined that VBA responded to FOIA request 21-00931-F on December 22, 2020; VBA again provided its response for delivery to the Plaintiff's counsel in March 2021. The Court then granted an extension of time in the case to allow the Plaintiff an opportunity to file an amended complaint as appropriate.

Separately, please note that six FOIA appeals resulting from initial FOIA determinations of various VA offices are pending within IALG; appeals are addressed in the order they are received and IALG anticipates issuing determinations on those appeals by the end of March.

**Question 12a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?**

**VA Response:**



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Department of Veterans Affairs  
April 2021

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