

From: (b)(6)
Sent: Mon, 5 Apr 2021 16:28:49 +0000
To: (b)(6)
Cc: McVicker, Carrie A. (b)(6)
Subject: HOT - letter from Senator Grassley to SECVA
Attachments: 04890714 - 2021-04-02 CEG to VA.pdf

Per conversation with (b)(6) I'm re-assigning to (b)(6) The Case number is 4890714 and I made this sensitive in VIEWS. Also note, this will not be sent out at 3pm today.

Respectfully

(b)(6)

Office of the Secretary
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420-0001

(b)(6)

Office Cell
Desk (Wed/Thurs)

“No mission too difficult, no sacrifice too great.”

[DTC Helpdesk](#)
[VIEWS CCM WEB-BASED TRAINING](#)
[VIEWS Resource Center](#)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Monday, April 5, 2021 8:14 AM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA

(b)(6) – I am thinking because of the names in the letter – we should not put this out at 3pm today. Lets figure out who the writer is and then (b)(6) and I can work with her directly on how to get the right offices in on this.

Thanks!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: McVicker, Carrie A.
Sent: Saturday, April 3, 2021 10:19 AM
To: (b)(6) @va.gov>
Cc: (b)(6) @va.gov>; (b)(6) @va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA

For early Monday. Lets quickly identify a writer. This will be LEAN. We will need an interim for Monday as well.

Thanks!

(b)(6)
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6) @va.gov

From: (b)(6) @va.gov>
Sent: Friday, April 2, 2021 6:51 PM
To: (b)(6) @va.gov (b)(6)
(b)(6)
Cc: McVicker, Carrie A. (b)(6) @va.gov>; (b)(6) @va.gov>;
Johnson, Glenn (SES) (b)(6) @va.gov>; (b)(6) @va.gov>;
McClain, Kimberly A. (b)(6) @va.gov>; (b)(6) @va.gov>;
(b)(6) @va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)
Congressional Relations Officer | Department of Veterans Affairs
2026 Rayburn House Ofc. Bldg., Washington, DC 20515
Desk: (b)(6) Mobile: (b)(6)
[\(b\)\(6\)](https://(b)(6))

From: (b)(6) @judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6) @va.gov>
Cc: (b)(6) @judiciary-rep.senate.gov>; CEG (Judiciary-Rep)

(b)(6) @judiciary-rep.senate.gov>

Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)

Investigative Counsel

Ranking Member Charles E. Grassley

U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMMERY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

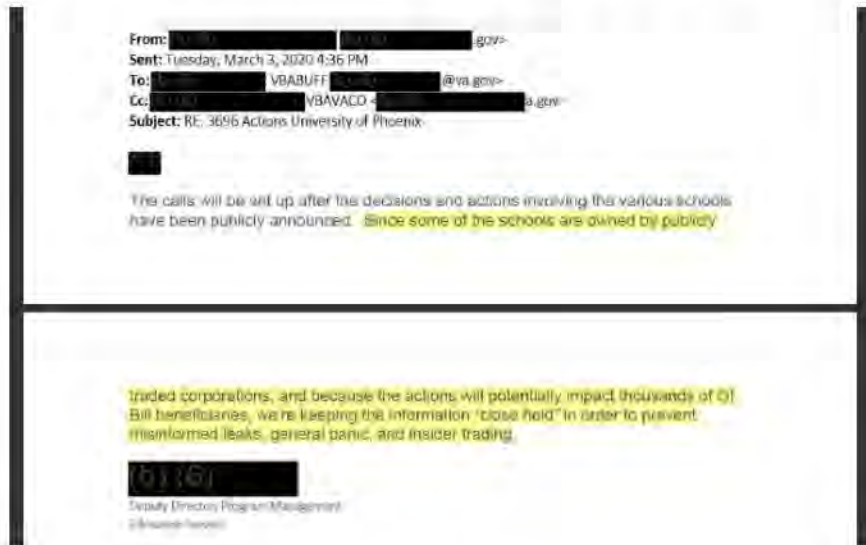
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 1. This action is brought under the Freedom of Information Act (“FOIA”). 5
2 U.S.C. § 552, as amended, for an order compelling Defendant United States Department
3 of Veterans Affairs (“VA”) to produce, provide access to, and make available certain
4 records specified below that were requested by Plaintiff Maria Pomares.

5 **JURISDICTION AND VENUE**

6 2. This Court has jurisdiction and venue over this action pursuant to 5 U.S.C. §
7 552(a)(4)(B).

8 **PARTIES**

9 3. Plaintiff is a citizen of the United States and a resident of the County of San
10 Diego.

11 4. Defendant is an agency of the United States Government and has possession
12 and control of the records that are the subject of this action.

13 **THE RELEASE OF THE RECORDS SOUGHT** 14 **WOULD SERVE THE HIGHEST PUBLIC INTEREST**

15 5. Plaintiff seeks records from the Department of Veterans Affairs (“VA”)
16 relating to the VA’s selective release of nonpublic information during the period from
17 January through March 2020 that adversely affected the stock price of Career Education
18 Corporation (“CEC”),¹ a U.S. publicly traded company. During this period, the stock
19 price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price
20 and over \$800 million in market capitalization. By July 2020, the VA had decided it
21 would take no action against CEC,² but for many investors who sold during the near
22

23
24 ¹ The name of the company was changed from Career Education Corporation to Perdoceo
25 Education Corporation effective January 1, 2020. The company’s former name is used in
26 this complaint, because the records requests and released records primarily use that name.

27 ² Danielle Douglas-Gabriel, *VA Backs down from Plan to Suspend University of Phoenix*
28 *and Other Colleges from Accessing GI Bill Benefits*, WASH. POST, July 2, 2020,
<https://www.washingtonpost.com/education/2020/07/02/va-backs-down-plan-suspend-university-phoenix-other-colleges-accessing-gi-bill-benefits/>, last visited Jan. 13, 2021.

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.

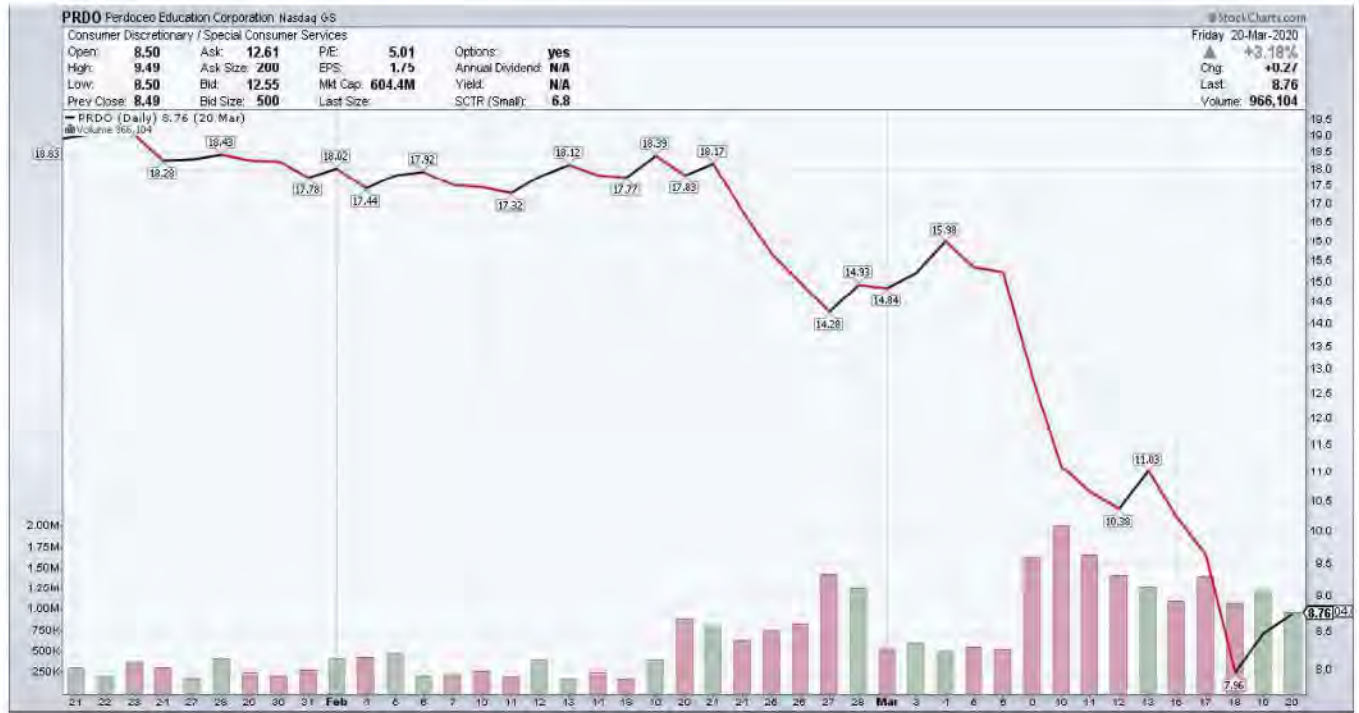


17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

22
23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

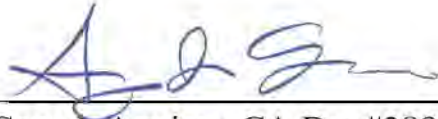
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

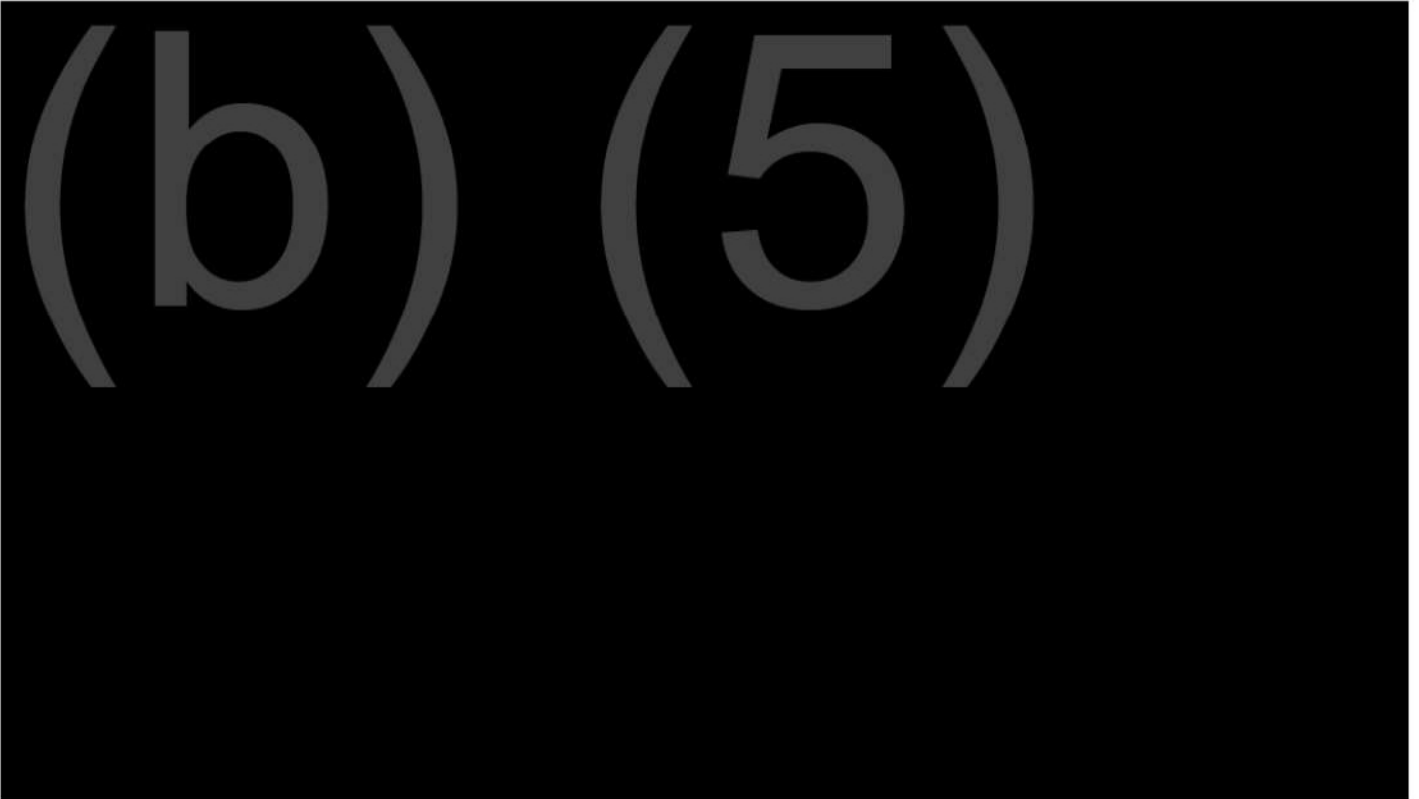
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Mon, 5 Apr 2021 17:05:22 +0000
To: (b)(6) (OGC); (b)(6) (OIG); (b)(6)
(b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OIG); Hogan, Michael R. (OGC); Barrans, David (OGC)
Cc: (b)(6) (OGC); OGC Personnel Law Group Supervisors (b)(6)
(b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC)
(OGC); (b)(6) (OGC)
Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
Attachments: 2021-04-02 CEG to VA.pdf
Importance: High

Good afternoon OGC, OAWP, OIG, OCLA and OSC Liaisons:

This is an invitation for the appropriate subject matter experts (SMEs) from your respective organizations to attend an urgent collaboration call to discuss and develop the Department's response to the attached incoming letter. This is a sensitive close hold matter and, therefore, **it is requested that you and your organization's SMEs limit the circulation of this and future communications about this issue to only the SMEs who have a need to know.**

Please let me know if you have any questions

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THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

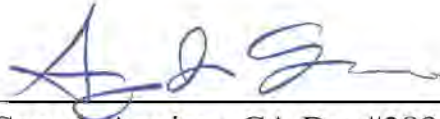
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

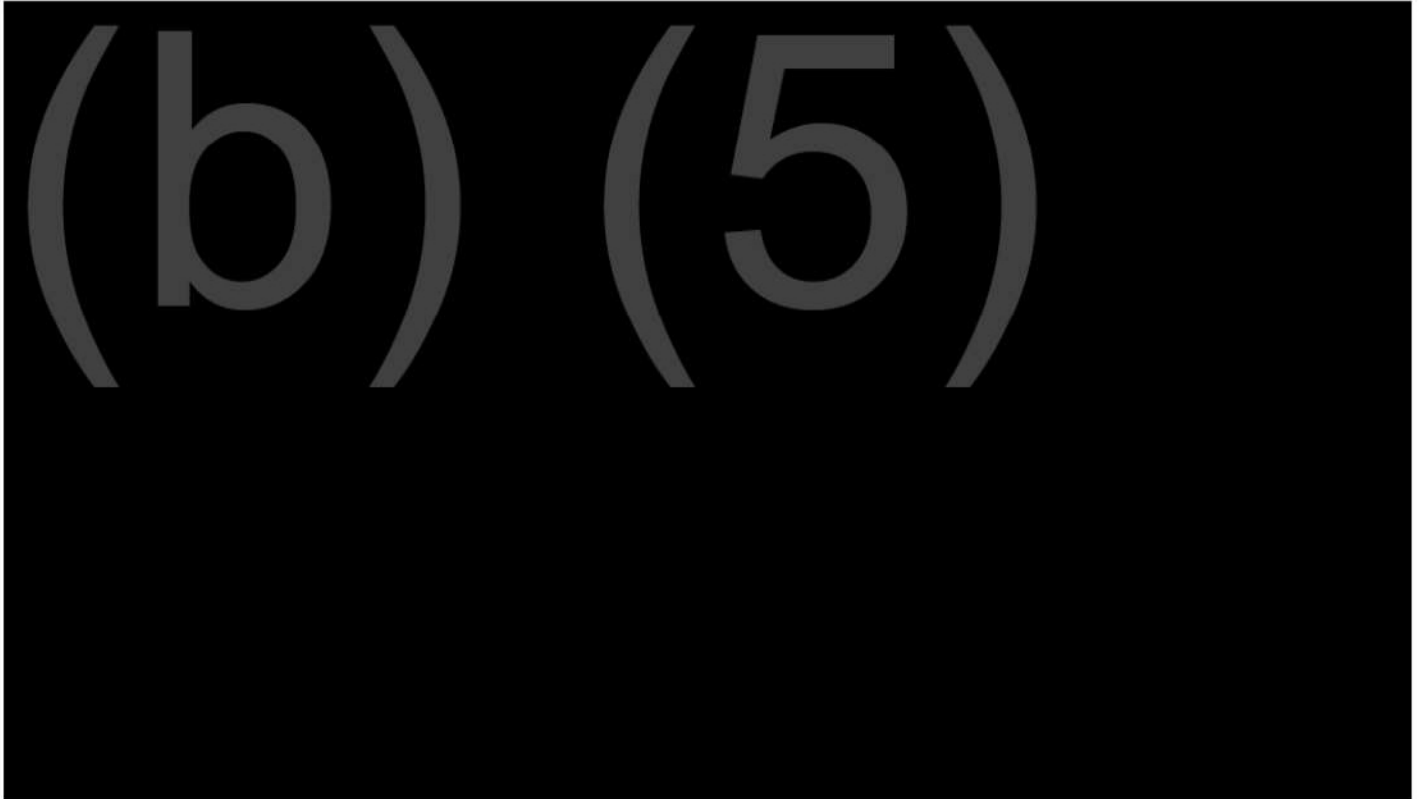
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28 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Mon, 5 Apr 2021 19:20:45 +0000
To: (b)(6)
Cc: (b)(6)
Subject: FW: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00
Attachments: 4890714 - Interim Response (1).docx, 4890714 - INCOMING 2021-04-02 CEG to VA (1).pdf

(b)(6)

Forwarding for review

(b)(6)

Program Analyst
Office of Congressional and Legislative Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6)

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 2:26 PM
To: (b)(6)@va.gov>
Subject: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

A new case task was created on: 2021-04-05 14:15:15 and assigned to OCLA.

Please see details below.

Case Subject: Letter from Senator Grassley to SECVA

Primary MOC:

Signature Level: SECVA

Task Created By: (b)(6)@va.gov

Office: OSVA-001B Executive Secretariat

Organization: OSVA

Task Name: LCT-280216

Due Date is on: 2021-04-05 17:00:00

Action Requested: Provide Concurrence

Requested Activity: Please secure OCLA's final concurrence on the attached interim response to Senator Grassley.. The incoming letter also attached.

To view case Task details and to provide response, please use the link below:

[\(b\)\(7\)\(E\)](https://(b)(7)(E))

(b)(7)(E)

Thank you!

For help with the VIEWS CCM, please contact your VIEWS Office Coordinator (VOC). A list of VOC's is available on the VIEWS Resource Center

[\(b\)\(7\)\(E\)](https://(b)(7)(E))

(b)(7)(E)

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
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JOHN CORNYN, TEXAS
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TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
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TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

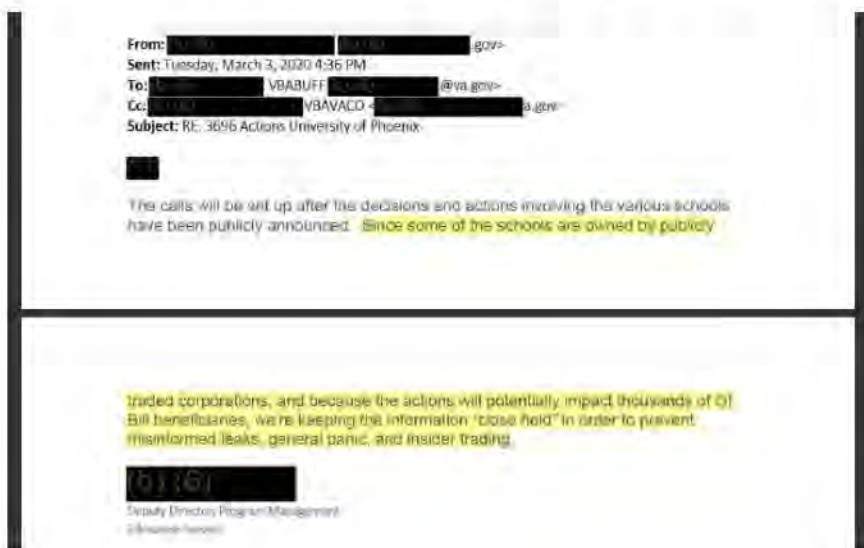
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

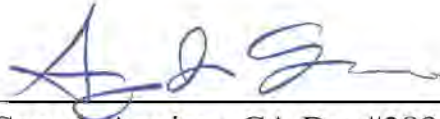
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

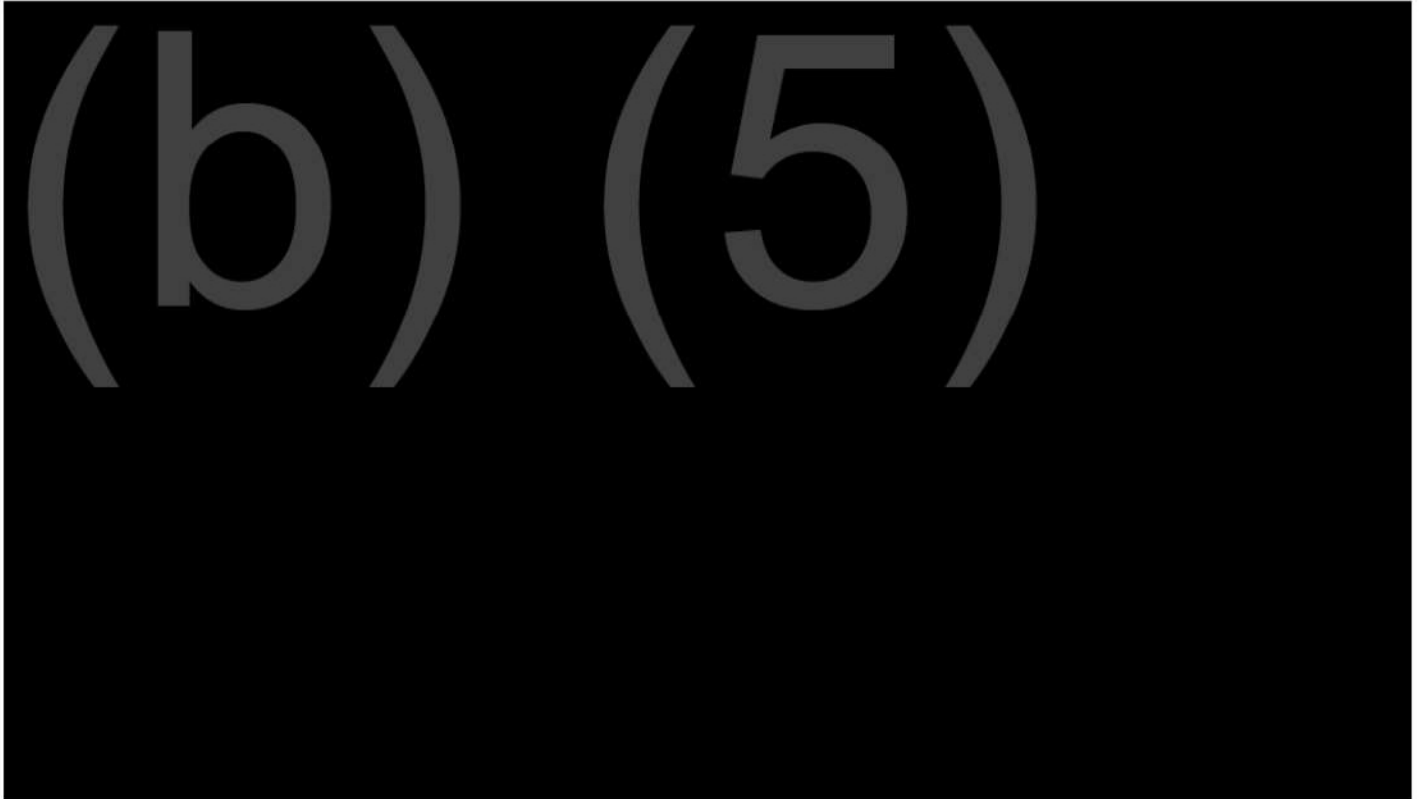
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Mon, 5 Apr 2021 19:40:30 +0000
To: (b)(6)
Cc:
Subject: RE: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00
Attachments: 4890714 - Interim Response (1).docx

Concur w/edit

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 3:21 PM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: FW: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

(b)(6)

Forwarding for review

(b)(6)

Program Analyst
Office of Congressional and Legislative Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6)

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 2:26 PM
To: (b)(6)@va.gov>
Subject: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

A new case task was created on: 2021-04-05 14:15:15 and assigned to OCLA.

Please see details below.

Case Subject: Letter from Senator Grassley to SECVA

Primary MOC:

Signature Level: SECVA

Task Created By (b)(6)@va.gov

Office: OSVA-001B Executive Secretariat

Organization: OSVA

Task Name: LCT-280216

Due Date is on: 2021-04-05 17:00:00

Action Requested: Provide Concurrence

Requested Activity: Please secure OCLA's final concurrence on the attached interim response to Senator Grassley.. The incoming letter also attached.

To view case Task details and to provide response, please use the link below:

[\(b\)\(7\)\(E\)](https://(b)(7)(E))

(b)(7)(E)

Thank you!

For help with the VIEWS CCM, please contact your VIEWS Office Coordinator (VOC). A list of VOC's is available on the VIEWS Resource Center

[\(b\)\(7\)\(E\)](https://(b)(7)(E))

(b)(7)(E)

From: (b)(6)
Sent: Mon, 5 Apr 2021 19:41:25 +0000
To: (b)(6)
Subject: FW: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00
Attachments: 4890714 - INCOMING 2021-04-02 CEG to VA (1).pdf, 4890714 - Interim Response (1).docx

Concur w/1 edit

(b)(6)
Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs
(b)(6)

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 3:21 PM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: FW: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

(b)(6)
Forwarding for review

(b)(6)
Program Analyst
Office of Congressional and Legislative Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6)

From: (b)(6)@va.gov>
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To view case Task details and to provide response, please use the link below:

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(b)(7)(E)

Thank you!

For help with the VIEWS CCM, please contact your VIEWS Office Coordinator (VOC). A list of VOC's is available on the VIEWS Resource Center

([\(b\)\(7\)\(E\)](https://(b)(7)(E)))

(b)(7)(E)

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
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JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

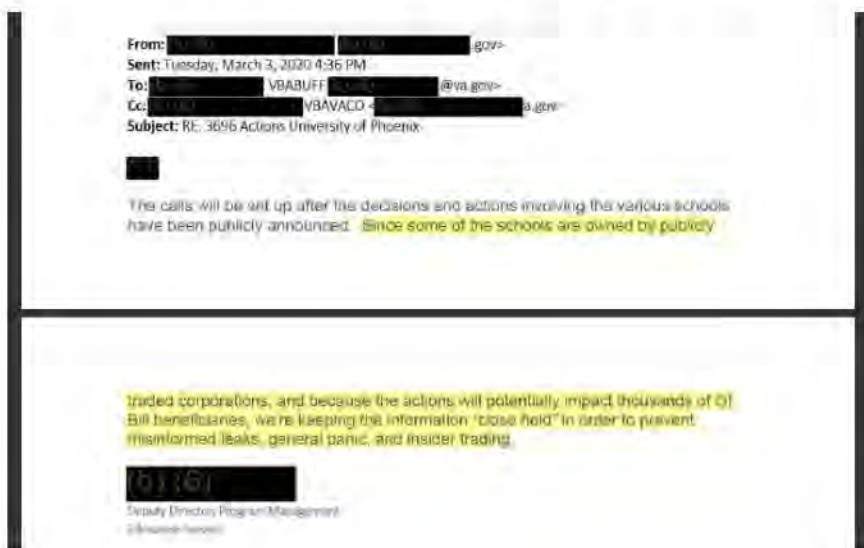
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniel Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

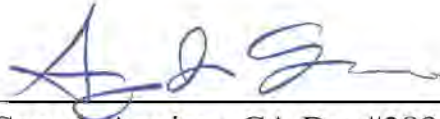
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

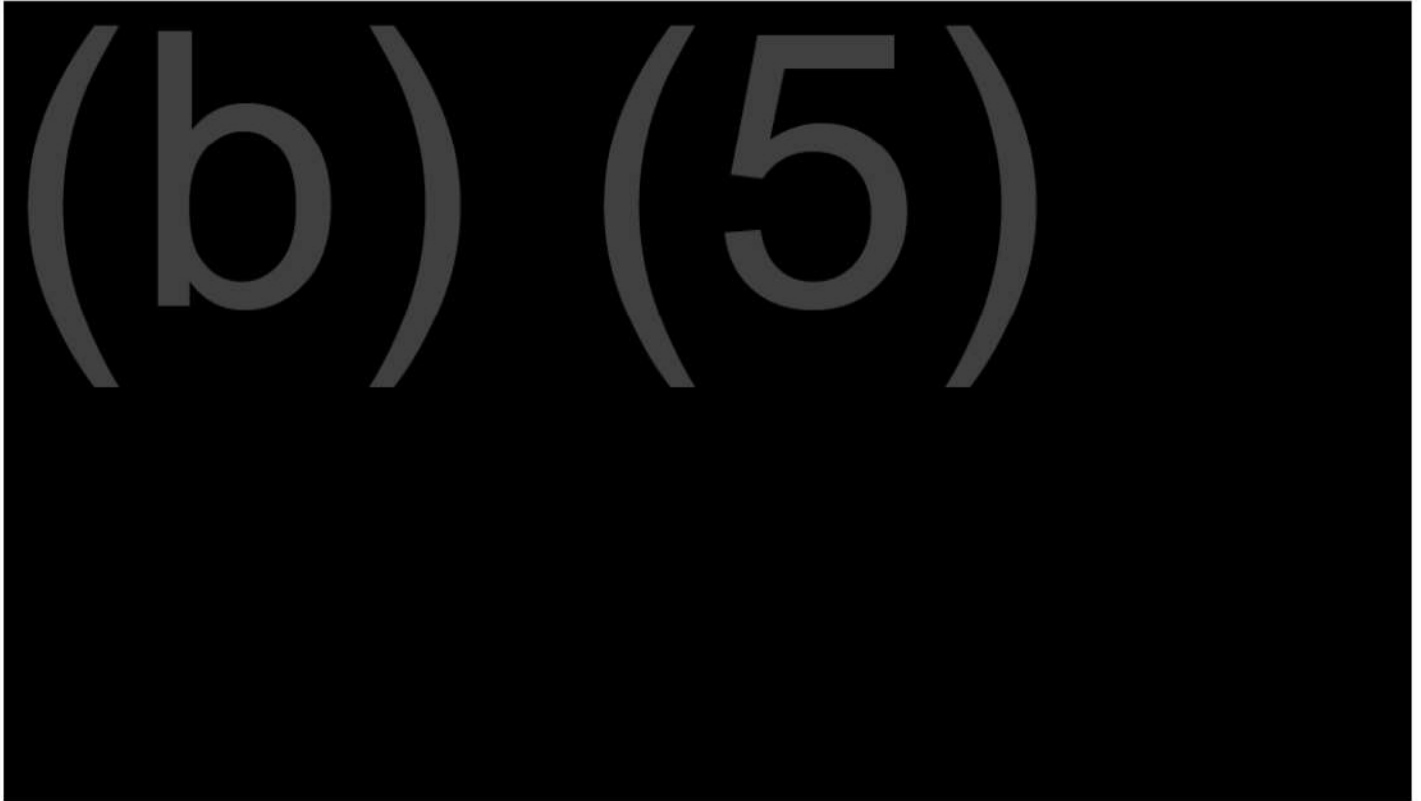
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Mon, 5 Apr 2021 19:51:34 +0000
To: (b)(6)
Subject: RE: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

Uploaded to #4890714/CATT-334911.

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 3:41 PM
To: (b)(6)@va.gov>; (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

Concur w/edit

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 3:21 PM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: FW: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

(b)(6)

Forwarding for review

(b)(6)
Program Analyst
Office of Congressional and Legislative Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6)

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 2:26 PM
To: (b)(6)@va.gov>
Subject: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00

A new case task was created on: 2021-04-05 14:15:15 and assigned to OCLA.

Please see details below.

Case Subject: Letter from Senator Grassley to SECVA

Primary MOC:
Signature Level: SECVA

Task Created By: (b)(6)@va.gov
Office: OSVA-001B Executive Secretariat
Organization: OSVA

Task Name: LCT-280216
Due Date is on: 2021-04-05 17:00:00
Action Requested: Provide Concurrence
Requested Activity: Please secure OCLA's final concurrence on the attached interim response to Senator Grassley.. The incoming letter also attached.

To view case Task details and to provide response, please use the link below:

[\(b\)\(7\)\(E\)](https://(b)(7)(E))
(b)(7)(E)

Thank you!

For help with the VIEWS CCM, please contact your VIEWS Office Coordinator (VOC). A list of VOC's is available on the VIEWS Resource Center

([\(b\)\(7\)\(E\)](https://(b)(7)(E)))
(b)(7)(E)

From: Gruntmeir, Doris (OGC)
Sent: Mon, 5 Apr 2021 20:50:38 +0000
To: Hogan, Michael R. (OGC)
Cc: (b)(6) (OGC)
Subject: RE: URGENT CLOSE HOLD MATTER /VIEWS 4890714
Attachments: 2021-04-02 CEG to VA.pdf

Michael,

(b)(5)

Doris L. Gruntmeir
Chief Counsel, Personnel Law Group
Office of General Counsel
Tel. (b)(6)

-----Original Appointment-----

From: (b)(6) OGC (b)(6) @va.gov > **On Behalf Of** (b)(6)
Sent: Monday, April 5, 2021 4:06 PM
To: OGC Personnel Law Group Supervisors
Subject: FW: URGENT CLOSE HOLD MATTER /VIEWS 4890714
When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Importance: High

Good afternoon,

I just wanted to confirm that we received this one?

-----Original Appointment-----

From: (b)(6) @va.gov >
Sent: Monday, April 5, 2021 4:02 PM
To: (b)(6) OGC (b)(6) OGC (b)(6) (OIG);
(b)(6) OAWP (b)(6)
(OAWP) (b)(6) (OAWP) (b)(6) (OIG)
Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Importance: High

Good afternoon (b)(6)

I want to make sure that PLG received this collab call mtg request on a sensitive matter. If this has already been received, please disregard my message.

Thank you.

Sincerely,

(b)(6)

Executive Assistant to the General Counsel
Office of General Counsel Suite 1030
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20240
OGC Main: (b)(6)
Direct: (b)(6)
Fax: 202-273-9299
Cell: (b)(6)

-----Original Appointment-----

From: (b)(6) <(b)(6)@va.gov>

Sent: Monday, April 5, 2021 1:05 PM

To: (b)(6) (OGC); (b)(6) (OIG); (b)(6)

(b)(6) (OAWP); (b)(6) (OAWP); (b)(6)

(b)(6) (OAWP); (b)(6) (OIG)

Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714

When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Importance: High

Good afternoon OGC, OAWP, OIG, OCLA and OSC Liaisons:

This is an invitation for the appropriate subject matter experts (SMEs) from your respective organizations to attend an urgent collaboration call to discuss and develop the Department's response to the attached incoming letter. This is a sensitive close hold matter and, therefore, **it is requested that you and your organization's SMEs limit the circulation of this and future communications about this issue to only the SMES who have a need to know.**

Please let me know if you have any questions

Microsoft Teams meeting

Join on your computer or mobile app

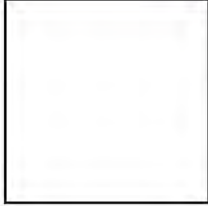
[Click here to join the meeting](#)

Or call in (audio only)

+1 872-701-0185 (b)(6) United States, Chicago

Phone Conference ID (b)(6)

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MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

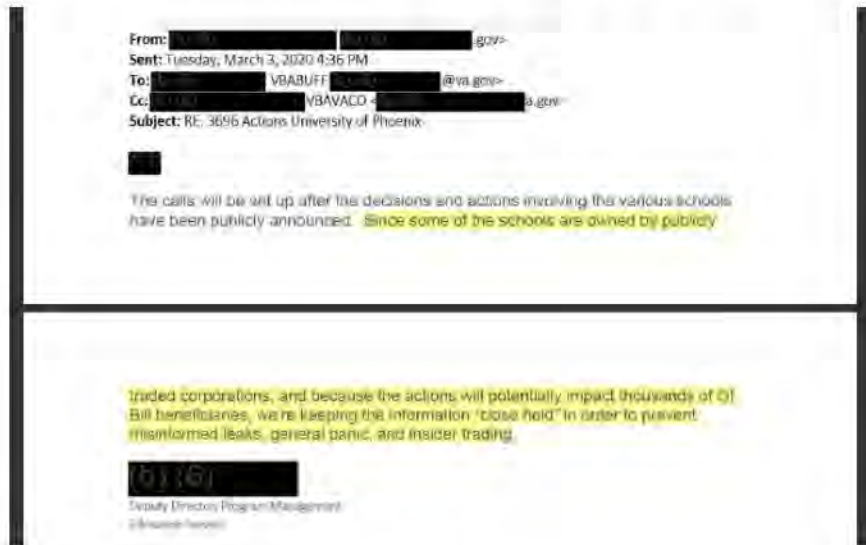
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

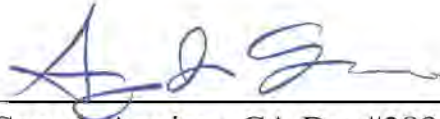
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

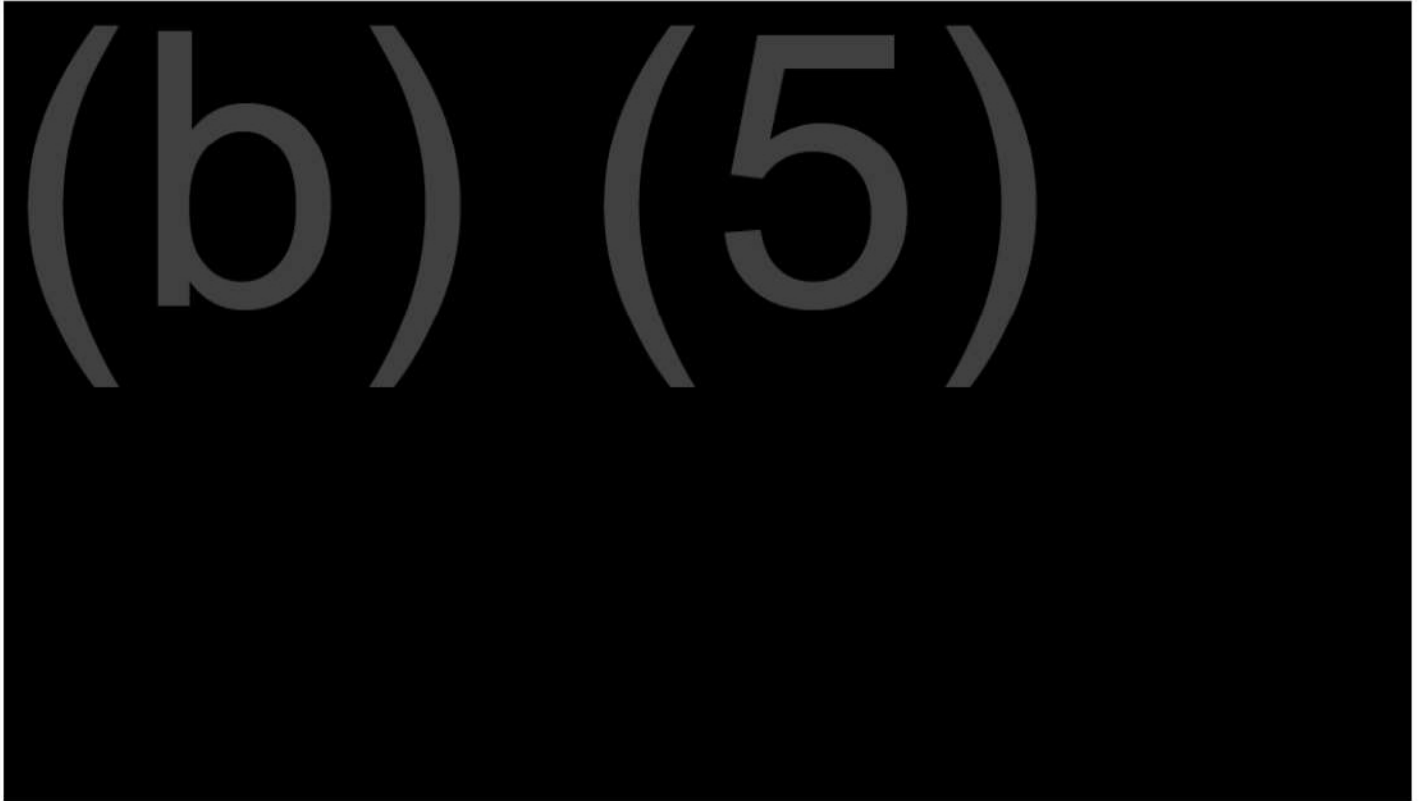
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28 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Tue, 6 Apr 2021 12:36:56 +0000
To: (b)(6) (OGC); (b)(6) (OIG); (b)(6) (b)(6)
(b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OIG); Hogan, Michael R. (OGC); Barrans, David (OGC)
Cc: (b)(6) (OGC); OGC Personnel Law Group Supervisors; (b)(6) (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC); Gruntmeir, Doris (OGC); (b)(6) (OGC)
Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
Attachments: 2021-04-02 CEG to VA.pdf
Importance: High

(b)(6)

Late notice, but please join the call if you can,.

Mike

-----Original Appointment-----

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 9:44 AM
To: (b)(6) (OGC); (b)(6) (OIG); (b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OIG); Hogan, Michael R. (OGC); Barrans, David (OGC)
Cc: (b)(6) (OGC); OGC Personnel Law Group Supervisors; (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC)
Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Importance: High

Good afternoon OGC, OAWP, OIG, OCLA and OSC Liaisons:

This is an invitation for the appropriate subject matter experts (SMEs) from your respective organizations to attend an urgent collaboration call to discuss and develop the Department's response to the attached incoming letter. This is a sensitive close hold matter and, therefore, **it is requested that you and your organization's SMEs limit the circulation of this and future communications about this issue to only the SMEs who have a need to know.**

Please let me know if you have any questions

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

+1 872-701-0185 (b)(6) United States, Chicago

Phone Conference ID: (b)(6)

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RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
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JOHN CORNYN, TEXAS
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TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

18 **COMPLAINT FOR DECLARATORY**
19 **AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

22
23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG’s Office of Counselor. A true and correct copy of the VA
3 OIG’s letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG’s
5 determination. A true and correct copy of Plaintiff’s appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG’s letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG’s appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF’S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff’s November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff’s November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

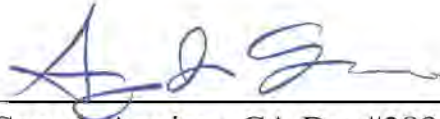
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff’s November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney’s fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

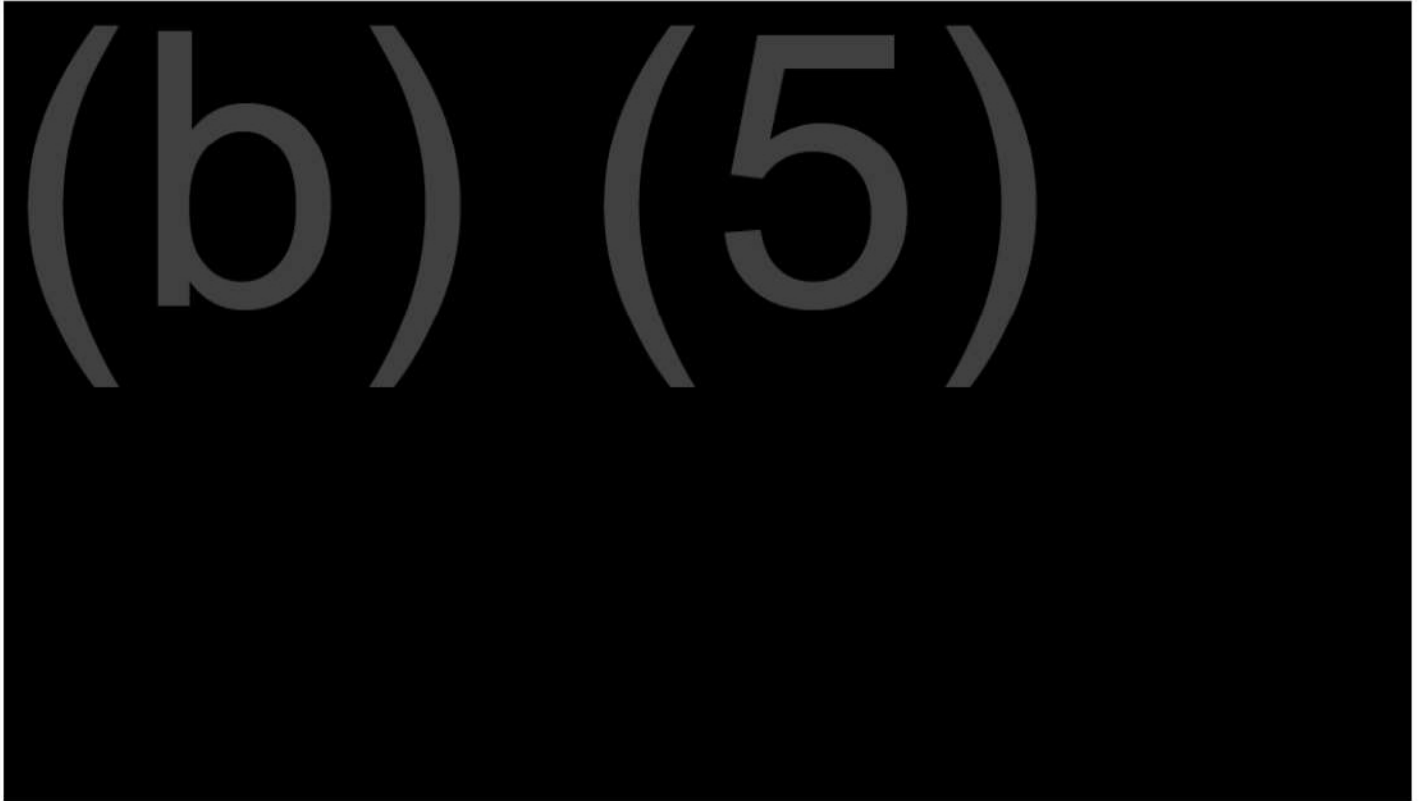
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: McVicker, Carrie A.
Sent: Tue, 6 Apr 2021 12:37:33 +0000
To: (b)(6)
Cc: (b)(6)
Subject: FW: HOT - letter from Senator Grassley to SECVA
Attachments: Tab1 4890714 Incoming Letter.pdf, Tab 2 4890714 - Grassley Interim response - Updated.docx, 4890714 VA Form 0907 (Interim).pdf
Importance: High

To print

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: (b)(6) @va.gov
Sent: Monday, April 5, 2021 6:18 PM
To: McVicker, Carrie A. <(b)(6)@va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

For review.

From: (b)(6) @va.gov
Sent: Monday, April 5, 2021 4:31 PM
To: (b)(6) @va.gov
Cc: McVicker, Carrie A. <(b)(6)@va.gov> <(b)(6)@va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

(b)(6)

Resending with an updated Grassley letter.

From: (b)(6)
Sent: Monday, April 5, 2021 4:09 PM
To: (b)(6) @va.gov
Cc: (b)(6) @va.gov; McVicker, Carrie A. <(b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA
Importance: High

(b)(6)

Attached for your review is the OSVA approval package for the VIEWS 4890714 interim response which includes the following:

- Tab 1 – incoming letter
- Tab 2 – interim response
- VA Form 0907

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Monday, April 5, 2021 1:21 PM
To: (b)(6)@va.gov>; (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA

Yes please.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 1:04 PM
To: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA

Should I prepare an interim?

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 12:56 PM
To: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA

Yes

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 12:51 PM
To: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA

Thanks (b)(6) My plan is to send out a collab call invitation to the appropriate correspondence liaisons (including for OIG) to allow them opportunity assign responsibility to the appropriate SME, per their internal processes. Should I add (b)(6) any way?

From: (b)(6) @va.gov
Sent: Monday, April 5, 2021 12:43 PM
To: (b)(6) @va.gov; McVicker, Carrie A. (b)(6) @va.gov
Cc: (b)(6) @va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

(b)(6) is OIG

From: (b)(6) @va.gov
Sent: Monday, April 5, 2021 12:36 PM
To: McVicker, Carrie A. (b)(6) @va.gov
Cc: (b)(6) @va.gov; (b)(6) @va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Ok. I will pull together a collab call for all recommended so that we can discuss as a group the best way to move forward. Does this one require an interim as well?

From: McVicker, Carrie A. (b)(6) @va.gov
Sent: Monday, April 5, 2021 12:29 PM
To: (b)(6) @va.gov
Cc: (b)(6) @va.gov; (b)(6) @va.gov
Subject: FW: HOT - letter from Senator Grassley to SECVA

(b)(6)

Rereading the letter – I recommend reaching out to:

--OGC
--OIG (b)(6) has a contact)
--OAWP
(b)(6) – for any OSC cases

Lets writer a quick interim on this.

Let us know if you want to talk about this one.

Thanks!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

(b)(6)

From: McClain, Kimberly A. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 7:35 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

Get [Outlook for iOS](#)

From: (b)(6)@va.gov>
Sent: Friday, April 2, 2021 6:51 PM
To: (b)(6)@va.gov
Cc: McVicker, Carrie A. (b)(6); Johnson, Glenn (SES); (b)(6) McClain, Kimberly A.; (b)(6)
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs
2026 Rayburn House Ofc. Bldg., Washington, DC 20515
Desk: (b)(6) Mobile: (b)(6)
[https://\(b\)\(6\)](https://(b)(6))

From: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6)@va.gov>
Cc: (b)(6) (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>; CEG (Judiciary-Rep) (b)(6)@judiciary-rep.senate.gov>
Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)

Investigative Counsel

Ranking Member Charles E. Grassley

U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

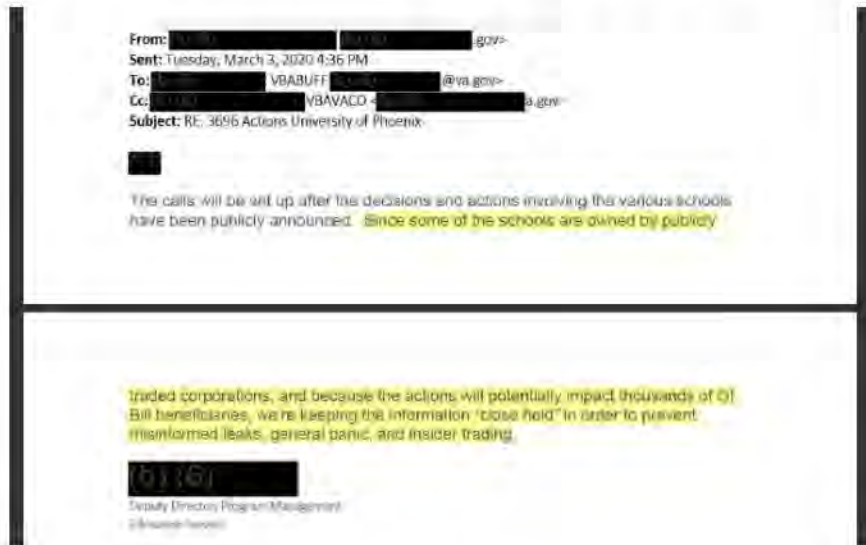
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
- 11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
- 25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
 carrie.wofford@veteranseducationsuccess.org would make this
 email responsive),
 b. Ang,
 c. Beynon,
 d. Bogue,
 e. Douglas-Gabriel,
 f. Halperin,
 g. Saunders,
 h. Safalow, and
 i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between
 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
 that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

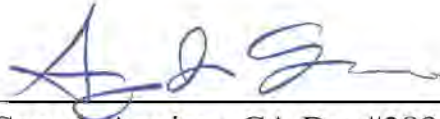
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

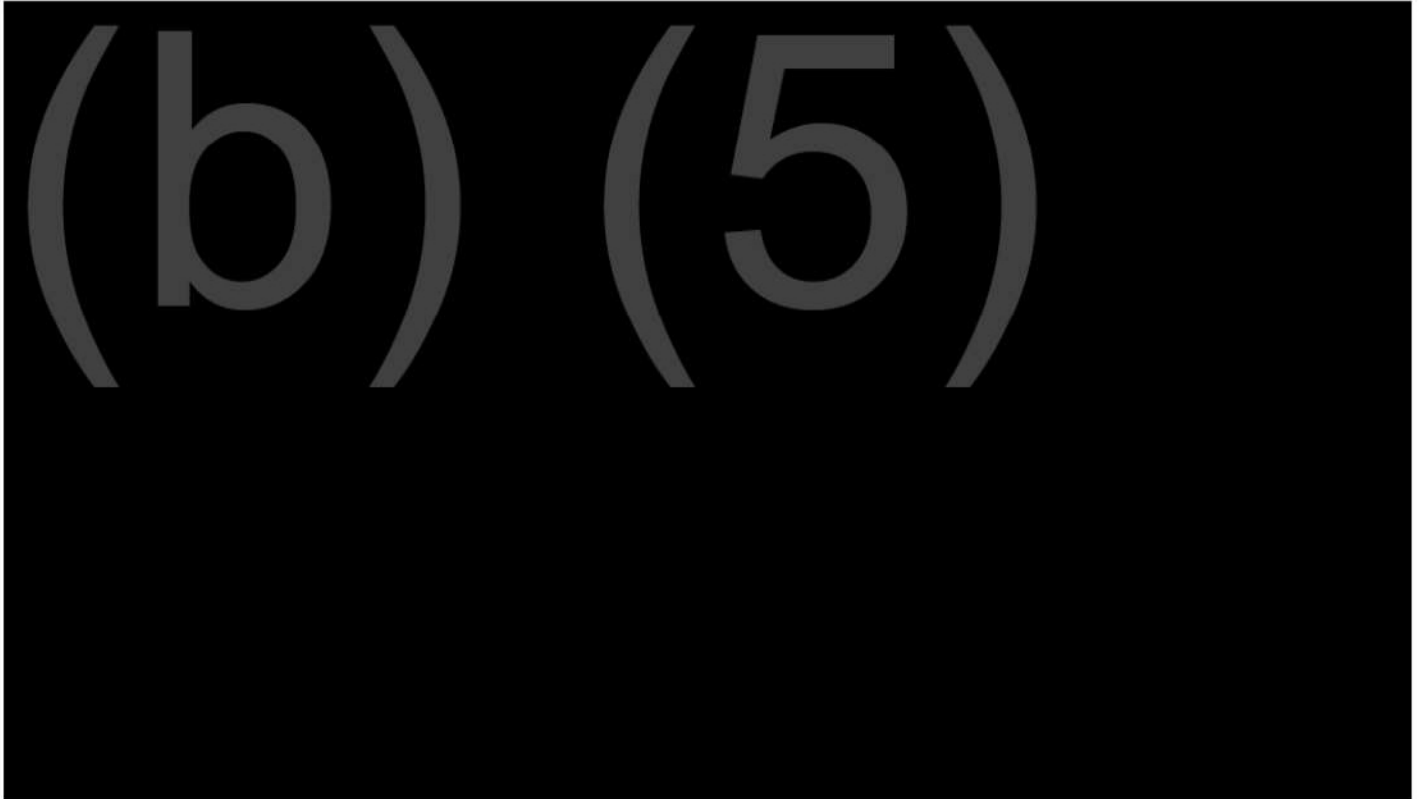
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

SUMMARY AND APPROVAL SHEET

NAME OF ORIGINATOR	VIEWS NO. 4890714	DATE 04/05/2021	DATE DUE
--------------------	----------------------	--------------------	----------

NAME OF EXECUTIVE SECRETARY STAFF (b)(6)	SUBJECT Interim Response to Senator Charles Grassely
---	---

ROUTING	INITIALS	DATE	COMMENTS
<input checked="" type="checkbox"/> EXEC SEC			
<input type="checkbox"/> DEPCOSVA			
<input type="checkbox"/> DEPCOSVA/WHL			
<input checked="" type="checkbox"/> COSVA			
<input type="checkbox"/> DEPSECVA			
<input type="checkbox"/> SECVA			

CONCURRENCE (b)(6)	OCLA/ 4/5/2021
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EXECUTIVE SUMMARY

Executive Summary Instruction

Purpose - Discussion - Recommendation

Purpose: To obtain OSVA approval of an interim response to an incoming letter from Senator Charles Grassly.

Background: The incoming letter from Senator Grassley concerns conflicts and ethical issues among senior officials at the Veterans Benefits Administration. He has requested a response by April 16, 2021. The purpose of the interim to acknowledge receipt of the incoming letter and to advise that VA is working to develop a comprehensive final response.

Recommendation: (b)(5)

From: (b)(6)
Sent: Tue, 6 Apr 2021 13:48:14 +0000
To: (b)(6) (OGC)
Subject: FW: URGENT CLOSE HOLD MATTER /VIEWS 4890714
Attachments: 2021-04-02 CEG to VA.pdf
Importance: High

(b)(5)

-----Original Appointment-----

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 8:52 AM
To: (b)(6) (OGC); (b)(6) (OIG); (b)(6)
(b)(6) (OAWP); (b)(6) (OAWP); (b)(6)
(b)(6) (OAWP); (b)(6) (OIG)
Cc: (b)(6) (OGC); OGC Personnel Law Group Supervisors (b)(6)
(OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC)
Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Importance: High

(b)(5); (b)(6)

-----Original Appointment-----

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 8:37 AM
To: (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6)
(b)(6) (OIG); (b)(6) (OAWP); (b)(6)
(b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OIG)
Cc: (b)(6) (OGC); OGC Personnel Law Group Supervisors
Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Importance: High

-----Original Appointment-----

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 4:06 PM
To: (b)(6) (OGC); (b)(6) (OIG); (b)(6)
(b)(6) (OAWP); (b)(6) (OAWP); (b)(6)
(b)(6) (OAWP); (b)(6) (OIG)
Cc: (b)(6) (OGC); OGC Personnel Law Group Supervisors

Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Importance: High

Good afternoon,

I just wanted to confirm that we received this one?

-----Original Appointment-----

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 4:02 PM
To: (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OIG);
(b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OIG)
Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714
When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Importance: High

Good afternoon (b)(6)

I want to make sure that PLG received this collab call mtg request on a sensitive matter. If this has already been received, please disregard my message.

Thank you.

Sincerely,

(b)(6)

Executive Assistant to the General Counsel
Office of General Counsel Suite 1030
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20240
OGC Main: (b)(6)
Direct: (b)(6)
Fax: 202-273-9299
Cell: (b)(6)

-----Original Appointment-----

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 1:05 PM
To: (b)(6) (OGC); (b)(6) (OIG); (b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OIG)

(b)(6) (OAWP) (b)(6) (OIG)

Subject: URGENT CLOSE HOLD MATTER /VIEWS 4890714

When: Tuesday, April 6, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Importance: High

Good afternoon OGC, OAWP, OIG, OCLA and OSC Liaisons:

This is an invitation for the appropriate subject matter experts (SMEs) from your respective organizations to attend an urgent collaboration call to discuss and develop the Department's response to the attached incoming letter. This is a sensitive close hold matter and, therefore, **it is requested that you and your organization's SMEs limit the circulation of this and future communications about this issue to only the SMES who have a need to know.**

Please let me know if you have any questions

Microsoft Teams meeting

Join on your computer or mobile app

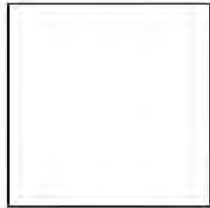
[Click here to join the meeting](#)

Or call in (audio only)

+1 872-701-0185 (b)(6) United States, Chicago

Phone Conference ID: (b)(6)

[Find a local number](#) | [Reset PIN](#)



[Learn More](#) | [Meeting options](#)

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RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
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LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
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TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

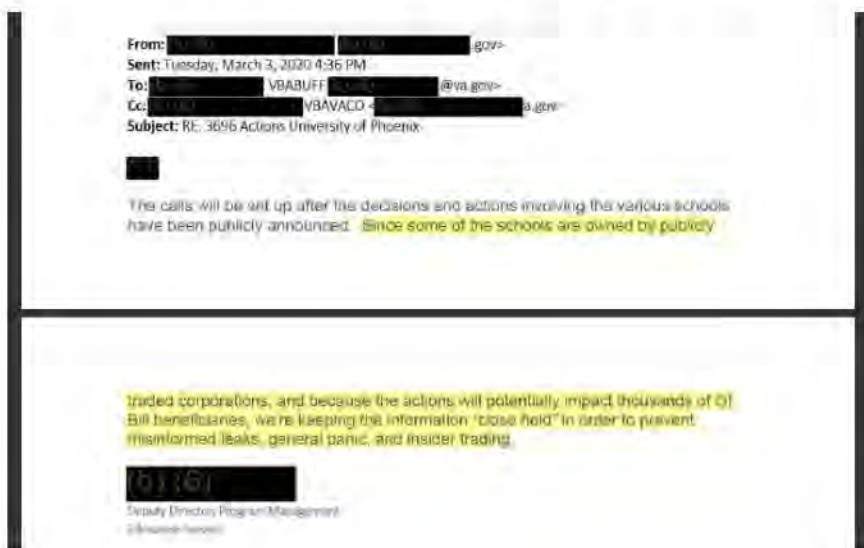
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

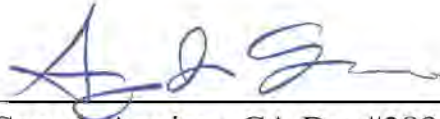
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

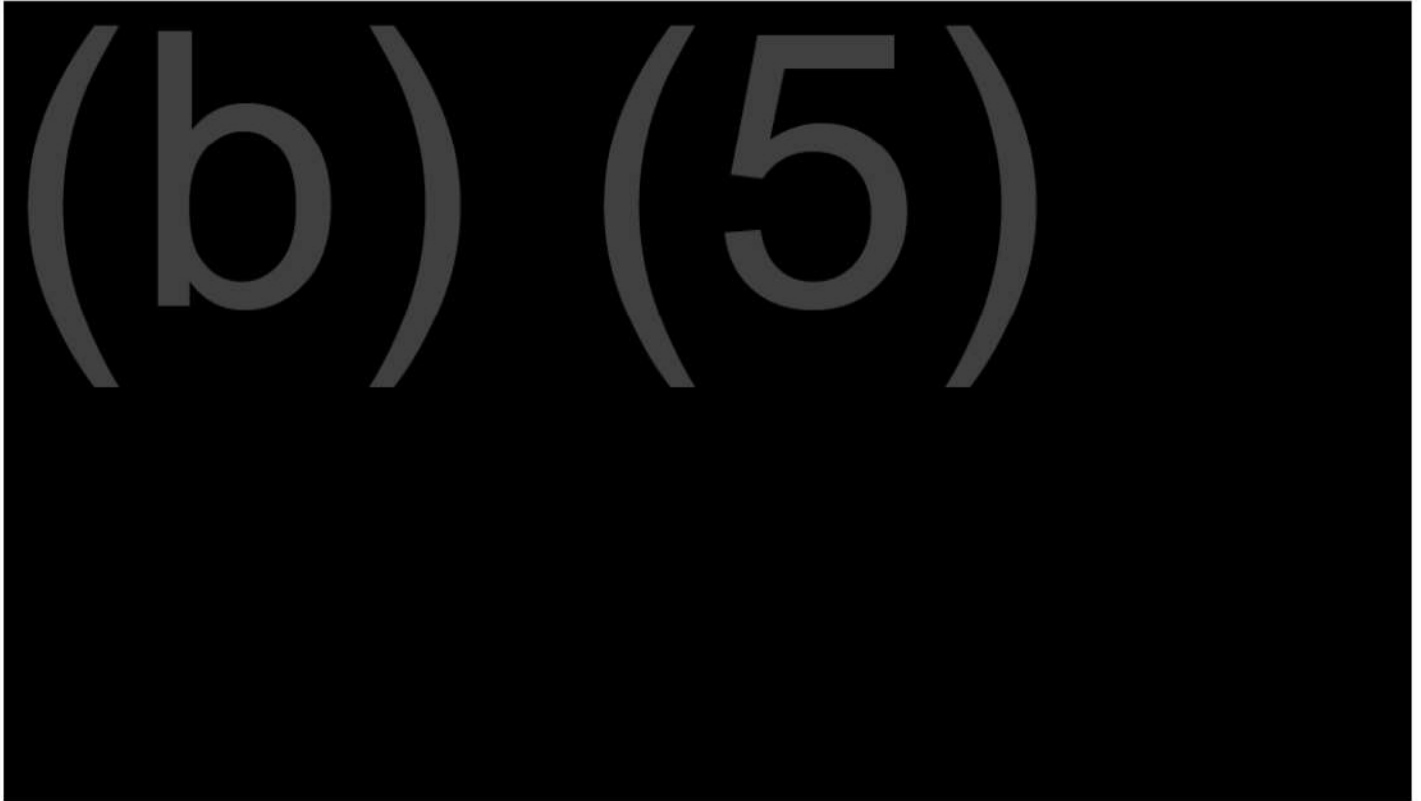
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Tue, 6 Apr 2021 14:44:06 +0000
To: McVicker, Carrie A.
Cc: (b)(6)
Subject: FW: Plan for VIEWS 4890714

FYI.

From: (b)(6)
Sent: Tuesday, April 6, 2021 10:42 AM
To: (b)(6)@va.gov>
Subject: FW: Plan for VIEWS 4890714

All OSC referrals are first offered to OIG for first right of refusal. If OSC referral is related to VBA, VHA, etc., it will be assigned to that office. While OMI receives the majority of referrals because of healthcare/VHA facility, they do not receive all of them. In a recent case, it was assigned to the DCOS due to the nature of the issue. Thanks.

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 10:38 AM
To: (b)(6)@va.gov> (b)(6)@va.gov>
Cc: (b)(6)@va.gov> (b)(6)@va.gov>
Subject: RE: Plan for VIEWS 4890714

(b)(6) – we have the OMI POCs but I just cannot see that the office of Medical investigations would have taken this one on. It makes no sense.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 10:37 AM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: Re: Plan for VIEWS 4890714

Thank you, good info. I will see if I can find a POC for OMI. My computer is restarting 😊

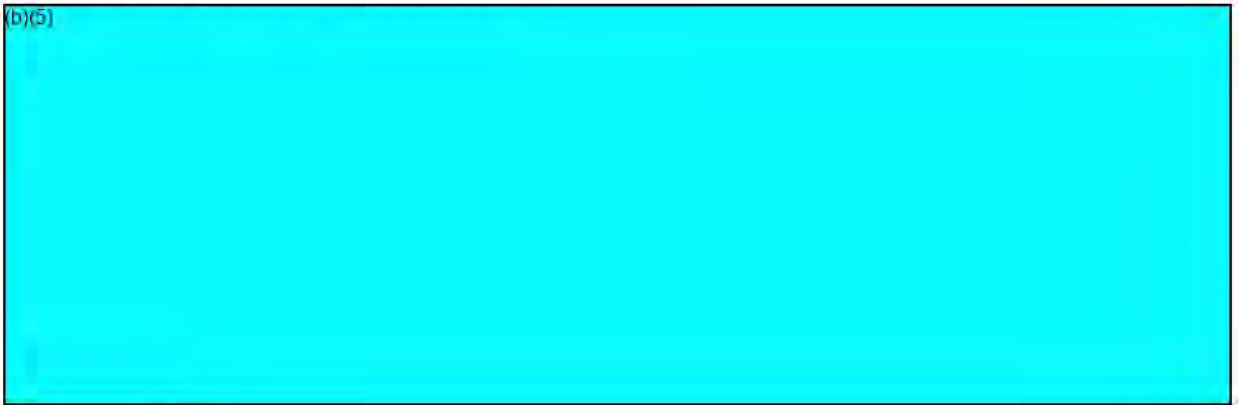
(b)(6) on the run

(b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 10:24:33 AM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: Plan for VIEWS 4890714

Just got off the phone with OGC and OAWP.

(b)(5)

A large rectangular area of the document is completely redacted with a solid black fill. The redaction covers the majority of the email's body text.

(b)(6)
Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

(b)(6)

From: McClain, Kimberly A.
Sent: Tue, 6 Apr 2021 15:59:57 +0000
To: McVicker, Carrie A.
Cc: Johnson, Glenn (SES) (b)(6)
Subject: RE: Plan for VIEWS 4890714

You are welcome. Now I could type "whether" that would be great 😊

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 11:20 AM
To: McClain, Kimberly A. (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov> (b)(6)@va.gov>
Subject: RE: Plan for VIEWS 4890714

Sounds good. Thanks Kim!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: McClain, Kimberly A. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 11:12 AM
To: McVicker, Carrie A. (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov> (b)(6)@va.gov>
Subject: RE: Plan for VIEWS 4890714

+ Glenn FYSA

Thank you for the update.

We have also received the request from one his staffers to discuss the letter (b)(5)

(b)(5)

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Email (b)(6)@va.gov

Office Phone (b)(6)

Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov

Sent: Tuesday, April 6, 2021 10:56 AM

To: McClain, Kimberly A. (b)(6)@va.gov

Subject: FW: Plan for VIEWS 4890714

Importance: High

Kim – see below from our collab call this AM on the Grassley letter. (b)(5)

(b)(5)

We are still crafting an interim response for your signature.

Carrie

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: (b)(6)@va.gov

Sent: Tuesday, April 6, 2021 10:25 AM

To: (b)(6)@va.gov

Cc: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov

Subject: Plan for VIEWS 4890714

Importance: High

Just got off the phone with OGC and OAWP.

(b)(6)



(b)(6)


Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW




(b)(6)

From: McVicker, Carrie A.
Sent: Tue, 6 Apr 2021 17:20:38 +0000
To: McClain, Kimberly A.
Subject: FW: HOT INTERIM- letter from Senator Grassley to SECVA
Attachments: Tab1 4890714 Incoming Letter.pdf, Tab 2 4890714 - Grassley Interim response - Updated.docx, 4890714 VA Form 0907 (Interim).pdf
Importance: High


Kim – COS has approved for your signature. Just need your approval for autopen.



Thanks!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
@va.gov

From: McVicker, Carrie A
Sent: Tuesday, April 6, 2021 8:38 AM
To: @va.gov>
Cc: @va.gov>; @va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

To print

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
@va.gov

From: @va.gov>
Sent: Monday, April 5, 2021 6:18 PM
To: McVicker, Carrie A. @va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

For review.

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 4:31 PM
To: (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov> (b)(6)@va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

(b)(6)

Resending with an updated Grassley letter.

From: (b)(6)
Sent: Monday, April 5, 2021 4:09 PM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA
Importance: High

(b)(6)

Attached for your review is the OSVA approval package for the VIEWS 4890714 interim response which includes the following:

- Tab 1 – incoming letter
- Tab 2 – interim response
- VA Form 0907

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Monday, April 5, 2021 1:21 PM
To: (b)(6)@va.gov> (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA

Yes please.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 1:04 PM
To: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>

Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Should I prepare an interim?

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:56 PM
To: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Yes

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:51 PM
To: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Thanks (b)(6) My plan is to send out a collab call invitation to the appropriate correspondence liaisons (including for OIG) to allow them opportunity assign responsibility to the appropriate SME, per their internal processes. Should I add (b)(6) any way?

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:43 PM
To: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

(b)(6) s OIG

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:36 PM
To: McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov; (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Ok. I will pull together a collab call for all recommended so that we can discuss as a group the best way to move forward. Does this one require an interim as well?

From: McVicker, Carrie A. (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:29 PM
To: (b)(6)@va.gov
Cc: (b)(6)@va.gov; (b)(6)@va.gov
Subject: FW: HOT - letter from Senator Grassley to SECVA

(b)(6)

Rereading the letter – I recommend reaching out to:

--OGC

--OIG (b)(6) has a contact)

--OAWP

(b)(6) for any OSC cases

Lets writer a quick interim on this.

Let us know if you want to talk about this one.

Thanks!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: McClain, Kimberly A. (b)(6)@va.gov>

Sent: Saturday, April 3, 2021 7:35 AM

To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>;
Jackson, Tahmika R. (OGC) (b)(6)@va.gov>

Cc: Johnson, Glenn (SES) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>

Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

Get [Outlook for iOS](#)

From: (b)(6)@va.gov>

Sent: Friday, April 2, 2021 6:51 PM

To: (b)(6)@va.gov

Cc: McVicker, Carrie A. (b)(6) Johnson, Glenn (SES); (b)(6) McClain, Kimberly A.;

(b)(6)

Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)

Congressional Relations Officer | Department of Veterans Affairs
2026 Rayburn House Ofc. Bldg., Washington, DC 20515

Desk: (b)(6) Mobile: (b)(6)

[\(b\)\(6\)](https://(b)(6))

From: (b)(6) Judiciary-Rep) (b)(6) <(b)(6)@judiciary-rep.senate.gov>

Sent: Friday, April 2, 2021 5:02 PM

To: (b)(6) <(b)(6)@va.gov>

Cc: (b)(6) Judiciary-Rep) (b)(6) <(b)(6)@judiciary-rep.senate.gov>; CEG (Judiciary-Rep)

(b)(6) <(b)(6)@judiciary-rep.senate.gov>

Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)

Investigative Counsel
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

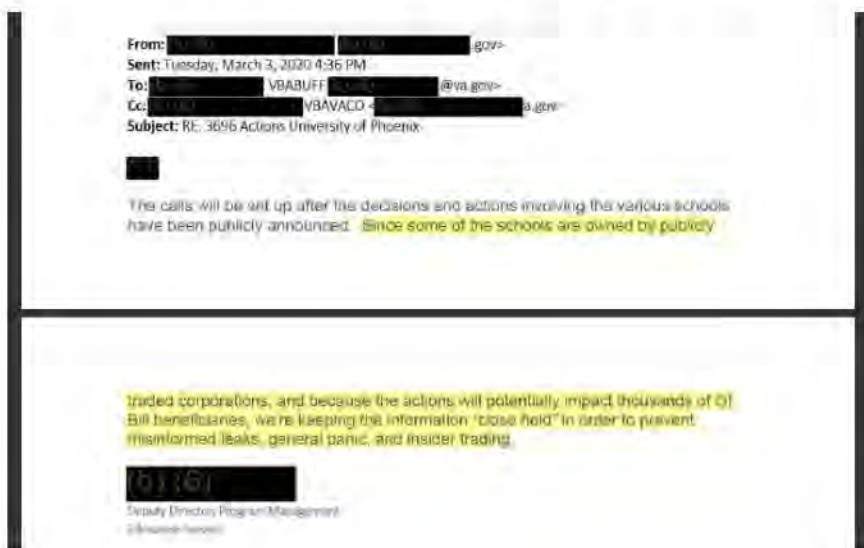
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

22
23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG’s Office of Counselor. A true and correct copy of the VA
3 OIG’s letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG’s
5 determination. A true and correct copy of Plaintiff’s appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG’s letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG’s appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF’S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff’s November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff’s November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

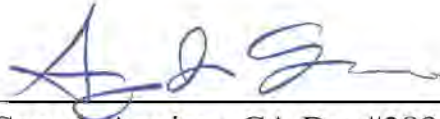
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff’s November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney’s fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

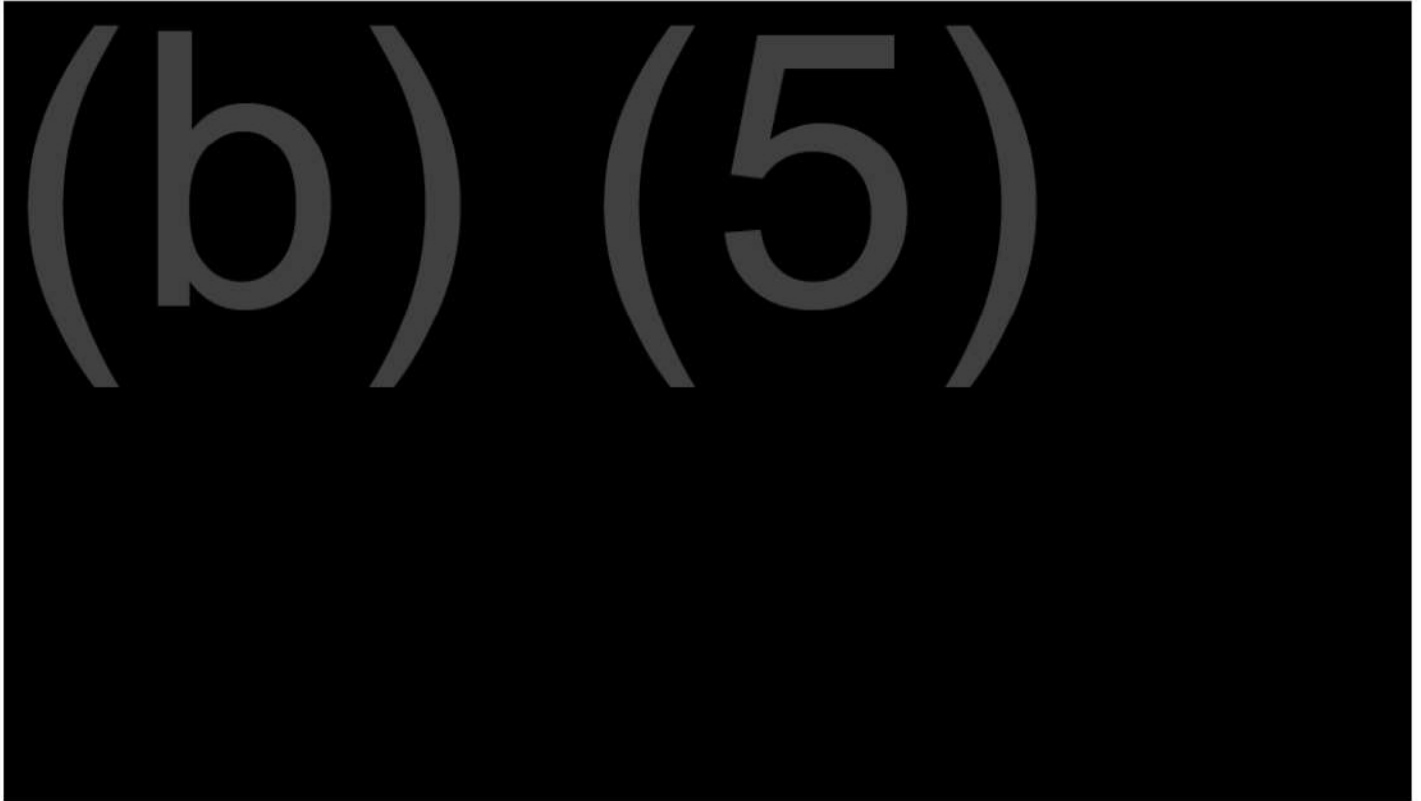
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

SUMMARY AND APPROVAL SHEET

NAME OF ORIGINATOR _____ VIEWS NO. 4890714 DATE 04/05/2021 DATE DUE _____

NAME OF EXECUTIVE SECRETARY STAFF (b)(5) SUBJECT Interim Response to Senator Charles Grassely

ROUTING	INITIALS	DATE	COMMENTS
<input checked="" type="checkbox"/> EXEC SEC			
<input type="checkbox"/> DEPCOSVA			
<input type="checkbox"/> DEPCOSVA/WHL			
<input checked="" type="checkbox"/> COSVA			
<input type="checkbox"/> DEPSECVA			
<input type="checkbox"/> SECVA			

CONCURRENCE
 (b)(5) (OCLA/ 4/5/2021)

EXECUTIVE SUMMARY

Executive Summary Instruction

Purpose - Discussion - Recommendation

Purpose: To obtain OSVA approval of an interim response to an incoming letter from Senator Charles Grassly.

Background: The incoming letter from Senator Grassley concerns conflicts and ethical issues among senior officials at the Veterans Benefits Administration. He has requested a response by April 16, 2021. The purpose of the interim to acknowledge receipt of the incoming letter and to advise that VA is working to develop a comprehensive final response.

Recommendation: (b)(5)

From: McClain, Kimberly A.
Sent: Tue, 6 Apr 2021 17:35:11 +0000
To: McVicker, Carrie A.
Cc: McClain, Kimberly A.
Subject: RE: HOT INTERIM- letter from Senator Grassley to SECVA

Autopen approved. Thank you

V/R,

Kimberly McClain, PhD (she/her)
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 1:21 PM
To: McClain, Kimberly A. (b)(6)@va.gov>
Subject: FW: HOT INTERIM- letter from Senator Grassley to SECVA
Importance: High

Kim – COS has approved for your signature. Just need your approval for autopen.

Thanks!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: McVicker, Carrie A.
Sent: Tuesday, April 6, 2021 8:38 AM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov> (b)(6)@va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

To print

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 6:18 PM
To: McVicker, Carrie A. (b)(6)@va.gov
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

For review.

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 4:31 PM
To: (b)(6)@va.gov
Cc: McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov
Subject: FW: HOT - letter from Senator Grassley to SECVA
Importance: High

(b)(6)

Resending with an updated Grassley letter.

From: (b)(6)
Sent: Monday, April 5, 2021 4:09 PM
To: (b)(6)@va.gov
Cc: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA
Importance: High

(b)(6)

Attached for your review is the OSVA approval package for the VIEWS 4890714 interim response which includes the following:

- Tab 1 – incoming letter
- Tab 2 – interim response
- VA Form 0907

From: McVicker, Carrie A. (b)(6)@va.gov
Sent: Monday, April 5, 2021 1:21 PM
To: (b)(6)@va.gov; (b)(6)@va.gov

Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Yes please.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 1:04 PM
To: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Should I prepare an interim?

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:56 PM
To: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Yes

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:51 PM
To: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

Thanks, (b)(6) My plan is to send out a collab call invitation to the appropriate correspondence liaisons (including for OIG) to allow them opportunity assign responsibility to the appropriate SME, per their internal processes. Should I add (b)(6) any way?

From: (b)(6)@va.gov
Sent: Monday, April 5, 2021 12:43 PM
To: (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov
Cc: (b)(6)@va.gov
Subject: RE: HOT - letter from Senator Grassley to SECVA

(b)(6) is OIG

From: (b)(6)@va.gov>
Sent: Monday, April 5, 2021 12:36 PM
To: McVicker, Carrie A. (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: RE: HOT - letter from Senator Grassley to SECVA

Ok. I will pull together a collab call for all recommended so that we can discuss as a group the best way to move forward. Does this one require an interim as well?

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Monday, April 5, 2021 12:29 PM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: FW: HOT - letter from Senator Grassley to SECVA

Kathy.

Rereading the letter – I recommend reaching out to:

--OGC
--OIG (b)(6) has a contact)
--OAWP
(b)(6) – for any OSC cases

Lets writer a quick interim on this.

Let us know if you want to talk about this one.

Thanks!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: McClain, Kimberly A. (b)(6)@va.gov>
Sent: Saturday, April 3, 2021 7:35 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>; Jackson, Tahmika R. (OGC) (b)(6)@va.gov>
Cc: Johnson, Glenn (SES) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: HOT - letter from Senator Grassley to SECVA

Chief, Dick, Tahmika

Placing RM Grassley's letter, Senate Judiciary, at the top of your inbox. This has a short suspense; 16 April.

Standing by for questions.

Thank you,

Kim

Get [Outlook for iOS](#)

From: (b)(6) <(b)(6)@va.gov>
Sent: Friday, April 2, 2021 6:51 PM
To: (b)(6) <(b)(6)@va.gov>
Cc: McVicker, Carrie A. <(b)(6)>; Johnson, Glenn (SES) <(b)(6)>; McClain, Kimberly A.; <(b)(6)>
Subject: HOT - letter from Senator Grassley to SECVA

Please see attached letter from Senator Grassley in his role as Ranking Member of the Committee on the Judiciary – he is requesting a response by APRIL 16

Respectfully,

(b)(6)
Congressional Relations Officer | Department of Veterans Affairs
2026 Rayburn House Ofc. Bldg., Washington, DC 20515
Desk: (b)(6) | Mobile: (b)(6)
[https://\(b\)\(6\)](https://(b)(6))

From: (b)(6) (Judiciary-Rep) <(b)(6)@judiciary-rep.senate.gov>
Sent: Friday, April 2, 2021 5:02 PM
To: (b)(6) <(b)(6)@va.gov>
Cc: (b)(6) (Judiciary-Rep) <(b)(6)@judiciary-rep.senate.gov>; CEG (Judiciary-Rep) <(b)(6)@judiciary-rep.senate.gov>
Subject: [EXTERNAL] 2021-04-02 CEG to VA

Hello (b)(6)

Please find the attached letter from Senator Grassley to the U.S. Department of Veterans Affairs.

Please confirm receipt of this letter. Thank you.

--

Best Regards,

(b)(6)
Investigative Counsel

Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary

From: (b)(6)
Sent: Tue, 6 Apr 2021 18:52:06 +0000
To: (b)(6)
Cc: (b)(6); McVicker, Carrie A.; (b)(6)
Subject: DISPATCHED TO 009 VIEWS # 4890714 - Letter from Senator Grassley to SECVA.msg
Attachments: 4890714 - Grassely.pdf

Good Afternoon:

DAS OCLA signed Interim response dated on 4-6-2021, please dispatch to the hill.

(b)(6)
Department of Veterans Affairs
Office of the Executive Secretary
(b)(6)



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON

April 6, 2021

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your April 2, 2021, letter to the Department of Veterans Affairs (VA) regarding conflicts and ethical issues among senior officials at the Veterans Benefits Administration. I appreciate the opportunity to respond on behalf of the Department.

VA takes this matter very seriously and we are currently working to fully address the issues raised in your letter and we will follow-up with a complete response.

Should you have any questions, please have a member of your staff contact Ms. (b)(6) Congressional Relations Officer, at (b)(6) or (b)(6) @va.gov..

Thank you for your continued support of our mission.

Sincerely,

A handwritten signature in blue ink that reads "Kimberly McClain".

Kimberly McClain, Ph.D.
Deputy Assistant Secretary for Congressional
and Legislative Affairs

From: (b)(6)
Sent: Wed, 7 Apr 2021 13:41:40 +0000
To: Hogan, Michael R. (OGC)
Cc: Hipolit, Richard (OGC);McVicker, Carrie A. (b)(6)
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Good morning Mike:

Thank you for this guidance and update. I will work with my leadership and the OCLA Correspondence liaison, copied above to develop a plan of execution and we will give you updates as they come available.

Regards,

(b)(6)

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6)@va.gov>
Cc: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: *The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _*

From: McVicker, Carrie A.
Sent: Wed, 7 Apr 2021 14:38:44 +0000
To: Bradsher, Tanya J.
Cc: McClain, Kimberly A.
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

Please see below from OGC regarding the Grassley letter on VBA (b)(5)

(b)(5)

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) [@va.gov](mailto:(b)(6)@va.gov)

From: Hogan, Michael R. (OGC) (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>
Cc: Hipolit, Richard (OGC) (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

From: McVicker, Carrie A.
Sent: Wed, 7 Apr 2021 15:01:29 +0000
To: Bradsher, Tanya J.
Cc: McClain, Kimberly A.
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Attachments: Tab1 4890714 Incoming Letter.pdf
Importance: High

Tanya.

(b)(5)

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) [@va.gov](mailto:(b)(6)@va.gov)

From: Hogan, Michael R. (OGC) (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>
Cc: Hipolit, Richard (OGC) (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6)

(Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.

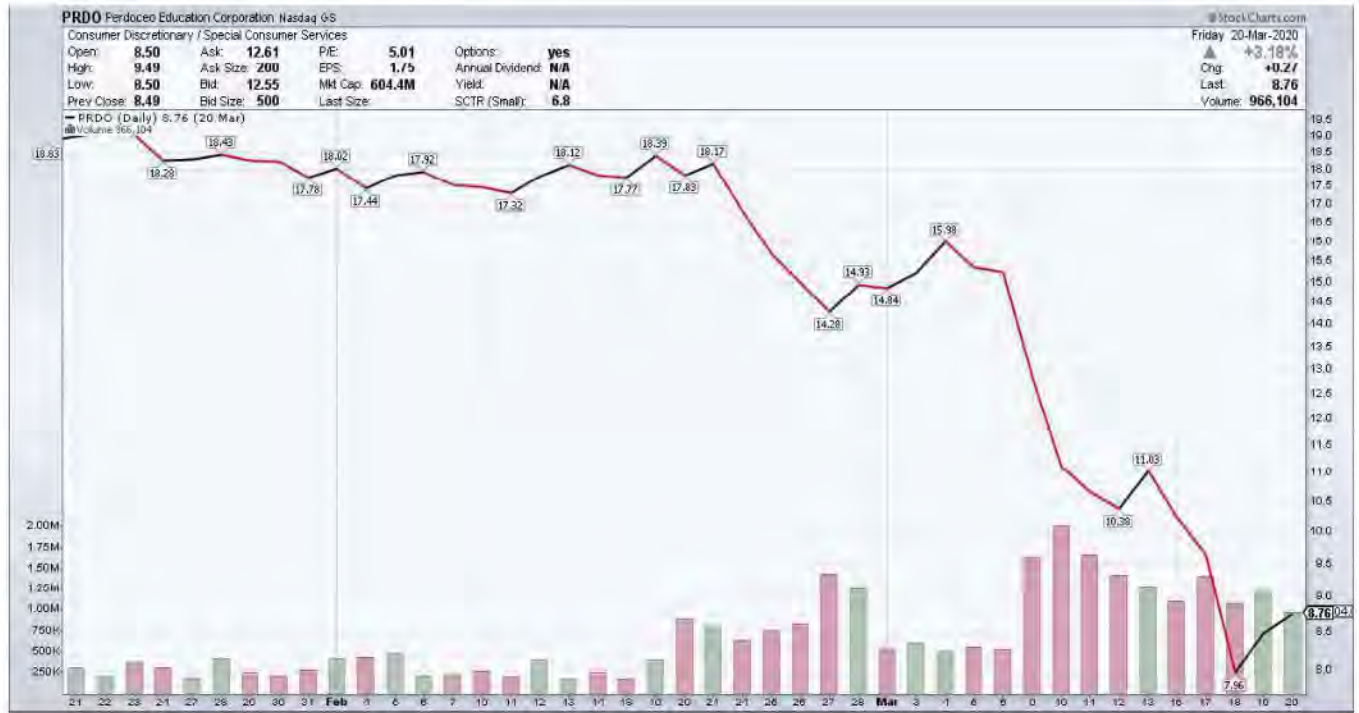


17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

22
23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

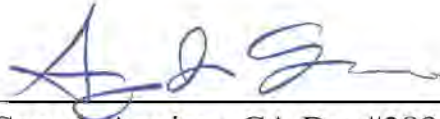
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

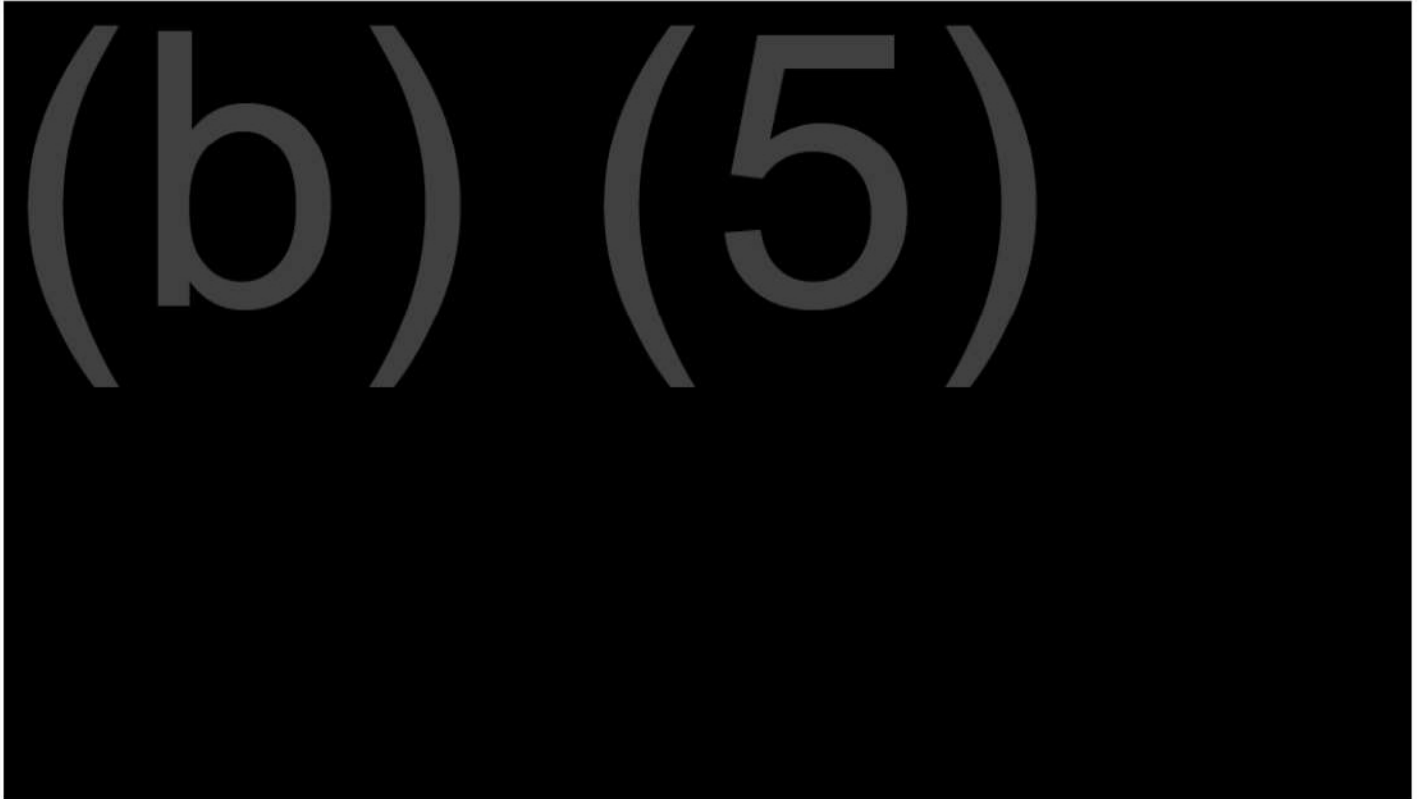
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: McClain, Kimberly A.
Sent: Wed, 7 Apr 2021 15:04:01 +0000
To: (b)(6) Johnson, Glenn (SES)
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Received. Thank you

V/R,

Kimberly McClain, PhD
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone: (b)(6)
Cell (b)(6)

From: (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 9:44 AM
To: McClain, Kimberly A. (b)(6)@va.gov>; Johnson, Glenn (SES) (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

FYSA – email traffic to the writer.

(b)(6)
Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs
(b)(6)

From: (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 9:42 AM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Cc: Hipolit, Richard (OGC) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Good morning Mike:

Thank you for this guidance and update. I will work with my leadership and the OCLA Correspondence liaison, copied above to develop a plan of execution and we will give you updates as they come available.

Regards,

(b)(6)

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6) @va.gov>
Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 15:09:11 +0000
To: Hipolit, Richard (OGC)
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Attachments: Tab1 4890714 Incoming Letter.pdf
Importance: High

Dick,

(b)(5) Please

let me know your thoughts.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6) @va.gov

Cell: (b)(6)

From: McVicker, Carrie A. (b)(6) @va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. (b)(6) @va.gov>
Cc: McClain, Kimberly A. (b)(6) @va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

(b)(5)

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6) @va.gov>
Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
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RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
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JOHN CORNYN, TEXAS
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TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
 carrie.wofford@veteranseducationsuccess.org would make this
 email responsive),
 b. Ang,
 c. Beynon,
 d. Bogue,
 e. Douglas-Gabriel,
 f. Halperin,
 g. Saunders,
 h. Safalow, and
 i. Shireman.
 4) All emails sent or received by any of the Designated VA Persons between
 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
 that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

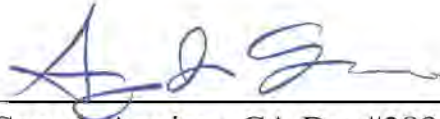
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

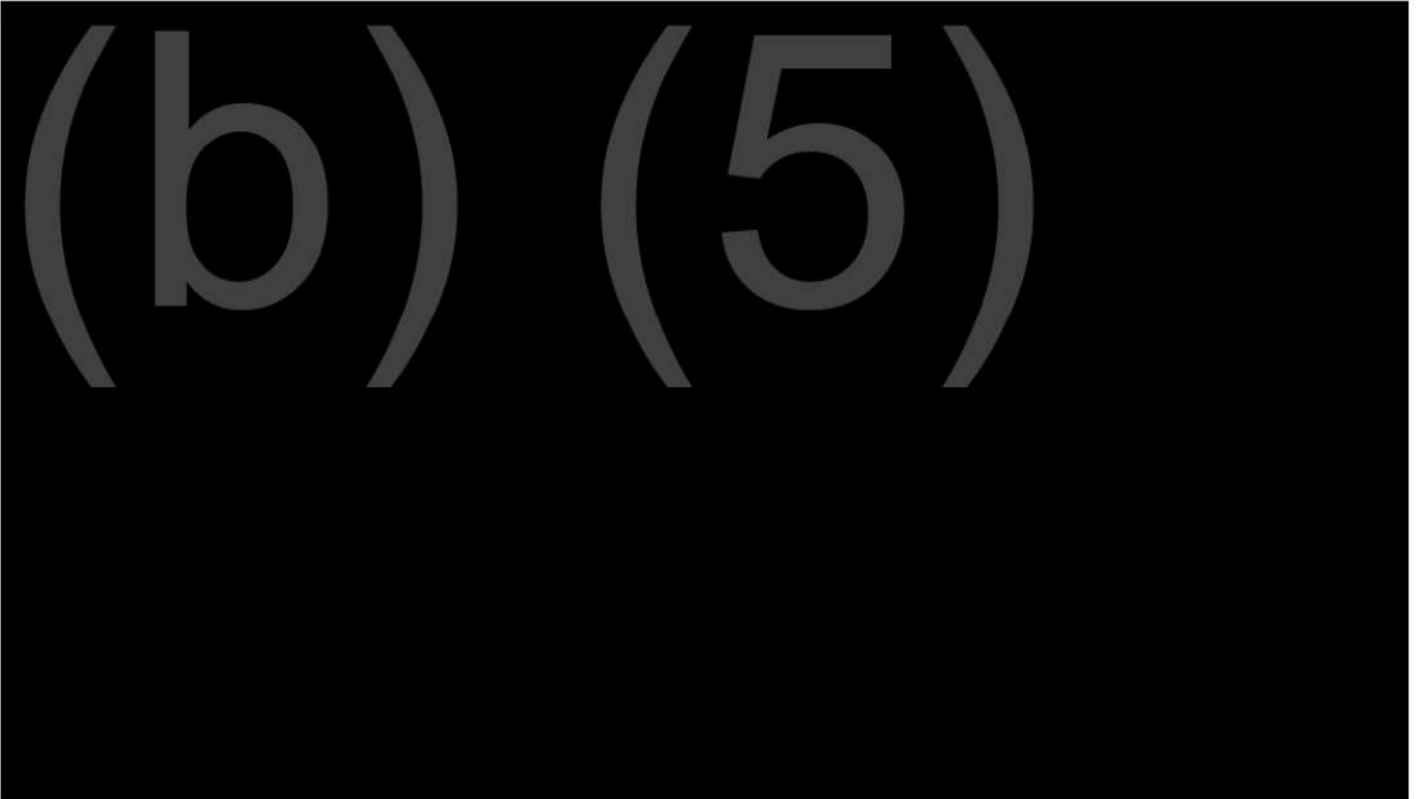
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Hipolit, Richard (OGC)
Sent: Wed, 7 Apr 2021 15:29:58 +0000
To: Hogan, Michael R. (OGC)
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Attachments: Tab1 4890714 Incoming Letter.pdf
Importance: High

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:09 AM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Dick,

(b)(5)

Please

let me know your thoughts.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

(b)(5)

(b)(5)

[Redacted]

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6) @va.gov>

Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

[Redacted]

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

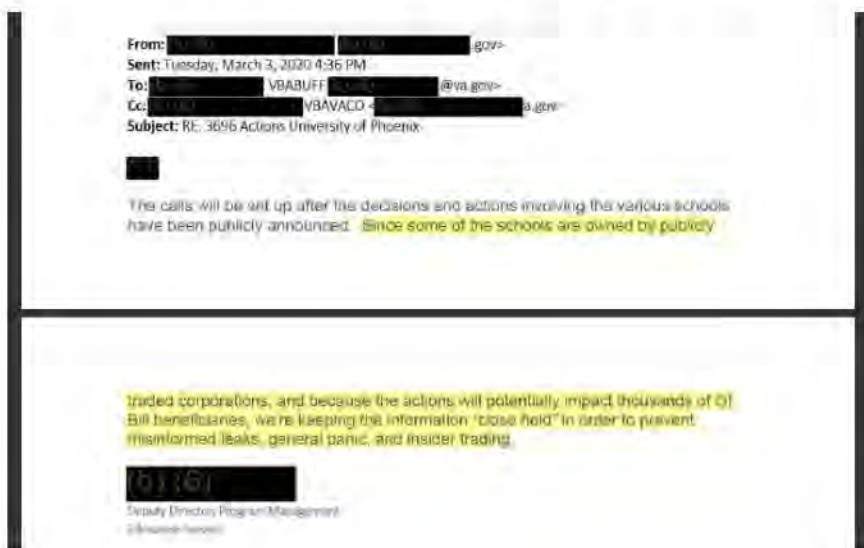
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

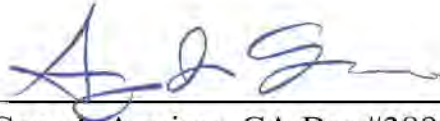
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

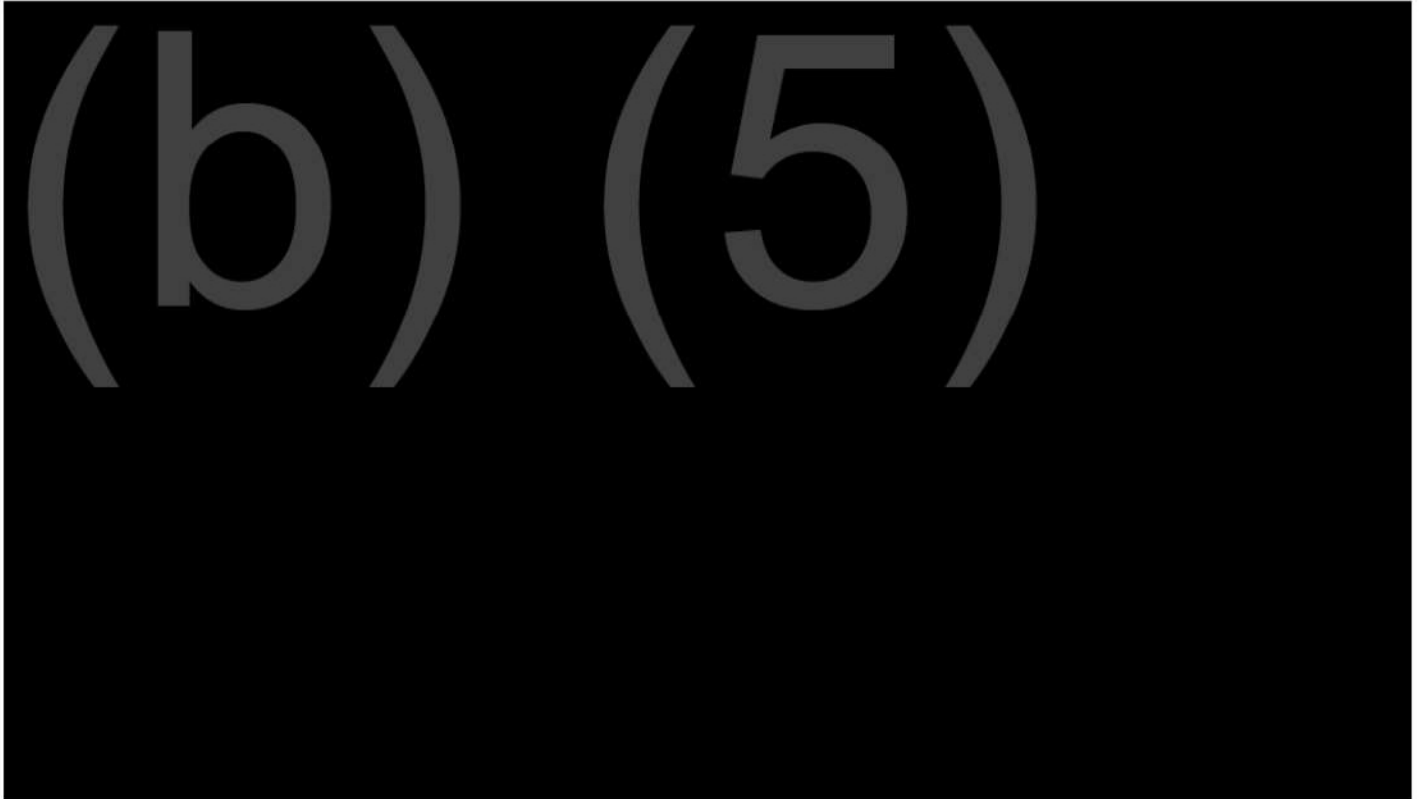
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov>; Mallia, Donna P. (b) (6)@va.gov>
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov>; Marsh, Mitzi A. VBASTL (b) (6)@va.gov>; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

Sent: Wed, 7 Apr 2021 15:32:47 +0000
To: Bradsher, Tanya J.
Subject: RE: Follow-up for VIEWS 4890714/Grassley

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:09 AM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Dick,

(b)(5)

Please

let me know your thoughts.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

(b)(5)

(b)(5)

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6)@va.gov>

Cc: Hipolit, Richard (OGC) (b)(6)@va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices,

without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

From: Hipolit, Richard (OGC)
Sent: Wed, 7 Apr 2021 16:38:56 +0000
To: Hogan, Michael R. (OGC)
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thanks, Mike.

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:51 AM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Dick,

(b)(5)

Mike

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:30 AM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:09 AM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Dick,

(b)(5)

Please

let me know your thoughts.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff

Department of Veterans Affairs

(b)(6) @va.gov

Cell: (b)(6)

From: McVicker, Carrie A. (b)(6) @va.gov>

Sent: Wednesday, April 7, 2021 11:01 AM

To: Bradsher, Tanya J. (b)(6) @va.gov>

Cc: McClain, Kimberly A. (b)(6) @va.gov>

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Tanya.

(b)(5)



I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6) @va.gov>

Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 16:41:57 +0000
To: Hipolit, Richard (OGC)
Cc: Hogan, Michael R. (OGC)
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you so much for reviewing.

Tanya Bradsher

Chief of Staff
Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:41 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

(b)(5)

From: Bradsher, Tanya J. (b)(5)@va.gov>
Sent: Wednesday, April 7, 2021 11:09 AM
To: Hipolit, Richard (OGC) (b)(5)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Dick,

(b)(5)

Please

let me know your thoughts.

Thank you so much,

Tanya

Tanya Bradsher

Chief of Staff
Department of Veterans Affairs

(b)(5)@va.gov

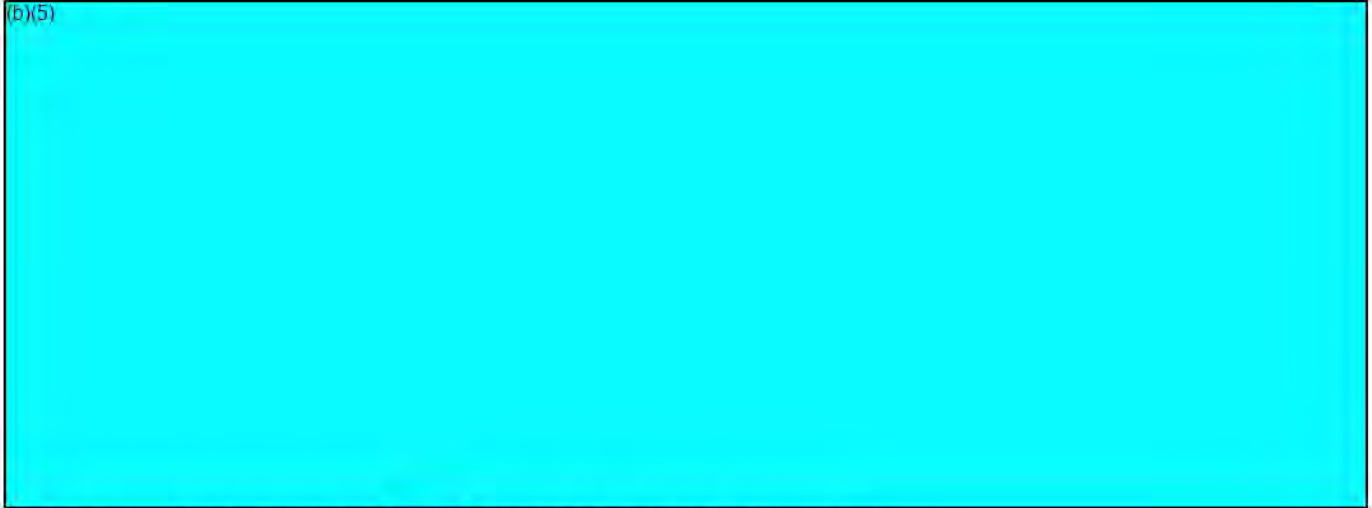
Cell: (b)(5)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>

Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

(b)(5)

A large rectangular area of the document is completely redacted with a solid black fill. The text "(b)(5)" is visible in the top-left corner of this redacted area.

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

The email address is partially redacted with a black box covering the name and part of the domain.

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, April 6, 2021 10:13 PM
To: (b)(6)@va.gov>
Cc: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

A small rectangular area of text is redacted with a black box.

(b)(5)

A large rectangular area at the bottom of the document is completely redacted with a solid black fill. The text "(b)(5)" is visible in the top-left corner of this redacted area.

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: McClain, Kimberly A.
Sent: Wed, 7 Apr 2021 17:17:39 +0000
To: McVicker, Carrie A.
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Copy. Thank you

V/R,

Kimberly McClain, PhD
Deputy Assistant Secretary
Office of Congressional & Legislative Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: (b)(6)@va.gov
Office Phone (b)(6)
Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 1:12 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Yes – I will do so.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 1:12 PM
To: McVicker, Carrie A. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: Re: Follow-up for VIEWS 4890714/Grassley

She is the commission today. Maybe tomorrow? (b)(6) can schedule

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs

(b)(6) @va.gov
Cell: (b)(6)

From: McVicker, Carrie A. <(b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:58:54 PM
To: Bradsher, Tanya J. <(b)(6)@va.gov>
Cc: McClain, Kimberly A. <(b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great. I recommend next step is to discuss with Gina. Do you want me to work on something with (b)(6) to set up a call?

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: Bradsher, Tanya J. <(b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:43 PM
To: McVicker, Carrie A. <(b)(6)@va.gov>
Cc: McClain, Kimberly A. <(b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you Carrie, I concur with your recommendations.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: McVicker, Carrie A. <(b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. <(b)(6)@va.gov>
Cc: McClain, Kimberly A. <(b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

(b)(5)

[Redacted]

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6) @va.gov>

Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

[Redacted]

(b)(5)

[Redacted]

MICHAEL R. HOGAN

Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Hipolit, Richard (OGC)
Sent: Wed, 7 Apr 2021 18:54:33 +0000
To: Bradsher, Tanya J.
Subject: RE: Follow-up for VIEWS 4890714/Grassley
Attachments: 156227_ Bogue, Charmain Note.pdf, 131618_ Bogue, Charmain Note.pdf, VBA - Vet Tech issue - Ethics timeline.docx

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:48 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great, thank you so much.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:45 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:42 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you so much for reviewing.

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 12:41 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:09 AM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Dick,

(b)(5) Please

let me know your thoughts.
Thank you so much,
Tanya

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 11:01 AM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Cc: McClain, Kimberly A. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Tanya.

(b)(5)

(b)(5)

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6) @va.gov>

Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: *The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _*

Notified Victor

From: (b)(6) (OGC)
Sent: Wednesday, July 29, 2020 7:30 AM
To: Bogue, Charmain, VBAVACO
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Good morning. Thank you for updating the report. Your review is now complete. I certified that your report complies with disclosure laws and regulations and there are no apparent conflicts of interest.

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.

In addition, you reported holding stock, including for companies that do business with the VA. Please be aware that pursuant to a criminal statute, 18 U.S.C. § 208, you are disqualified from personally and substantially participating in a particular VA matter that has a direct and predictable effect on a company in which you own stock. You may, however, participate in such a matter if the affected publicly-traded stock or stocks that you, your spouse or minor children own in the aggregate does not exceed \$15,000. Note that this \$15,000 de minimis exception does not apply to non-publicly-traded stock.

Please remember to fulfill your annual live ethics training requirement by December 31, 2020 and feel free to let me know if you have any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information <https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: (b)(6) (OGC)
Sent: Monday, July 20, 2020 5:57 AM
To: Bogue, Charmain, VBAVACO (b)(6) @va.gov
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Thank you for the additional information.

I have returned the report to you to be updated. Both the assets in the sold IRA and new stock purchases need to be included in Transactions (section #7).

Once you have updated the information, please let me know so I can pull the report back in my queue for review and approval.

Thank you. Please reach out with any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information <https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: Bogue, Charmain, VBAVACO (b)(6) @va.gov <mailto:(b)(6)@va.gov>
Sent: Friday, July 17, 2020 11:22 AM
To: (b)(6) (OGC) (b)(6) @va.gov <mailto:(b)(6)@va.gov>
Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Hello,

IRA- sold

Stocks line 8-12, only of the stocks is new

I am unable to edit so not sure if there is something you need to do so I can make the changes.

Charmain Bogue
Executive Director
Education Service
Veterans Benefits Administration
(b)(6)@va.gov <mailto:(b)(6)@va.gov>

From: (b)(6) (OGC) (b)(6)@va.gov <mailto:(b)(6)@va.gov> >
Sent: Tuesday, June 30, 2020 7:12 PM
To: Bogue, Charmain, VBAVACO (b)(6)@va.gov <mailto:(b)(6)@va.gov> >
Subject: INITIAL REVIEW: Public Financial Disclosure Report
Importance: High

Good afternoon. I have been assigned review of your Annual Public Financial Disclosure report (278) and that review is now complete. I've completed my initial review; however, before I can certify the report I need to confirm inform or seek amendments. Please provide this information by July 10. I will be out of the office until July 8 but can respond to non-encrypted emails.

New And Deleted Assets

When comparing this year's report to 2019's, I noticed there was no longer an employment-related asset in section two. Did you sell off the assets in the IRA, or was it no longer reportable due to value?

In addition, several new stocks were reported in Section 6 (nos. 8-12). Were these newly purchased, or were they under the reporting threshold in 2019? If these are new purchases, the stocks also need to be identified in section 7.

Thank you for the additional information. Once I have this, I can advise if the report needs to be amended, or I can make the changes. Please reach out with any questions.

(b)(6)
VA Staff Attorney
Ethics Specialty Team
(b)(6) (BB)
Monday - Thursday only

OGC Ethics Website <<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> | Ethics contact information <https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf>

From: (b)(6) (OGC)
Sent: Monday, September 09, 2019 8:04 AM
To: Bogue, Charmain (b)(6)@va.gov>
Subject: RE: PFD 2019

Thanks for making that change. I certified that your report complies with disclosure laws and that there are no apparent conflicts of interest. I offer the following guidance going forward.

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.

You reported holding stock. This same statute prohibits you from participating in a particular VA matter that has a direct and predictable effect on a company in which you own stock. You may, however, participate in such a matter if the affected stock that you, your spouse and minor children own in the aggregate does not exceed \$15,000. Note that this \$15,000 *de minimis* exception does not apply to non-publicly-traded stock.

If you haven't done so already, please remember to fulfill your annual live ethics training requirement by December 31, 2019. Please let me know if you have any questions and thanks again for making that change.

(b)(6)

Staff Attorney and Deputy Ethics Official
Office of General Counsel
Ethics Specialty Team

(b)(6)

Please visit our [Government Ethics website](https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx)
<<https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> for more information on ethics topics

From: Bogue, Charmain
Sent: Friday, September 06, 2019 3:23 PM
To: (b)(6) (OGC) (b)(6)@va.gov <mailto:(b)(6)@va.gov>
Subject: RE: PFD 2019

Hi (b)(6)

Sorry for the delay I was out last week. I amended the document.

Charmain Bogue

Executive Director

Education Service

Veterans Benefits Administration

(b)(6)@va.gov <mailto:(b)(6)@va.gov>

From: (b)(6) (OGC)

Sent: Friday, August 30, 2019 10:20 AM

To: Bogue, Charmain (b)(6)@va.gov <mailto:(b)(6)@va.gov>

Subject: PFD 2019

Good morning. I have been assigned review of your New Entrant Public Financial Disclosure report (278). Before I can certify the report I need you to make one minor amendment.

In Part 6, Item 6, you disclosed your spouse's interest in "Rental Property." Please amend your report by describing the type of real estate (e.g., "residential," "commercial," "industrial," or "undeveloped") and the city and state in which it is located. Providing the county and state is also acceptable. But do not provide a street address. Here's an example: *Commercial property, Sullivan County, NY.*

Here's the Integrity login link for your convenience:

<<<https://www.integrity.gov/efeds-login/>>>. Please let me know when you've made these amendments or if you have any questions. You can reach me at the telephone number listed below.

(b)(6)

Staff Attorney and Deputy Ethics Official

Office of General Counsel

Ethics Specialty Team

(b)(6)

Please visit our [Government Ethics website](https://vaww.oqc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx)

<<https://vaww.oqc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx>> for more information on ethics topics

Ethics advice timeline

December 2017

VBA contacted (b)(6) Senior Ethics Attorney

From: (b)(6) VBAVACO
Sent: Thursday, December 07, 2017 1:20 PM
To: (b)(6) (OGC)
Cc: (b)(6) VBAVACO
Subject: Vet Tech / Student Veterans of America

(b)(6)

The new GI Bill law has directed an IT pilot called Vet Tech. This pilot allocates \$75 million ((\$15 million per year for 5 years).

The law calls for the to enter into contracts with vendors to provide training and support. Likewise the VA Education team will assist by issuing a GI Bill living stipend.

Long story short, we are getting ready to engage in design and stand up of the pilot in early Jan 2018.

(b)(6) is the GS 15 assigned to oversee the entire implementation of the Comery Act. This includes the Vet Tech pilot. I'm assigned as the pilot lead.

(b)(6) out of an abundance of caution mentioned to me that her spouse works for Student Veterans is America and that this organization has a partnership with VA and may decide to compete for the Vet Tech pilot. I suggested she connect with you to determine if a disclosure/recusal is needed. I want to make sure we kick off the pilot properly and don't inadvertently create a negative perception.

(b)(6)

(b)(6) agrees Ms. Bogue should recuse from the Vet Tech procurement

From: (b)(6) (OGC)
Sent: Thursday, December 07, 2017 6:05 PM
To: (b)(6) VBAVACO; (b)(6) VBAVACO
Subject: RE: Vet Tech / Student Veterans of America

(b)(6)

Good catch. You have disclosed, and (b)(6) recusing from any involvement in source selection for the Vet Tech pilot is lthe way forward. If Student Veterans of America (SVA) is one of the contractors then the recusal would continue. 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.

(b)(6)

Have you been involved in the preparation of the contract documents?

Thanks for the follow up.

(b)(6)

Senior Ethics Attorney/
Deputy Ethics Official
Ethics Specialty Team

(b)(6)

Fax (202) 273-4601

February 2018

VBA seeks clarification from the Ethics Team

From: (b)(6) VBAVACO
Sent: Wednesday, February 28, 2018 2:08 PM
To: (b)(6) (OGC)
Cc: (b)(6) (OGC)
Subject: Vet Tech / Student Veterans of America
Importance: High

(b)(6)

I have a few follow-up questions regarding the coordination of the acquisition below.

After raising the need for recusal of Ms. (b)(6) her leadership suggested we not go through an acquisition process and instead pursue a provisional approval of each vendor as a GI Bill school. That course of action has now been deemed as not feasible by our contracting office.

Originally - Mr. Coy had removed the entire acquisition process from Ms. (b)(6) organization to OEO due to a perceived risk that the SVA is actively engaged in conversations with vendors of Vet Tec and also planned to bid. It was unclear to us at the time if SVA would partners with vendors for the acquisition or bid independently.

We are quickly going to be conducting market research (with SVA in attendance) an RFI, and also prepare a statement of work for competition.

What are the rules of engagement for Ms. (b)(6) Staff she supervises? As it pertains to establishing the selection criteria, statement of work, and source selection board?

I am concerned about both perceptions of COIs and actual COIs. Some of the potential vendors are currently suing the VA for what they perceive as a bias against for profit schools. Both SVA and VBA EDU are under scrutiny in that allegation. When the task was assigned to me by Mr. Coy, I discovered that no NDAs were in place for contractors supporting the acquisition and that Ms. (b)(6) was not aware of the need to recuse formally. This lack of acumen raises concerns as there seems to be regular coordination with SVA officials and EDU staff. We requested guidance from VBA contracting and received the below as it pertains to recusals.

Contracting provided us the guidance below:

Personnel with covered conflicts of interest should declare them and be recused from source selection. Recusals are generally not needed for non-acquisition operations, or other phases of the acquisition life cycle (i.e. planning/market research). OGC guidance should be obtained as necessary

I would like to take their input, your guidance, and provide a recommendation to VBA leadership on best way ahead.

(b)(6) responds

From: (b)(6) (OGC)
Sent: Wednesday, February 28, 2018 3:11 PM
To: (b)(6) VBAVACO
Cc: (b)(6) (OGC)
Subject: RE: Vet Tech / Student Veterans of America

(b)(6)

Has (b)(6) been working with SVA, amongst others, as part of the market research, or is it contemplated that SVA will be involved in the market research, Given that the market research assists us in shaping the procurement, if it is anticipated that SVA will be a bidder then (b)(6) should recuse from the Vet Tech procurement.

(b)(6)

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

(b)(6) provides additional guidance

From: (b)(6) (OGC)
Sent: Wednesday, February 28, 2018 3:20 PM
To: (b)(6) (OGC); (b)(6) VBAVACO
Subject: RE: Vet Tech / Student Veterans of America

In addition to what (b)(6) wrote, if we foreclose the possibility of an 18 USC 208 issue, meaning that we're left with a recusal obligation under 502, please note that 502 contains a process for the employee to obtain a "502 authorization" from an "agency designee" (likely Mr. Coy in this situation). This authorization allows the employee to participate in the matter despite the appearance of a conflict of interest. However, because you are concerned about the appearance of a conflict, allowing her to work on the contract under a 502 authorization would do little to alter that appearance, at least in the minds of non-Federal entities that are prone to litigate. Plus, for the EST to approve a 502 authorization, you would need to show, among other things, that no one else besides Charmain is capable of doing this job, and I imagine that there are others who can perform her work.

It's fine for (b)(6) employees to work on this matter, even while (b)(6) is recused. But it must be clear to everyone involved that (b)(6) is not to be consulted on this matter at all.

March 2018

VBA responds with additional information

From: (b)(6) VBAVACO
Sent: Wednesday, March 07, 2018 11:22 AM
To: (b)(6) (OGC); (b)(6) (OGC)
Subject: Vet Tech / Student Veterans of America

Closing the loop.

I connected with (b)(6) and Rob Worley who both stated they have connected with SVA and do not believe there is a conflict of interest and that they are not going to be bidding directly on the work.

This is counter to my understanding from my boss Curt Coy and (b)(6) herself a few months ago. They also assured me they were not going to engage in market research or support other bidders.

I shared my concerns, Rob Worley as the project sponsor doesn't understand the notion of recusal versus COI so I will send him the below guidance so he's fully aware.

My concern remains ... scrutiny by for-profit schools, entities that do not compete or do not win an award, and the likelihood of media /social media scrutiny etc. The VA has a very strong relationship with SVA and they have shown to be strong supporters of the GI Bill. I stressed to both (b)(6) and Rob Worley that this is not in any way a negative view of SVA as an organization it's an effort to proactively protect all entities and the propriety of the pilot.

(b)(6) responds

From: (b)(6) (OGC)
Sent: Wednesday, March 07, 2018 12:50 PM
To: (b)(6) VBAVACO; (b)(6) (OGC)
Subject: RE: Vet Tech / Student Veterans of America

Thanks for the follow up.

(b)(6)

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 19:30:13 +0000
To: Hipolit, Richard (OGC)
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Wonderful, thank you so much

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:21 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Good for me. I'll call you on Teams at 4:00.

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:20 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Is Teams okay?

Tanya Bradsher
Chief of Staff
Department of Veterans Affairs
(b)(6)@va.gov
Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:19 PM
To: Bradsher, Tanya J. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Yes. Phone or Teams?

From: Bradsher, Tanya J. (b)(6)@va.gov>
Sent: Wednesday, April 7, 2021 3:17 PM
To: Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great, can we please chat at 4 pm?

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 2:55 PM

To: Bradsher, Tanya J. (b)(6)@va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 12:48 PM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great, thank you so much.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell: (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 12:45 PM

To: Bradsher, Tanya J. (b)(6)@va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 12:42 PM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>

Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you so much for reviewing.

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell (b)(6)

From: Hipolit, Richard (OGC) (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 12:41 PM

To: Bradsher, Tanya J. (b)(6)@va.gov>

Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Subject: RE: Follow-up for VIEWS 4890714/Grassley

(b)(5)

From: Bradsher, Tanya J. (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 11:09 AM

To: Hipolit, Richard (OGC) (b)(6)@va.gov>

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Dick,

(b)(5)

Please

let me know your thoughts.

Thank you so much,

Tanya

Tanya Bradsher

Chief of Staff

Department of Veterans Affairs

(b)(6)@va.gov

Cell (b)(6)

From: McVicker, Carrie A. (b)(6)@va.gov>

Sent: Wednesday, April 7, 2021 11:01 AM

To: Bradsher, Tanya J. (b)(6)@va.gov>

Cc: McClain, Kimberly A. (b)(6)@va.gov>

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Tanya.

(b)(5)

I also stand by with my writer (b)(6) to help put together the response.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) @va.gov

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, April 6, 2021 10:13 PM

To: (b)(6) @va.gov>

Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>

Subject: Follow-up

Re: Sen Grassley letter

(b)(6)

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law

Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Bradsher, Tanya J.
Sent: Wed, 7 Apr 2021 20:36:05 +0000
To: Bradsher, Tanya J.;Farrisee, Gina S.;McVicker, Carrie A.
Cc: Hipolit, Richard (OGC)
Subject: Follow-up for VIEWS 4890714/Grassley

Microsoft Teams meeting

Join on your computer or mobile app

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+1 872-701-0185, (b)(6) United States, Chicago

Phone Conference ID: (b)(6)

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From: (b)(6) on behalf of Bradsher, Tanya J.
Sent: Thu, 8 Apr 2021 12:09:24 +0000
To: Farrisee, Gina S.;McVicker, Carrie A.;Hipolit, Richard (OGC)
Subject: Follow-up for VIEWS 4890714/Grassley

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From: Bradsher, Tanya J.
Sent: Thu, 8 Apr 2021 12:35:02 +0000
To: Bradsher, Tanya J.;Farrisee, Gina S.;McVicker, Carrie A.
Cc: Hipolit, Richard (OGC)
Subject: Follow-up for VIEWS 4890714/Grassley

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+1 872-701-0185, (b)(6) United States, Chicago

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From: McVicker, Carrie A.
Sent: Fri, 9 Apr 2021 19:30:15 +0000
To: Farrissee, Gina S.
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Attachments: Tab1 4890714 Incoming Letter.pdf
Importance: High

Gina – just for SA – this was Ruthann’s read on the questions.

But see what Brandye says before you consider below.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
@va.gov

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Friday, April 9, 2021 3:25 PM
To: @va.gov>
Cc: McVicker, Carrie A. @va.gov>; @va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Hi 

I have reviewed the asks that begin on page 4 and find the following regarding ownership of potential records:

 (b)(5)

(b)(5)

A large rectangular area of the document is completely redacted with a solid black fill. The redaction covers the majority of the upper and middle sections of the page.

(b)(5)

A second large rectangular area of the document is completely redacted with a solid black fill, covering the lower middle section of the page.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Friday, April 9, 2021 2:22 PM
To: Parise, Ruthann (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

RICHARD J. DURBIN, ILLINOIS, CHAIR
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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

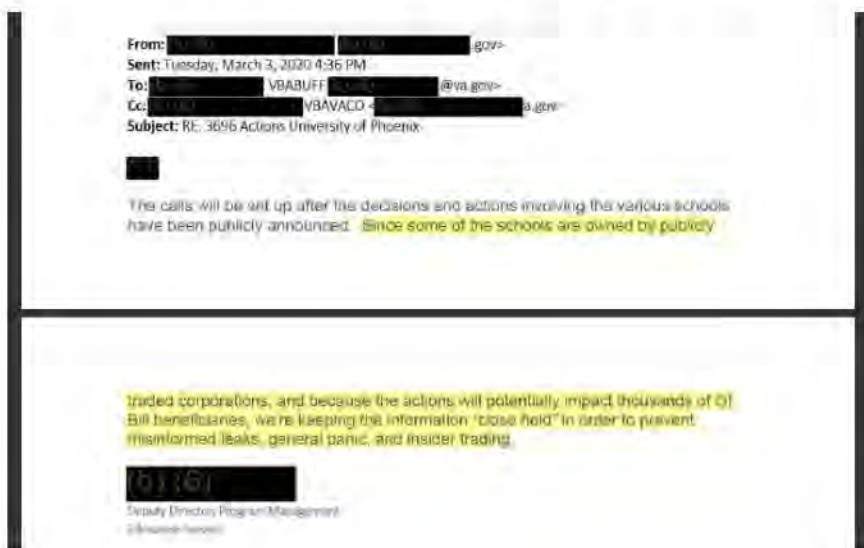
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
 carrie.wofford@veteranseducationsuccess.org would make this
 email responsive),
 b. Ang,
 c. Beynon,
 d. Bogue,
 e. Douglas-Gabriel,
 f. Halperin,
 g. Saunders,
 h. Safalow, and
 i. Shireman.
 4) All emails sent or received by any of the Designated VA Persons between
 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
 that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

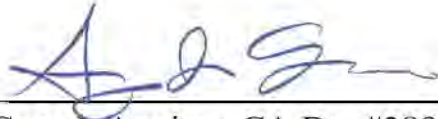
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

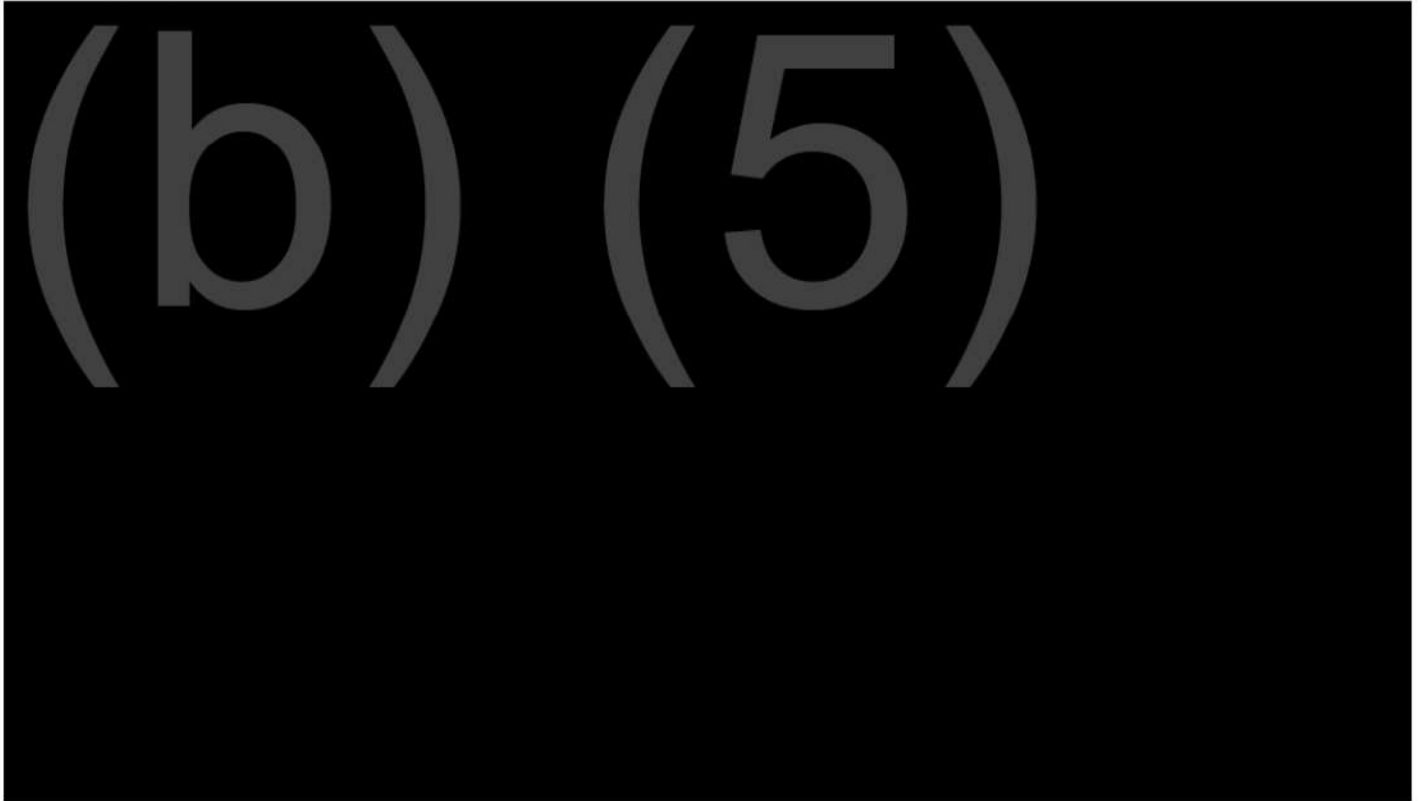
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Parise, Ruthann
Sent: Fri, 9 Apr 2021 20:05:12 +0000
To: (b)(6)
Cc: McVicker, Carrie A. (b)(6)
Subject: RE: Follow-up for VIEWS 4890714/Grassley

You're welcome (b)(6)

I just did a search by requests in FOIAXpress and found the following:

(b)(5)

A large rectangular area of the document is completely redacted with a solid black fill. The text "(b)(5)" is visible in the top-left corner of this redacted area.

(b)(5)

A second large rectangular area of the document is completely redacted with a solid black fill. The text "(b)(5)" is visible in the top-left corner of this redacted area.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

This message and attachments, if any, are For Official Use Only, not to be shared outside intended parties, and may be exempt from disclosure pursuant to 5 U.S.C. § 552. If you received this message and attachments, if any, in error, you must inform the FOIA Officer and destroy them immediately.

From: (b)(6)@va.gov
Sent: Friday, April 9, 2021 3:44 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov
Subject: RE: Follow-up for VIEWS 4890714/Grassley
Importance: High

Thanks Ruthann. (b)(5)

(b)(5)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Friday, April 9, 2021 3:25 PM
To: (b)(6)@va.gov
Cc: McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Hi (b)(6)

I have reviewed the asks that begin on page 4 and find the following regarding ownership of potential records:

(b)(5)

(b)(5)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

This message and attachments, if any, are For Official Use Only, not to be shared outside intended parties, and may be exempt from disclosure pursuant to 5 U.S.C. § 552. If you received this message and attachments, if any, in error, you must inform the FOIA Officer and destroy them immediately.

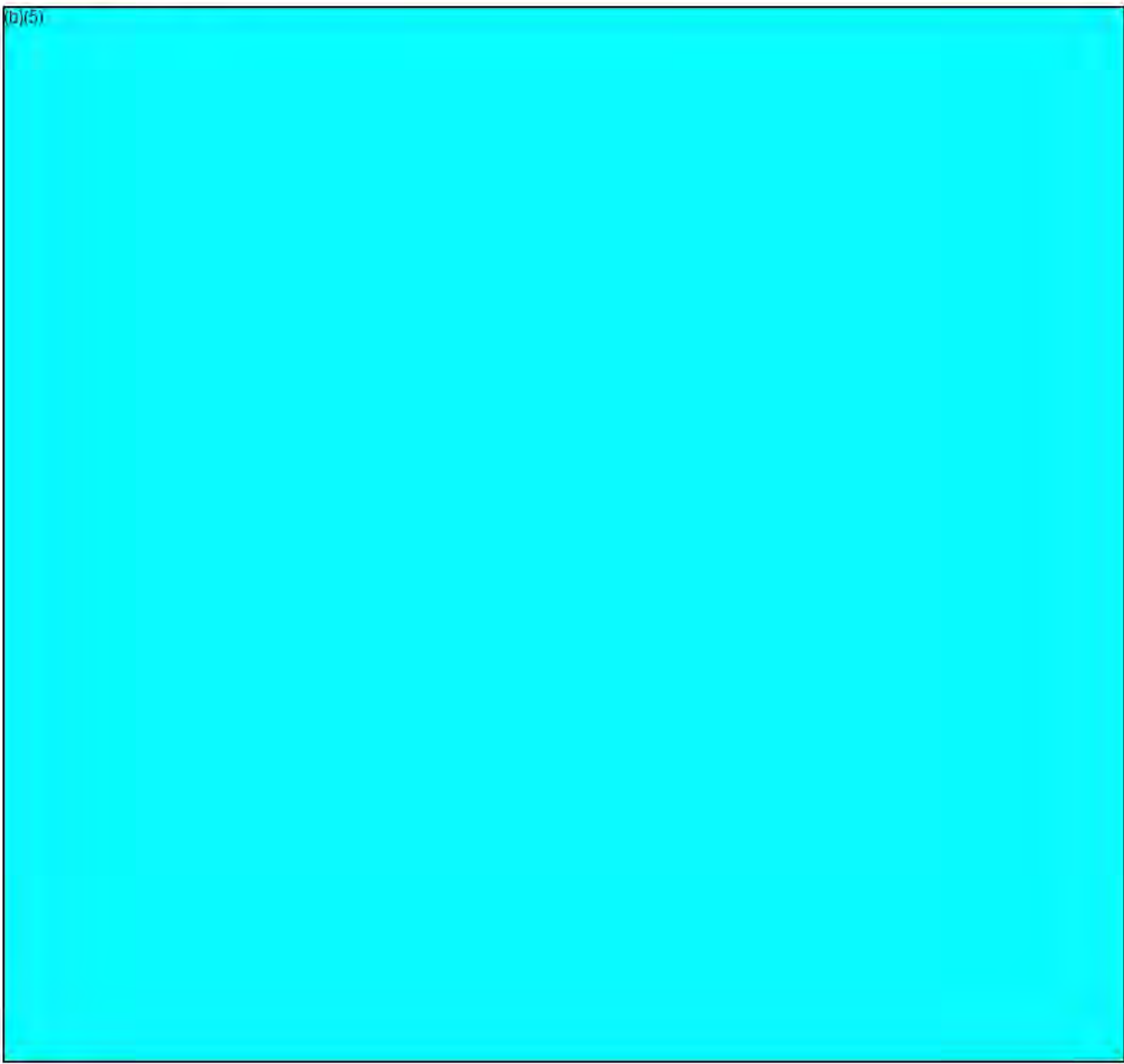
From: McVicker, Carrie A. <(b)(6)@va.gov>
Sent: Friday, April 9, 2021 2:22 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

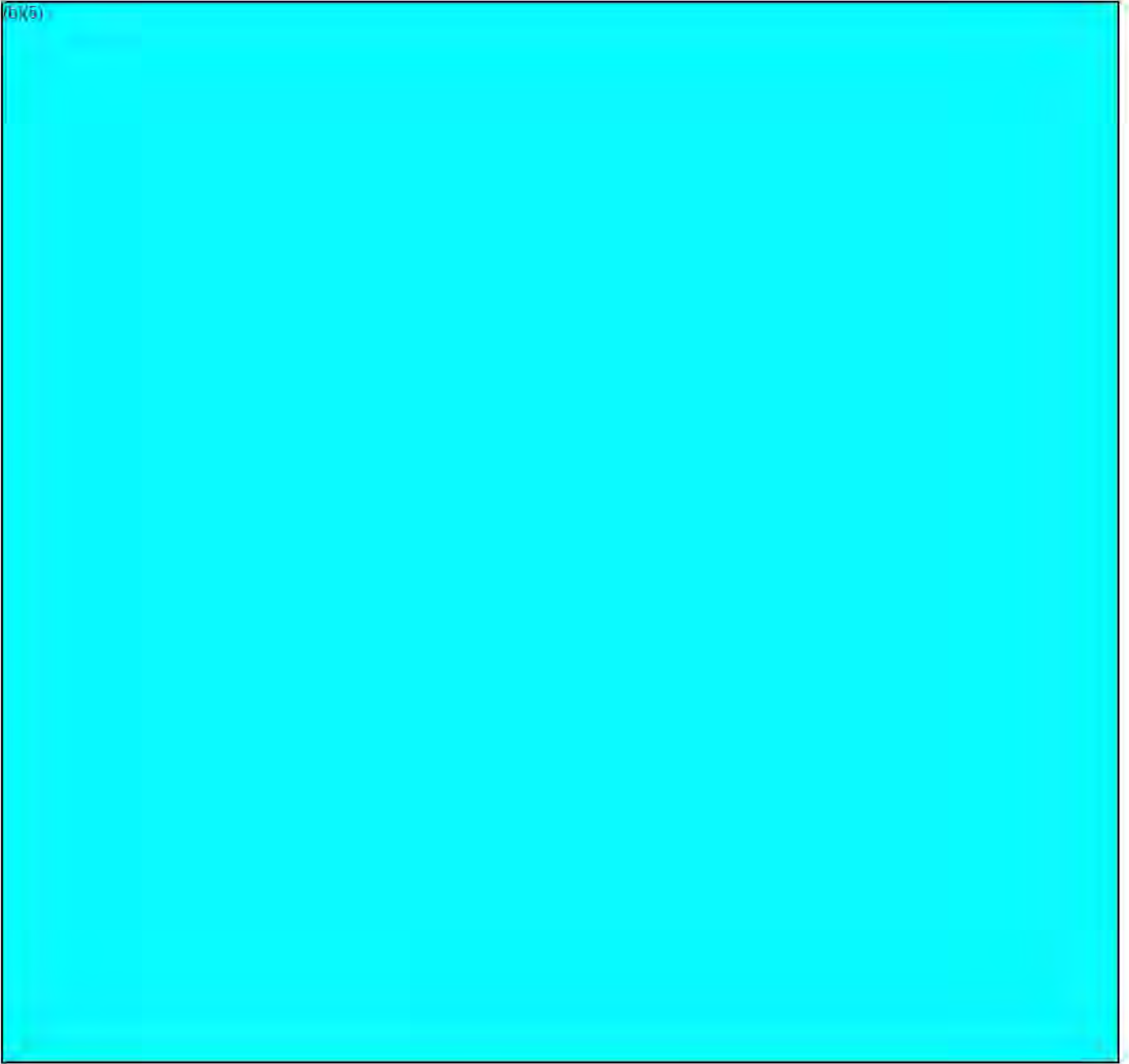
From: (b)(6)
Sent: Fri, 9 Apr 2021 20:18:56 +0000
To: Hogan, Michael R. (OGC)
Cc: (b)(6) McVicker, Carrie A.
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)
Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf
Importance: High

Good afternoon Mike:

(b)(5)



(b)(5)



Please let me know if you have any questions.

(b)(6)

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

(b)(6)

(b)(7)(C) [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:

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:

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:

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:

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:

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:

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

VA Response:

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:

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:

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:

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:

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:

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

VA Response:

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:

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

VA Response:

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:

Department of Veterans Affairs
April 2021

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
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ALEX PADILLA, CALIFORNIA
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TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

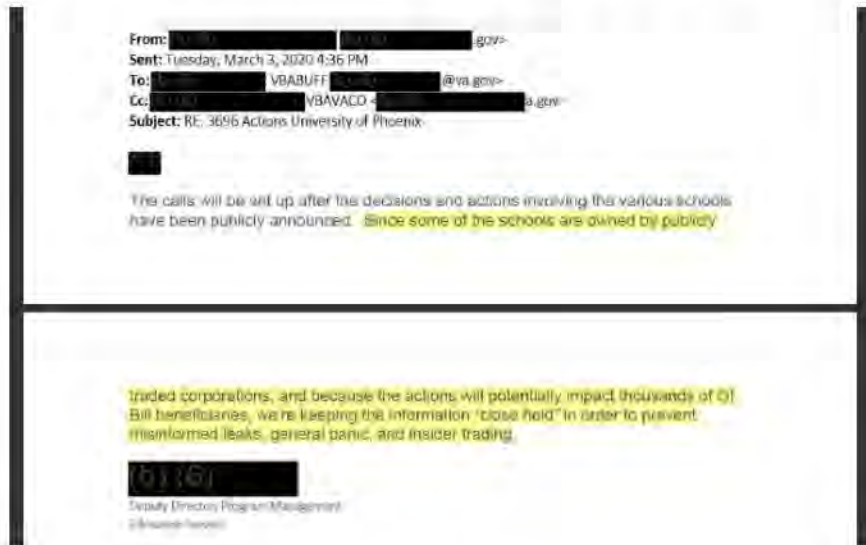
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

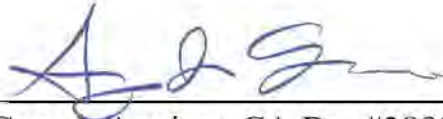
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

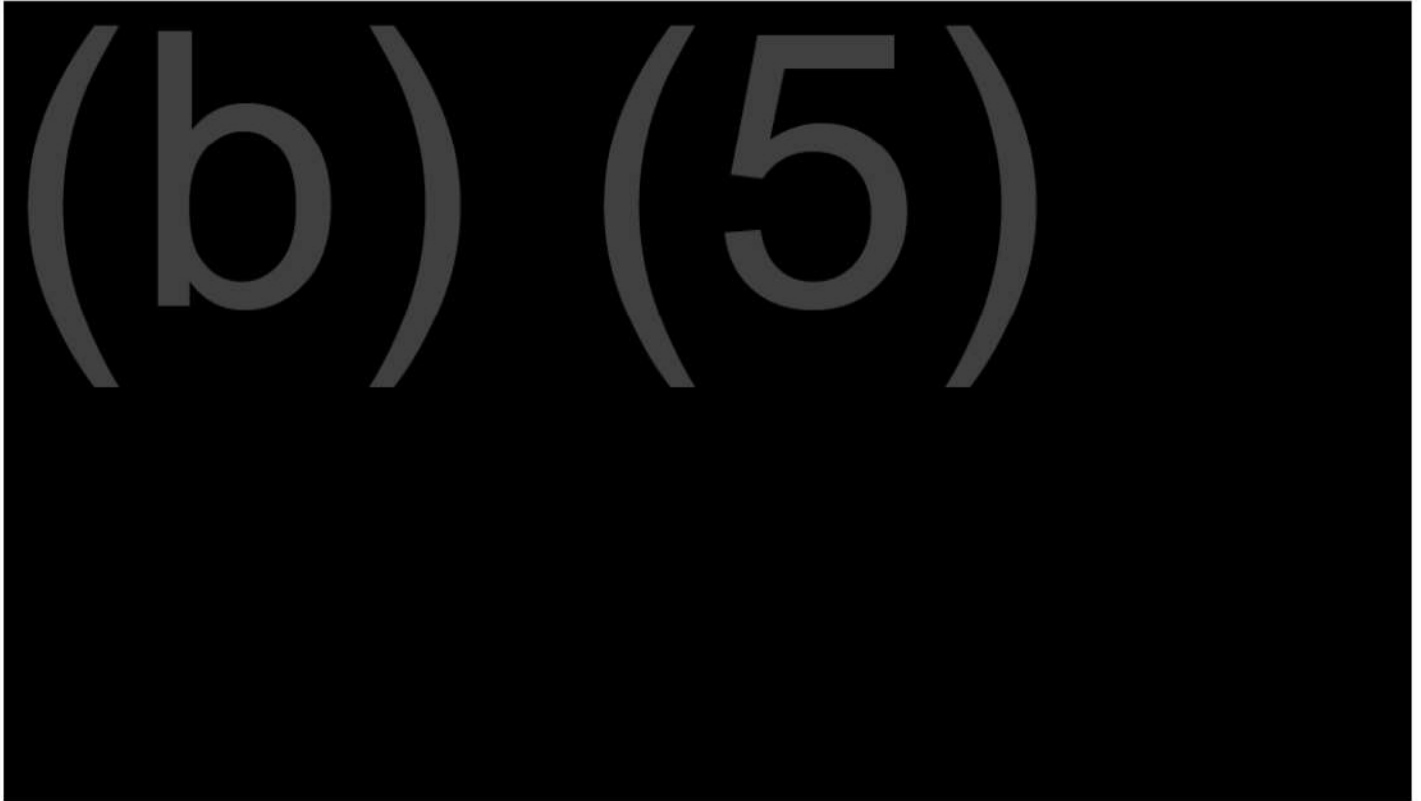
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Farrisee, Gina S.
Sent: Fri, 9 Apr 2021 21:30:44 +0000
To: McVicker, Carrie A.
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Thank you!

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Friday, April 9, 2021 4:10 PM
To: Farrisee, Gina S. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley

Just more background. Ruthann is very good.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: Parise, Ruthann (b)(6)@va.gov>
Sent: Friday, April 9, 2021 4:05 PM
To: (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

You're welcome (b)(6)

I just did a search by requests in FOIAXpress and found the following:

(b)(5)



(b)(5)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6)@va.gov
Sent: Friday, April 9, 2021 3:44 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov
Subject: RE: Follow-up for VIEWS 4890714/Grassley
Importance: High

Thanks Ruthann. (b)(5)

(b)(5)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Friday, April 9, 2021 3:25 PM
To: (b)(6)@va.gov
Cc: McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov

Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Hi (b)(5)

I have reviewed the asks that begin on page 4 and find the following regarding ownership of potential records:

(b)(5)



(b)(6)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: McVicker, Carrie A. <(b)(6)@va.gov>
Sent: Friday, April 9, 2021 2:22 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: Farrisee, Gina S.
Sent: Sat, 10 Apr 2021 01:06:53 +0000
To: McVicker, Carrie A.
Subject: Re: Follow-up for VIEWS 4890714/Grassley

Great, thank you. Enjoy the weekend!

Gina

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From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Friday, April 9, 2021 6:56:52 PM
To: Farrisee, Gina S. (b)(6)@va.gov>
Subject: Re: Follow-up for VIEWS 4890714/Grassley

Concur. I will connect them on Monday.

V/r

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From: Farrisee, Gina S. (b)(6)@va.gov>
Sent: Friday, April 9, 2021 5:47:01 PM
To: McVicker, Carrie A. (b)(6)@va.gov>
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Carrie,

Why don't we let Brandye and Ruthann work it out and let us know if there are issues?

Gina

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Friday, April 9, 2021 3:30 PM
To: Farrisee, Gina S. (b)(6)@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Gina – just for SA – this was Ruthann's read on the questions.

But see what Brandye says before you consider below.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: Parise, Ruthann <Ruthann.Parise@va.gov>

Sent: Friday, April 9, 2021 3:25 PM

To: (b)(6)@va.gov

Cc: McVicker, Carrie A. (b)(6)@va.gov (b)(6)@va.gov

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Hi (b)(6)

I have reviewed the asks that begin on page 4 and find the following regarding ownership of potential records:

(b)(5)



(b)(5)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: McVicker, Carrie A. [\[b\]\(6\)@va.gov](mailto:[b](6)@va.gov)
Sent: Friday, April 9, 2021 2:22 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: FW: Follow-up for VIEWS 4890714/Grassley
Importance: High

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
[\[b\]\(6\)@va.gov](mailto:[b](6)@va.gov)

From: Hogan, Michael R. (OGC)
Sent: Mon, 12 Apr 2021 14:24:52 +0000
To: (b)(6)
Cc: (b)(6) McVicker, Carrie A. (b)(6) (OGC)
Subject: RE: Regarding VIEWS 4890714 (SME DATA REQUEST)

Thank you (b)(6)

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: (b)(6)@va.gov>
Sent: Monday, April 12, 2021 10:24 AM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov> (b)(6)
(b)(6) (OGC) <(b)(6)@va.gov>
Subject: Re: Regarding VIEWS 4890714 (SME DATA REQUEST)

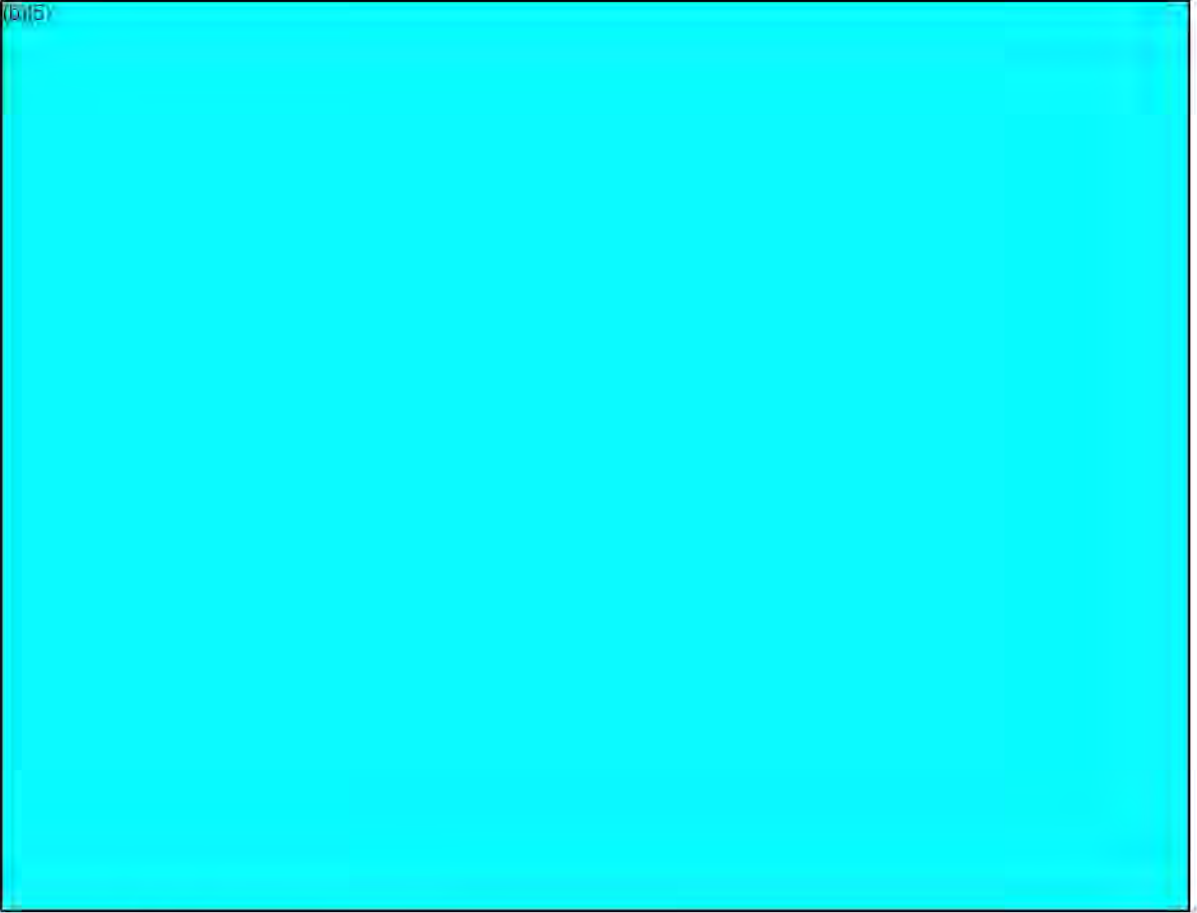
Good morning Mike:

I realized this morning that when I sent you the email below on Friday, I neglected to provide you with a due date for providing the responses to the questions on the enclosure template. Please provide the responses by COB on April 16, 2021. The OGC correspondence liaison (b)(6) has been added to the email and a VIEWS case task has been created to facilitate tracking of the request for data.

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From: (b)(6)
Sent: Friday, April 9, 2021 4:18:56 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Cc: (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)

(b)(5)



Please let me know if you have any questions.

(b)(5)

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

(b)(5)

(mobile)

From: (b)(6) OGC
Sent: Tue, 13 Apr 2021 10:39:33 +0000
To: OGC Information Law Group Supervisors
Cc: (b)(6) OGC (b)(6) OGC
Subject: RE: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Requested - Provide Information
Attachments: FW_VIE~1.pdf

GCL 154271 (b)(6) is Ethics the front office made the Task directly to her. I sent the attachments to you all yesterday via email attached again to this email.

-----Original Message-----

From: (b)(6) OGC (b)(6) @va.gov>
Sent: Monday, April 12, 2021 4:18 PM
To: Cromwell, Sonya OGC (b)(6) @va.gov> (b)(6) OGC (b)(6) @va.gov>; OGC Information Law Group Supervisors (b)(6) @va.gov>
Cc: (b)(6) OGC (b)(6) @va.gov>
Subject: RE: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Requested - Provide Information

Not sure, can't access the case in VIEWS b/c it is sensitive. So if you don't see it, you are right.

-----Original Message-----

From: Cromwell, Sonya OGC (b)(6) @va.gov>
Sent: Monday, April 12, 2021 4:16 PM
To: (b)(6) OGC (b)(6) @va.gov>; (b)(6) OGC (b)(6) @va.gov>; OGC Information Law Group Supervisors (b)(6) @va.gov>
Cc: (b)(6) OGC (b)(6) @va.gov>
Subject: RE: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Requested - Provide Information

Thanks (b)(6) I may have missed the assignment to Ethics in VIEWS. Maybe they are assigning outside of VIEWS??.

Sonya Marie Cromwell
Chief Counsel
OGC Information and Administrative Law Group (IALG)

Department of Veterans Affairs
810 Vermont Avenue, NW, 1156A
Washington, DC 20020
Office Phone (b)(6)
VA cell: (b)(6)
Fax: 202-273-6388

Suicide Prevention is Everyone's Business - #BeThere.
The Veterans Crisis Line is 1-800-273-8255 and Press 1

VA Core Values: Integrity Commitment Advocacy Respect Excellence VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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-----Original Message-----

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Monday, April 12, 2021 4:12 PM
To: Cromwell, Sonya (OGC) (b)(6)@va.gov>; (b)(6) (OGC) (b)(6)@va.gov>; OGC Information Law Group Supervisors (b)(6)@va.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov>
Subject: RE: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Requested - Provide Information

(b)(6) should have this assignment.

I think Ethics already has this task from a call last week. I think our only response would be from question 12.

-----Original Message-----

From: Cromwell, Sonya (OGC) (b)(6)@va.gov>
Sent: Monday, April 12, 2021 3:46 PM
To: (b)(6) (OGC) (b)(6)@va.gov>; OGC Information Law Group Supervisors (b)(6)@va.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov>
Subject: RE: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Requested - Provide Information

(b)(6) as questions 5, 6 and 12 pertain to release of information/FOIA, please advise (b)(6) on the assignment (b)(6) please also create a task for the Ethics Law Group.

Thanks,
Sonya

Sonya Marie Cromwell
Chief Counsel
OGC Information and Administrative Law Group (IALG)

Department of Veterans Affairs
810 Vermont Avenue, NW, 1156A
Washington, DC 20020
Office Phone (b)(6)
VA cell (b)(6)
Fax: 202-273-6388

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-----Original Message-----

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Monday, April 12, 2021 2:23 PM
To: OGC Information Law Group Supervisors (b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>
Subject: FW: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Requested - Provide Information

GCL 154271

-----Original Message-----

From: (b)(6) @va.gov>
Sent: Monday, April 12, 2021 2:08 PM
To: (b)(6) (OGC) (b)(6) @va.gov>
Subject: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Requested - Provide Information

Action Required: Provide Information

New Task Assignment Alert!

A new case task was created on: 2021-04-12 14:07:22 and assigned to OGC-024 Information Law Group.

Please see details below.

Case Subject: Letter from Senator Grassley to SECVA Primary MOC:
Signature Level: SECVA

Task Created By: (b)(6) @va.gov
Office: OGC-02 General Counsel
Organization: OGC

Task Name: LCT-281627

Due Date is on: 2021-04-16 17:00:00

Action Requested: Provide Information

Requested Activity: This is a request for OGC, under the guidance of Mike Hogan, using the attached template, to develop the responses to Senator Grassley's questions, found in the incoming letter (also attached). The places in the template where red font is used indicates those instances where Senator Grassley is specifically asking for a document. For purposes of background, an email from the EXECSEC writer summarizing the plan for moving forward and other possibly important information from the OSVA FOIA officer is included as well.

To view case Task details and to provide response, please use the link below:

[\(b\)\(7\)\(E\)](https://(b)(7)(E))

(b)(7)(E)

Thank you!

For help with the VIEWS CCM, please contact your VIEWS Office Coordinator (VOC). A list of VOC's is available on the VIEWS Resource Center

(https://(b)(7)(E)

(b)(7)(E)

FOIA:
b(6)
Date: 08/12/2013 10:04 AM
Subject: [REDACTED]
Attachments: [REDACTED]

CC: [REDACTED]

From: [REDACTED]
To: [REDACTED]
Subject: [REDACTED]

App Task: [REDACTED]

A case record was created on 08/12/2013 10:04 AM in the [REDACTED] database.

Case Name: [REDACTED]
Case Number: [REDACTED]

Case Status: [REDACTED]

Case Type: [REDACTED]

Case Date: [REDACTED]

Case Description: [REDACTED]

[REDACTED]

[REDACTED]

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THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

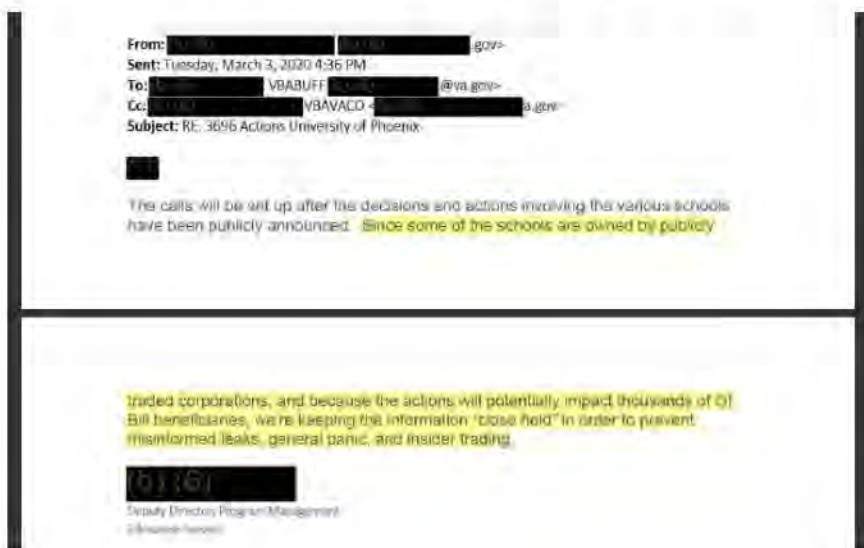
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

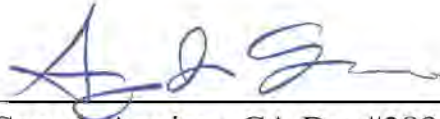
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

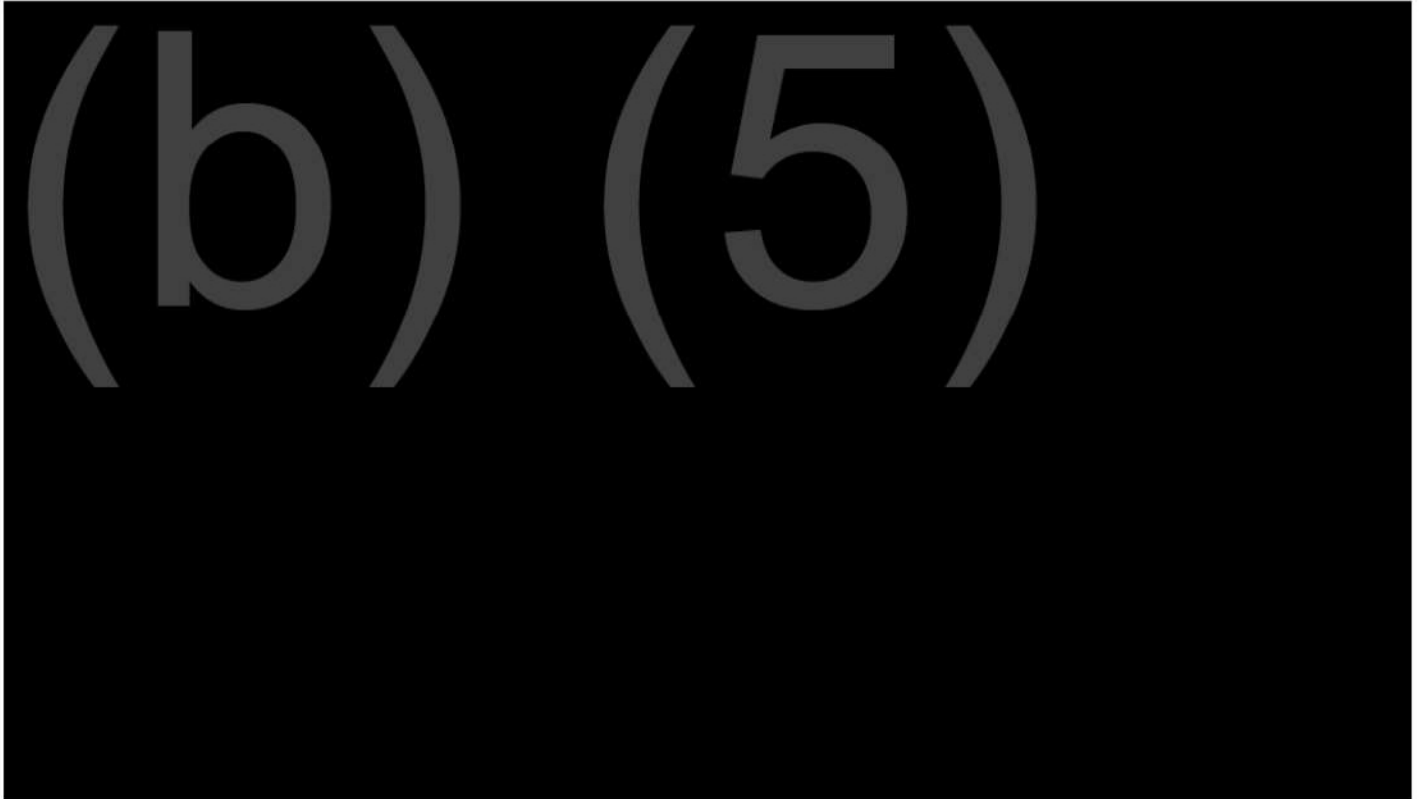
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

**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:

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:

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:

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:

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:

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:

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

VA Response:

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:

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:

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:

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:

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:

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

VA Response:

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:

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

VA Response:

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:

Department of Veterans Affairs
April 2021

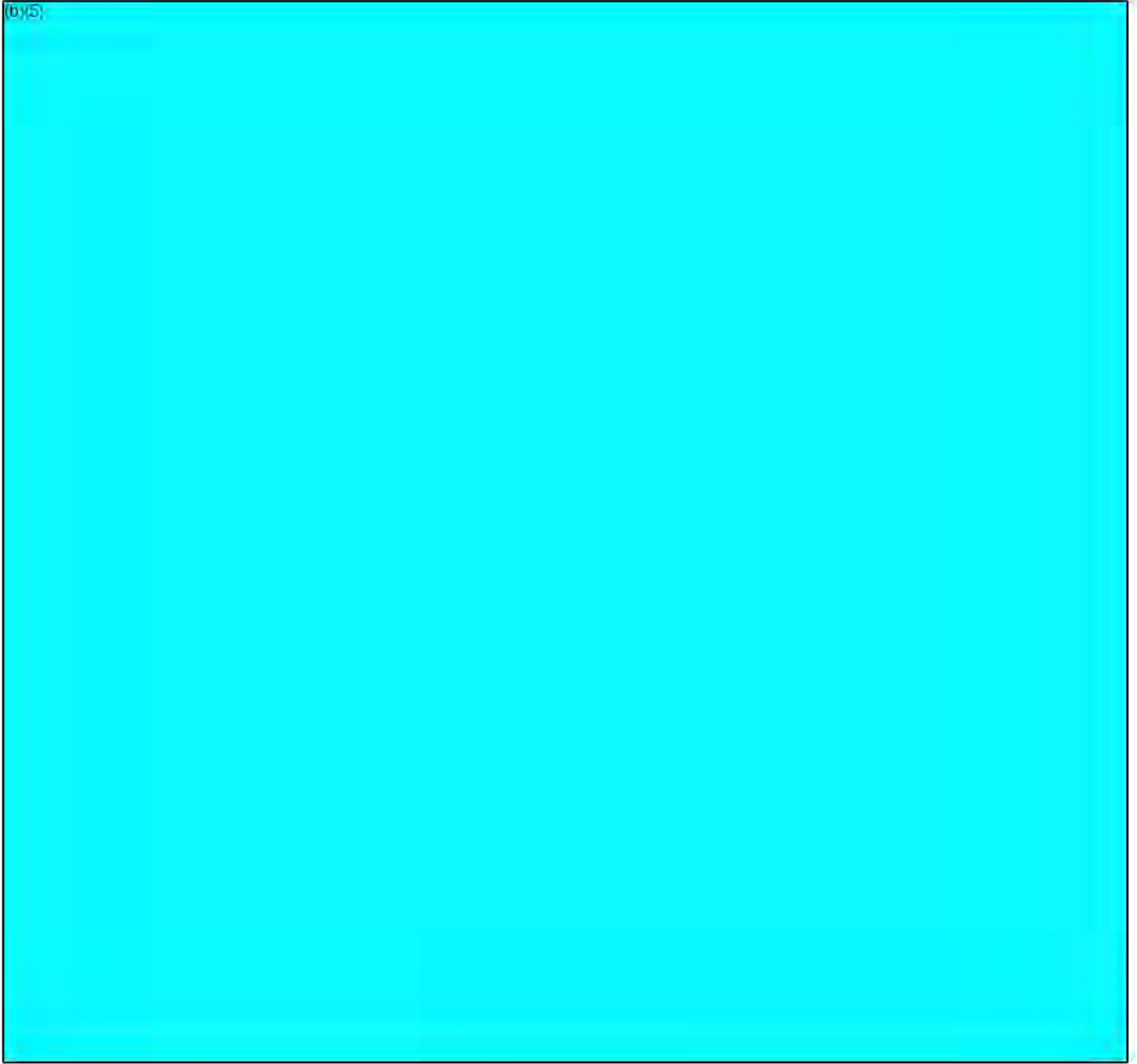
From: (b)(6)
Sent: Fri, 9 Apr 2021 20:18:56 +0000
To: Hogan, Michael R. (OGC)
Cc: (b)(6); McVicker, Carrie A.
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)
Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf
Importance: High

Good afternoon Mike:

(b)(5)



(b)(5)



Please let me know if you have any questions.

(b)(6)

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

(b)(6)

(b)(6) (mobile)

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

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VA Response:

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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:

Department of Veterans Affairs
April 2021

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
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ALEX PADILLA, CALIFORNIA
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JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
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TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

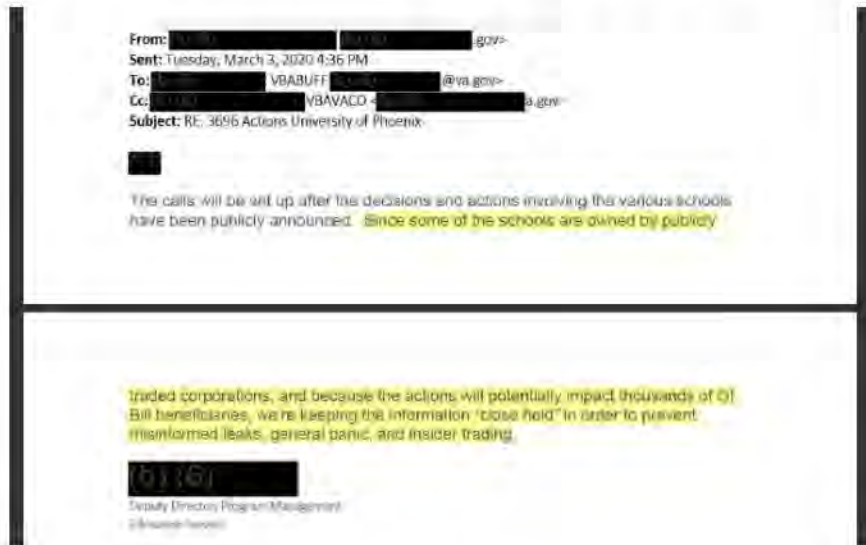
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11
- 12 1. Is there any internal rule or regulation (CFR) that defines, states, or
13 discusses the different tier? For example, what is the guidance for deciding
14 what is tier 2 versus tier 3?
 - 15 2. Is there any internal rule or regulation (CFR) that expand the period to
16 respond to a FOIA request when the agency transfers a request to a new
17 tier?
 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

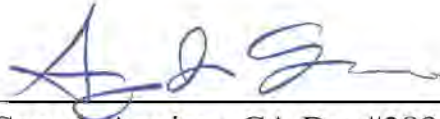
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

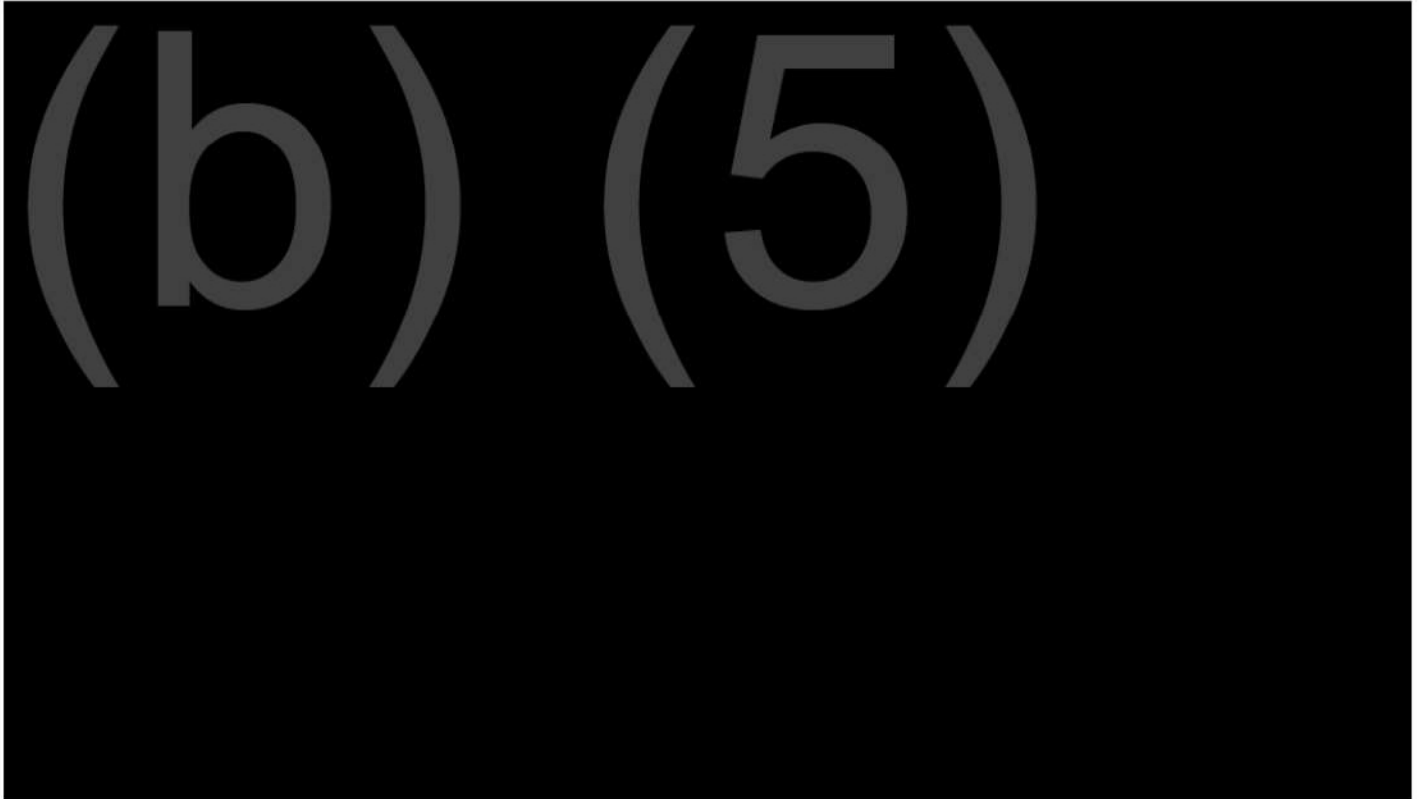
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
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THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

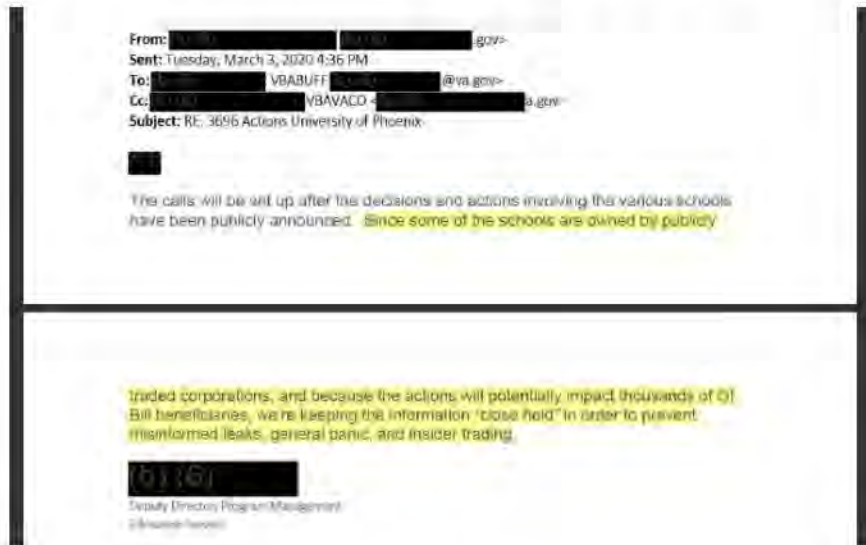
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

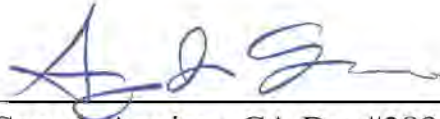
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

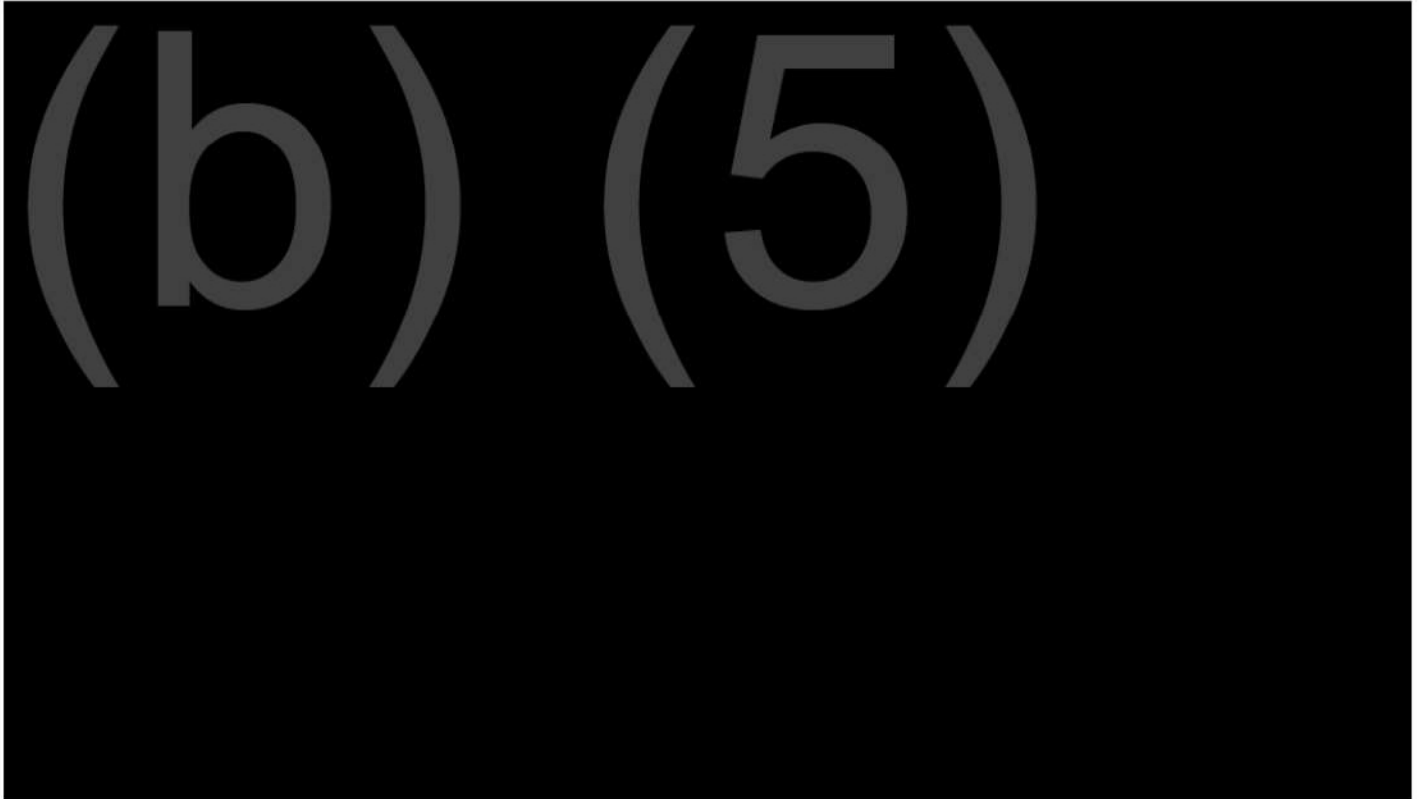
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

**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:

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:

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:

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:

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:

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:

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

VA Response:

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:

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:

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:

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:

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:

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

VA Response:

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:

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

VA Response:

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:

Department of Veterans Affairs
April 2021

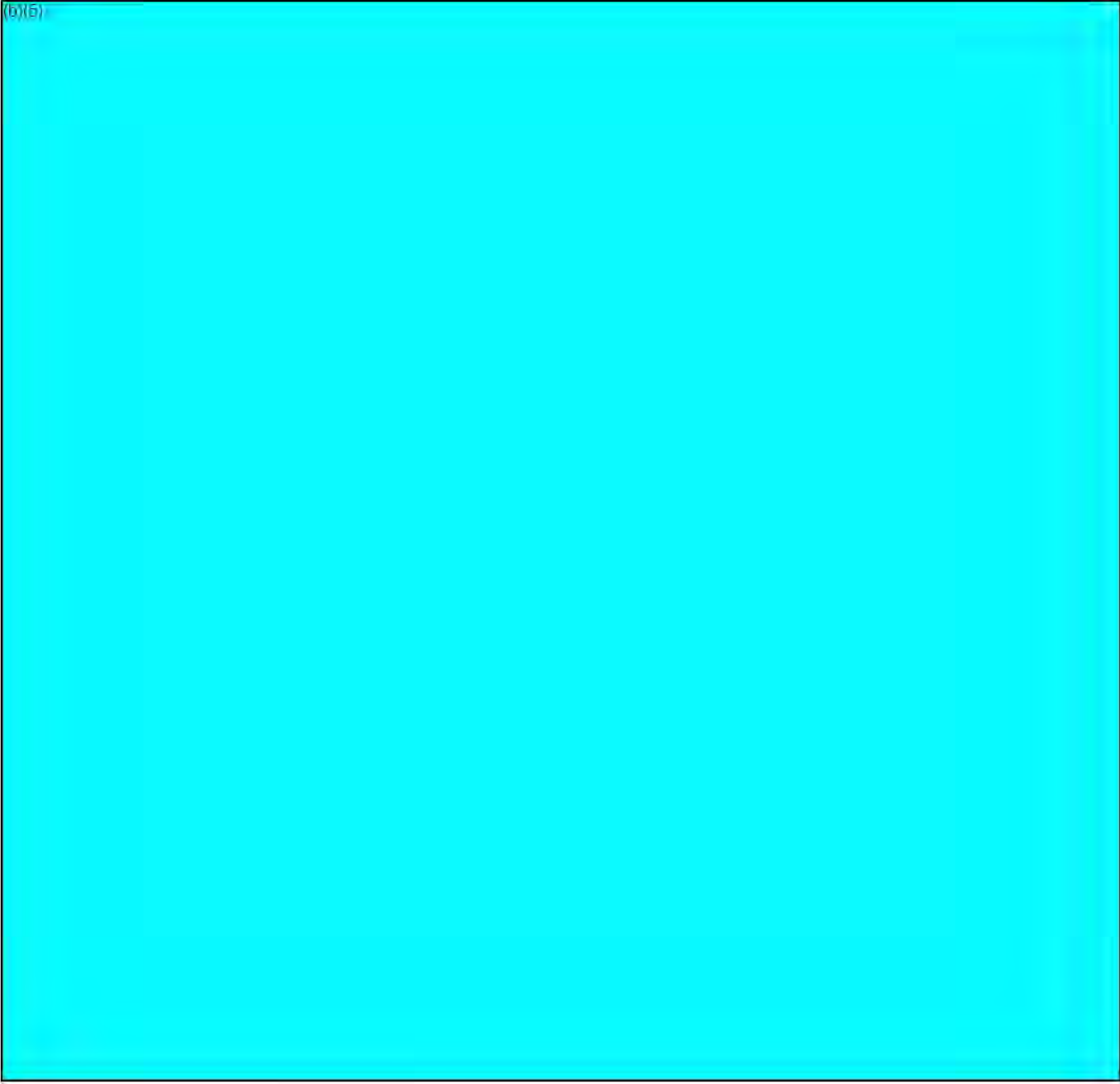
From: (b)(6)
Sent: Fri, 9 Apr 2021 20:18:56 +0000
To: Hogan, Michael R. (OGC)
Cc: (b)(6) McVicker, Carrie A.
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)
Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf
Importance: High

Good afternoon Mike:

(b)(5)



(b)(5)



Please let me know if you have any questions.

(b)(6)

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

(b)(6)

(b)(6) (mobile)

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

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

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VA Response:

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VA Response:

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:

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

VA Response:

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VA Response:

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VA Response:

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:

Department of Veterans Affairs
April 2021

RICHARD J. DURBIN, ILLINOIS, CHAIR
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DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

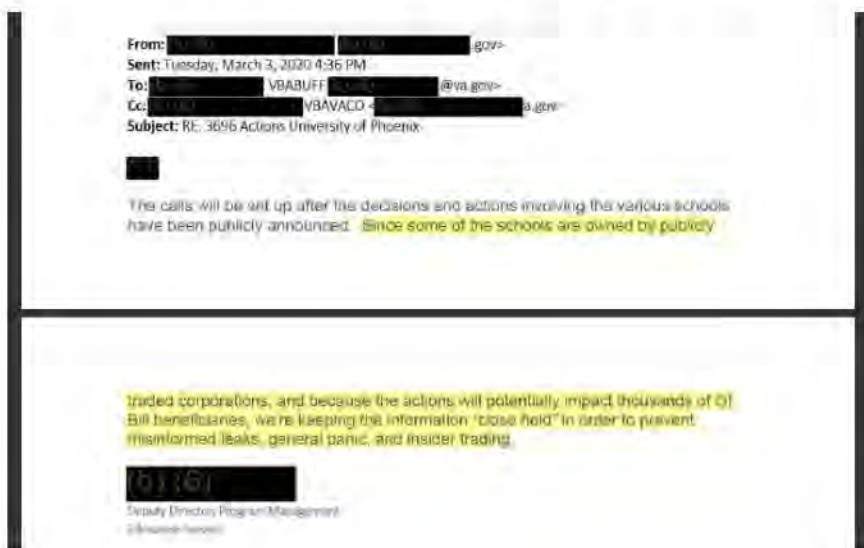
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/)
[of-v-a-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-v-a-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11
- 12 1. Is there any internal rule or regulation (CFR) that defines, states, or
13 discusses the different tier? For example, what is the guidance for deciding
14 what is tier 2 versus tier 3?
 - 15 2. Is there any internal rule or regulation (CFR) that expand the period to
16 respond to a FOIA request when the agency transfers a request to a new
17 tier?
 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

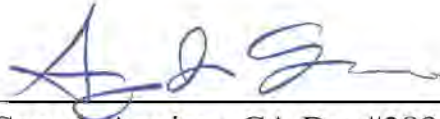
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

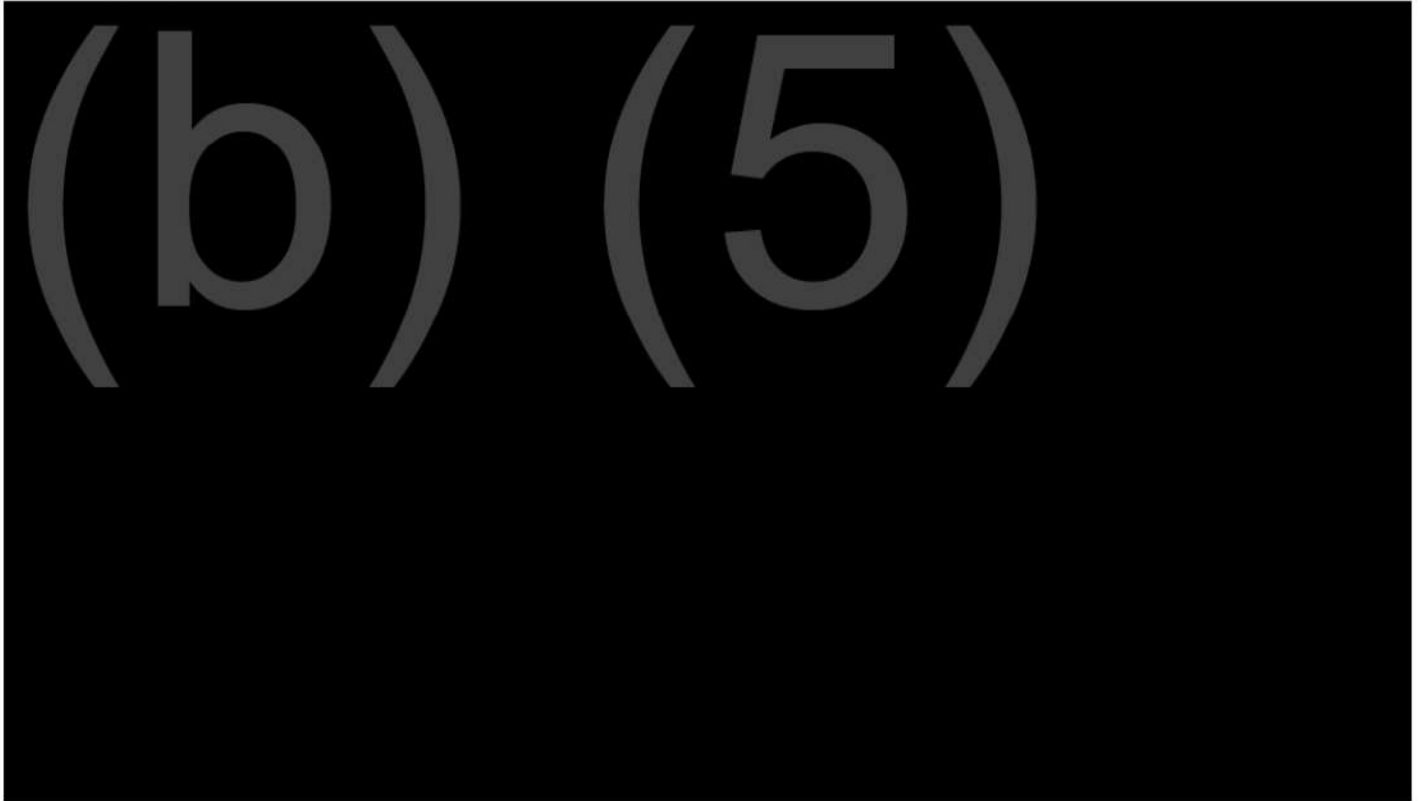
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Tue, 13 Apr 2021 16:58:24 +0000
To: Terrell, Brandye, VBAVACO
Cc: McVicker, Carrie A.; (b)(6) Parise, Ruthann
Subject: Regarding 4890714/Grasssley

Good afternoon Brandye:

I am the writer assigned to facilitate the development of a response for VIEWS 4890714/Grassley. I was recently informed that you were developing responses on behalf VBA for some of the questions. I write to request that you send me a copy of the responses by COB, Friday, April 16, 2021. I will create a task assignment for you only (because this matter is close hold) in VIEWS for tracking/monitoring purposes.

Please let me know if you have any questions.

Best regards,

(b)(6)

Get [Outlook for iOS](#)

From: (b)(6)
Sent: Fri, 16 Apr 2021 16:20:44 +0000
To: (b)(6)
Subject: CLOSE HOLD LETTER/VIEWS 4890714
Attachments: 04890714 - 2021-04-02 CEG to VA.pdf
Importance: High

Hi (b)(6)

Attached is a close hold letter from Senator Grassley about some misconduct at VBA. I have been scurrying about trying to figure out who can provide answers to the 12 questions in the letter. (b)(5)

(b)(5)

(b)(5)

That

said, I am hosting a collab call on Monday and I need the name of the appropriate SME, other than you, who I can send the invitation to directly. (b)(5)

(b)(6)

Let me know if you have any questions.

(b)(6)

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11
- 12 1. Is there any internal rule or regulation (CFR) that defines, states, or
13 discusses the different tier? For example, what is the guidance for deciding
14 what is tier 2 versus tier 3?
 - 15 2. Is there any internal rule or regulation (CFR) that expand the period to
16 respond to a FOIA request when the agency transfers a request to a new
17 tier?
 - 18 3. What is the definition and rule or regulation applied in determining that
19 Ms. Bogue is at a sufficient high level of management within the VBA that
20 this request should now be transferred to Tier 3?

21 A true and correct copy of this email is attached hereto and incorporated by reference as
22 Exhibit 9, at 34.

23 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
24 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
25 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
26 Office of General Counsel (OGC). The email continued:

27 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
28 this week. Secondly, I have reviewed your questions below concerning IT
processes. I have contacted the Chief of VBACO Desktop Support Services
for question #1.... This request is being reviewed by OGC because the subject
matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

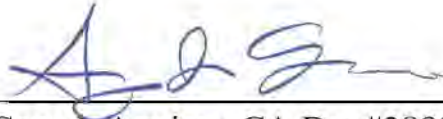
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

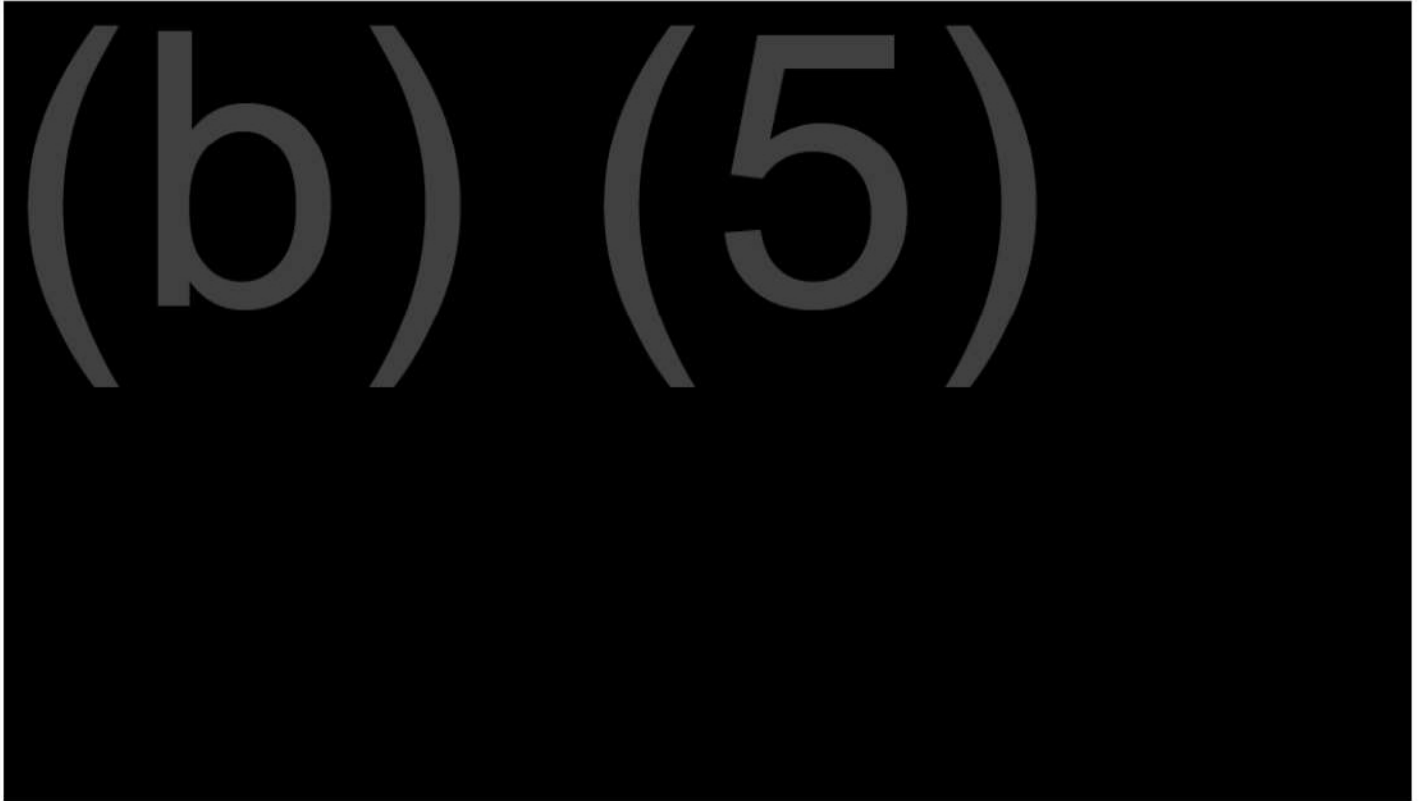
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Cordeiro, Hansel (OAWP)
Sent: Fri, 16 Apr 2021 16:32:56 +0000
To: (b)(6)
Cc: McVicker, Carrie A. (b)(6)
Subject: RE: Regarding 4890714/Grassley

Hi (b)(6)

Later in the day works best, say around 3pm or later. Carrie Johnson Clark is likely the person in CSEMO with access to the personnel files and grievance decisions for individuals referenced in Sen. Grassley's letter.

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs
Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420
To make a disclosure: Complete the optional form found at <https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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From: (b)(6)@va.gov>
Sent: Friday, April 16, 2021 12:28 PM
To: Cordeiro, Hansel (OAWP) (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: RE: Regarding 4890714/Grassley

Thanks Hansel. Is there a particular time on Monday that would be better for you if you are able to dial in? I will be sure to invite (b)(6) and Brandye. What about for CESMO?

From: Cordeiro, Hansel (OAWP) (b)(6)@va.gov>
Sent: Friday, April 16, 2021 12:05 PM
To: (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: RE: Regarding 4890714/Grassley

Hi (b)(6)

Brandye Terrell from VBA referred the allegations to OAWP. I'm out of the office on Monday but will try and dial-in. (b)(5) (b)(6)

(b)(5)

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

To make a disclosure: Complete the optional form found at <https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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From: (b)(6)@va.gov>

Sent: Friday, April 16, 2021 12:01 PM

To: Cordeiro, Hansel (OAWP) (b)(6)@va.gov>

Cc: McVicker, Carrie A. (b)(6)@va.gov> (b)(6)@va.gov>

Subject: Regarding 4890714/Grassley

Importance: High

Good morning Hansel:

Based upon the feedback you provided to Dick Hipolit (shared with me by Mike Hogan) regarding 4890714/Grassley I am writing for two reasons. First, I want to let you know that I will be sending you an invitation to a collaboration call that I am hosting for the purpose of developing responses to some of the outstanding questions in the letter. I will attach a draft of the questions and answers I have received so far to the collaboration call invitation.

(b)(5)

Thanks in advance for your help.

Best regards,

(b)(6)

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

(b)(6) mobile

Sent: Fri, 16 Apr 2021 18:40:57 +0000
To: (b)(6)
Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

We

From: (b)(6)@va.gov>
Sent: Friday, April 16, 2021 1:15 PM
To: (b)(6)@va.gov>
Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

(b)(6) I'm consulting now. give me an hour to get a response ☐☐

(b)(6)

VA/OALC (003)

(b)(6)



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IEWS Information (b)(7)(E)

IEWS HELPDESK Requests (b)(7)(E)



Choose VA

From: (b)(6)@va.gov>
Sent: Friday, April 16, 2021 12:21 PM
To: (b)(6)@va.gov>
Subject: CLOSE HOLD LETTER/VIEWS 4890714
Importance: High

Hi (b)(6)

Attached is a close hold letter from Senator Grassley about some misconduct at VBA. I have been scurrying about trying to figure out who can provide answers to the 12 questions in the letter. (b)(5)

(b)(5)

(b)(5)

That

said, I am hosting a collab call on Monday and I need the name of the appropriate SME, other than you, who I can send the invitation to directly. (b)(5)

(b)(5) Let me know if you have any questions.

(b)(5)

From: Office of the Executive Secretary (VACO) - Calendar
Sent: Fri, 16 Apr 2021 19:24:54 +0000
To: Office of the Executive Secretary (VACO) - Calendar; Hogan, Michael R. (OGC); (b)(6) (OGC); (b)(6) (OGC); Cordeiro, Hansel (OAWP); Parise, Ruthann (b)(6) Terrell, Brandye, VBAVACO; Johnson-Clark, Carrie; (b)(6) (b)(6) Christy, Phillip (SES)
Cc: McVicker, Carrie A. (b)(6) (OGC) (b)(6) (OGC) (b)(6) Farrisee, Gina S.
Subject: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD)
Attachments: 04890714 - 2021-04-02 CEG to VA.pdf

(b)(6)

Just in case you were not included on this invite.

(b)(6)

-----Original Appointment-----

From: Office of the Executive Secretary (VACO) - Calendar (b)(6)@va.gov>
Sent: Friday, April 16, 2021 3:25 PM
To: Office of the Executive Secretary (VACO) - Calendar; Hogan, Michael R. (OGC); (b)(6) (OGC); (b)(6) (OGC); Cordeiro, Hansel (OAWP); Parise, Ruthann; (b)(6) Terrell, Brandye, VBAVACO; Johnson-Clark, Carrie; (b)(6) Christy, Phillip (SES)
Cc: McVicker, Carrie A.; (b)(6) (OGC)
Subject: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD)
When: Monday, April 19, 2021 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Hello,

This is an invitation for another collab call to discuss the development of responses for the outstanding questions for the VIEWS 4890714/Grassley enclosure. We also need to talk about what the transmittal letter should say. The incoming letter is attached for your reference. Because I am unable (and/or do not know how) to encrypt teams meeting invitations I am forwarding the current (incomplete) version of the enclosure as a separate email. The email subject will be similar to the subject of this meeting invitation: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD) DRAFT ENCLOSURE.

Thank you in advance for participating in the call on Monday.

Microsoft Teams meeting

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DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
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THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

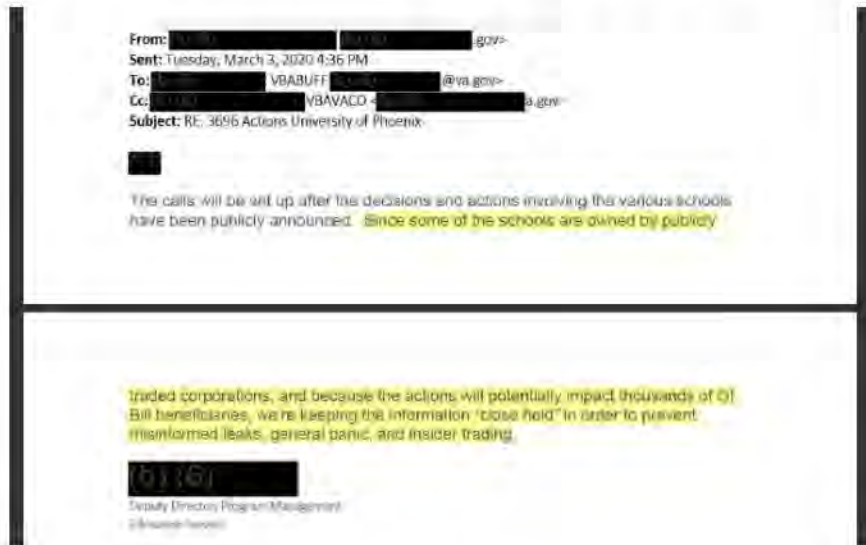
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
 carrie.wofford@veteranseducationsuccess.org would make this
 email responsive),
 b. Ang,
 c. Beynon,
 d. Bogue,
 e. Douglas-Gabriel,
 f. Halperin,
 g. Saunders,
 h. Safalow, and
 i. Shireman.
 4) All emails sent or received by any of the Designated VA Persons between
 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
 that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

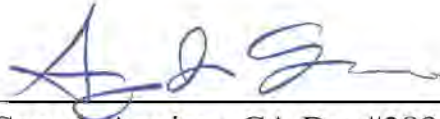
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

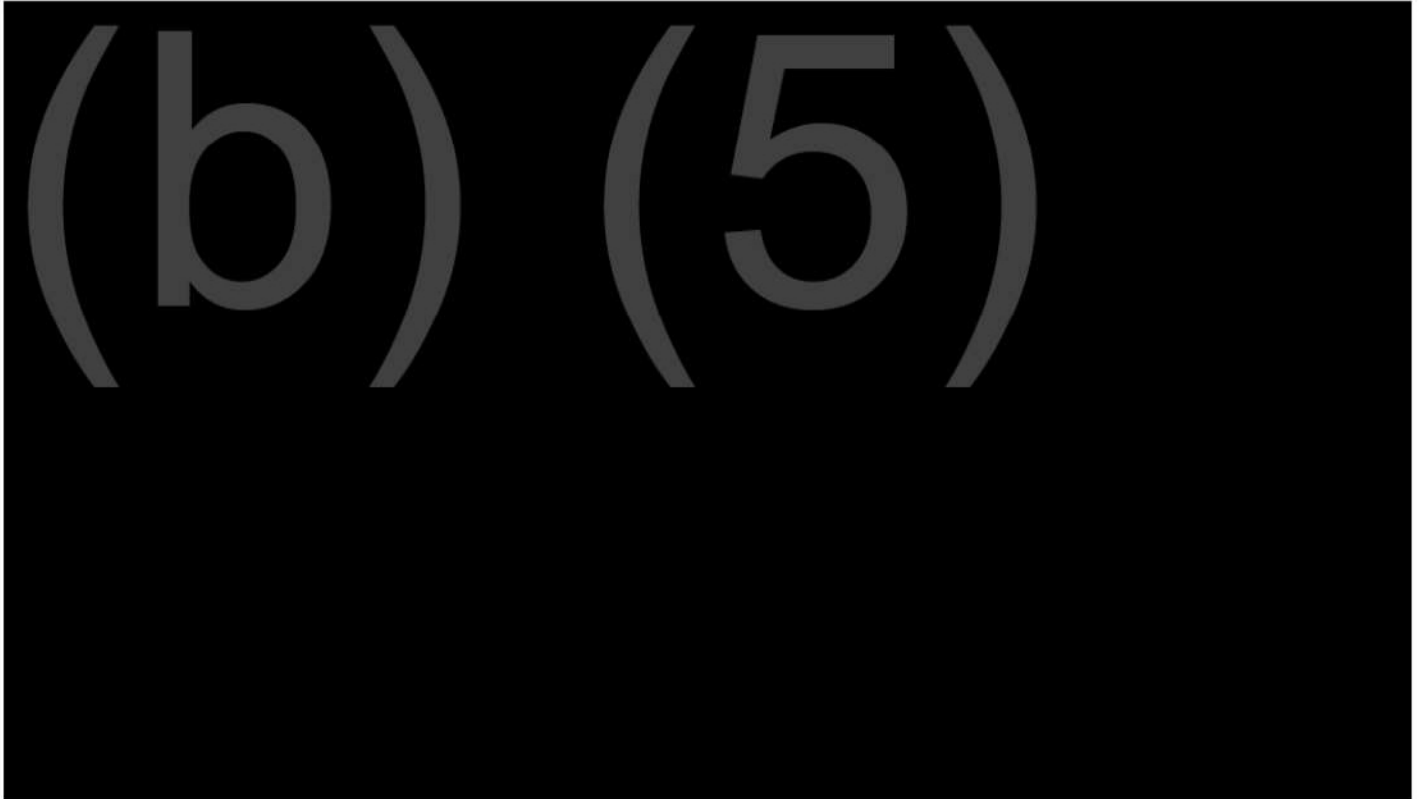
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: (b)(6)
Sent: Fri, 16 Apr 2021 19:29:51 +0000
To: (b)(6)
Cc: Christy, Phillip (SES)
Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

(b)(6) But i'm happy to facilitate any follow-on actions, if needed. v/r a.

(b)(6)
VA/OALC (003)
(b)(6)



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IEWS Information: (b)(7)(E)
IEWS HELPDESK Requests (b)(7)(E)



Choose VA

From: (b)(6)@va.gov>
Sent: Friday, April 16, 2021 3:21 PM
To: (b)(6)@va.gov>
Cc: Christy, Phillip (SES) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

(b)(6)

Do you want to be on the call too?

From: (b)(6)@va.gov>
Sent: Friday, April 16, 2021 3:15 PM
To: (b)(6)@va.gov>
Cc: Christy, Phillip (SES) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

Hi (b)(6) OALC SME for the subject call is:

Phillip W. Christy *EJD, CMRP, CFCM, PMP, FACHE*
Deputy Principal Executive Director
Office of Acquisition, Logistics & Construction

Thanks all. v/r A.

(b)(6)
VA/OALC (003)
(b)(6)



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IEWS Information: (b)(7)(E)
IEWS HELPDESK Requests (b)(7)(E)



Choose VA

From: (b)(6)
Sent: Friday, April 16, 2021 1:15 PM
To: (b)(6) <(b)(6)@va.gov>
Subject: RE: CLOSE HOLD LETTER/IEWS 4890714

(b)(6) I'm consulting now. give me an hour to get a response 😊

(b)(6)
VA/OALC (003)
(b)(6)



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IEWS Information: (b)(7)(E)

VIEWS HELPDESK Requests: (b)(7)(E)



Choose VA

From: (b)(6)@va.gov>
Sent: Friday, April 16, 2021 12:21 PM
To: (b)(6)@va.gov>
Subject: CLOSE HOLD LETTER/VIEWS 4890714
Importance: High

Hi (b)(6)

Attached is a close hold letter from Senator Grassley about some misconduct at VBA. I have been scurrying about trying to figure out who can provide answers to the 12 questions in the letter. (b)(5)

(b)(5)

(b)(5)

That said, I am hosting a collab call on Monday and I need the name of the appropriate SME, other than you, who I can send the invitation to directly. I am deviating from the usual process in this way because the matter is a close hold. Let me know if you have any questions.

(b)(6)

From: Office of the Executive Secretary (VACO) - Calendar
Sent: Mon, 19 Apr 2021 12:29:51 +0000
To: (b)(6) (OGC)
Subject: FW: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD)
Attachments: 04890714 - 2021-04-02 CEG to VA.pdf

(b)(6)

This meeting invitation is for personnel who are gathering information responsive to the Sen Grassley request (i.e. the matter involving Murphy, Manker, Reynolds, Bogue). Pls plan to join the call if you are available.

Thank you.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

-----Original Appointment-----

From: Office of the Executive Secretary (VACO) - Calendar <(b)(6)@va.gov>

Sent: Friday, April 16, 2021 3:25 PM

To: Office of the Executive Secretary (VACO) - Calendar; Hogan, Michael R. (OGC) (b)(6)
(OGC); (b)(6) (OGC); Cordeiro, Hansel (OAWP); Parise, Ruthann; (b)(6) Terrell,
Brandye, VBAVACO; Johnson-Clark, Carrie; (b)(6) Christy, Phillip (SES)

Cc: McVicker, Carrie A.; (b)(6)

Subject: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD)

When: Monday, April 19, 2021 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Hello,

This is an invitation for another collab call to discuss the development of responses for the outstanding questions for the VIEWS 4890714/Grassley enclosure. We also need to talk about what the transmittal letter should say. The incoming letter is attached for your reference. Because I am unable (and/or do

not know how) to encrypt teams meeting invitations I am forwarding the current (incomplete) version of the enclosure as a separate email. The email subject will be similar to the subject of this meeting invitation: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD) DRAFT ENCLOSURE.

Thank you in advance for participating in the call on Monday.

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)



[Learn More](#) | [Meeting options](#)

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

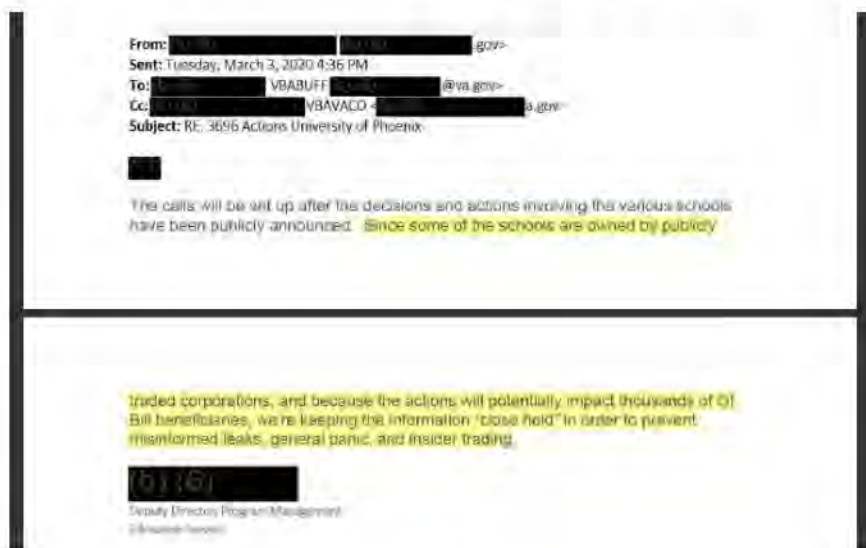
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.

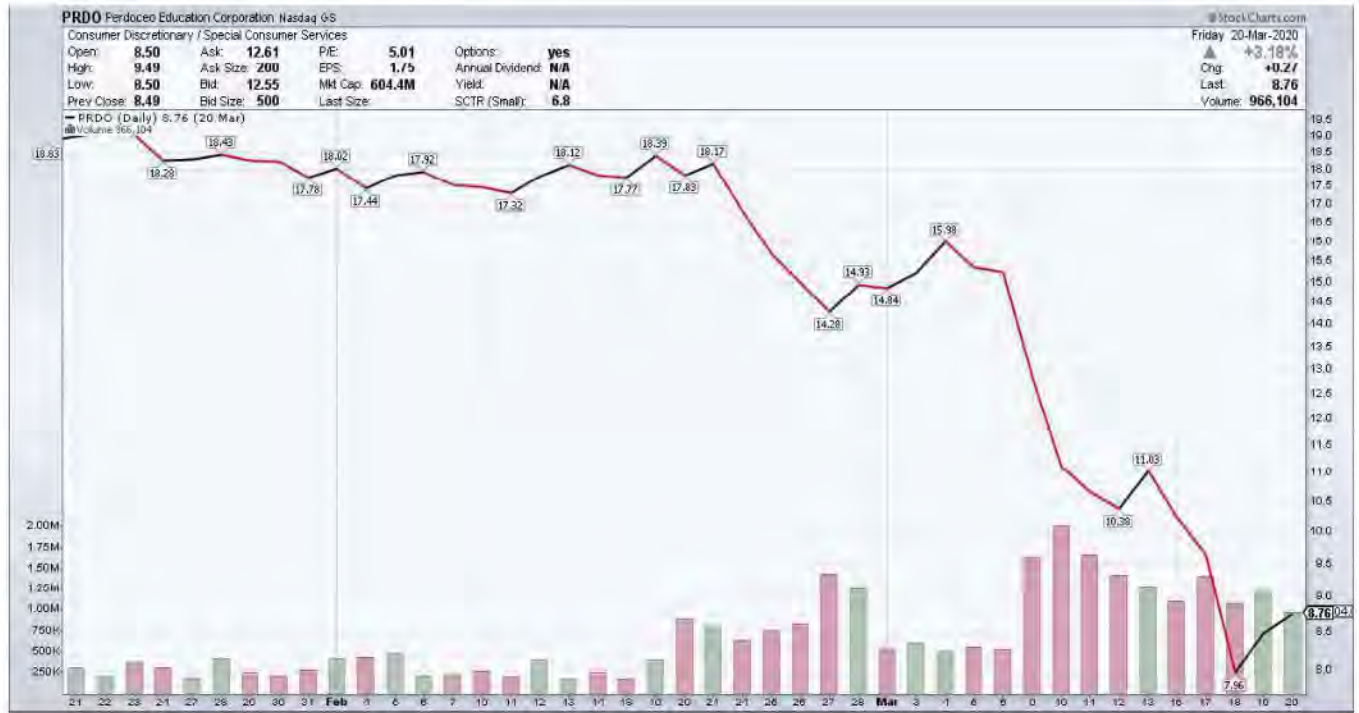


15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG’s Office of Counselor. A true and correct copy of the VA
3 OIG’s letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG’s
5 determination. A true and correct copy of Plaintiff’s appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG’s letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG’s appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF’S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff’s November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff’s November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

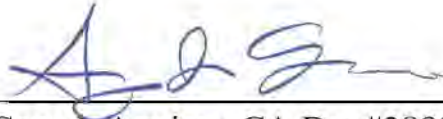
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff’s November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney’s fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

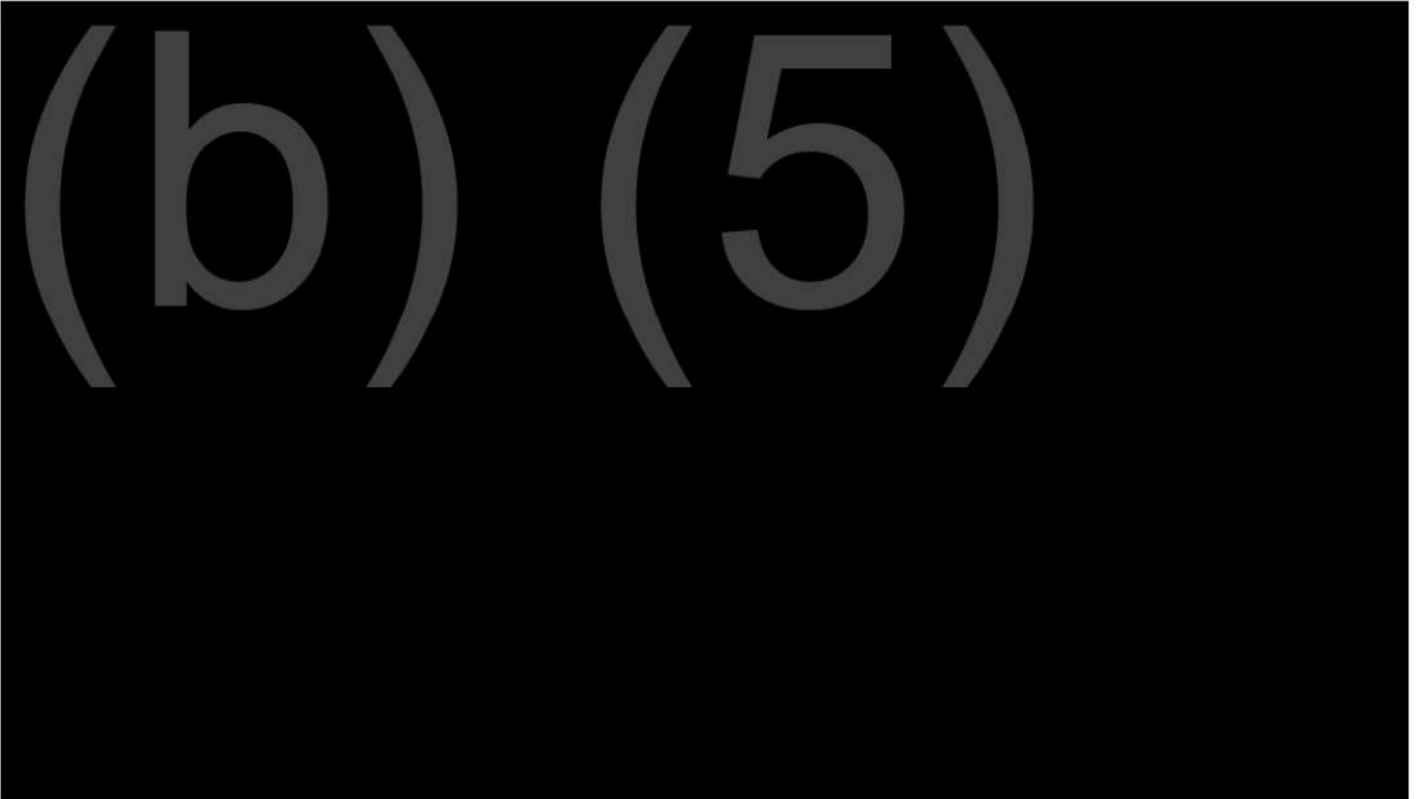
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Office of the Executive Secretary (VACO) - Calendar
Sent: Mon, 19 Apr 2021 14:15:09 +0000
To: (b)(6)
Subject: FW: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD)
Attachments: 04890714 - 2021-04-02 CEG to VA.pdf

(b)(6) and (b)(6)

I believe you both have conflicts. I can attend (not sure how much I can offer) but will give you a read out after the call.

(b)(6)
Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs
(b)(6)

-----Original Appointment-----

From: Office of the Executive Secretary (VACO) - Calendar (b)(6)@va.gov>
Sent: Friday, April 16, 2021 3:25 PM
To: Office of the Executive Secretary (VACO) - Calendar; Hogan, Michael R. (OGC) (b)(6)
(OGC) (b)(6) (OGC); Cordeiro, Hansel (OAWP); Parise, Ruthann; (b)(6) Terrell,
Brandy, VBAVACO; Johnson-Clark, Carrie; (b)(6) Christy, Phillip (SES)
Cc: McVicker, Carrie A. (b)(6) (OGC); (b)(6)
(OGC)
Subject: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD)
When: Monday, April 19, 2021 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Hello,

This is an invitation for another collab call to discuss the development of responses for the outstanding questions for the VIEWS 4890714/Grassley enclosure. We also need to talk about what the transmittal letter should say. The incoming letter is attached for your reference. Because I am unable (and/or do not know how) to encrypt teams meeting invitations I am forwarding the current (incomplete) version of the enclosure as a separate email. The email subject will be similar to the subject of this meeting invitation: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD) DRAFT ENCLOSURE.

Thank you in advance for participating in the call on Monday.

Microsoft Teams meeting

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

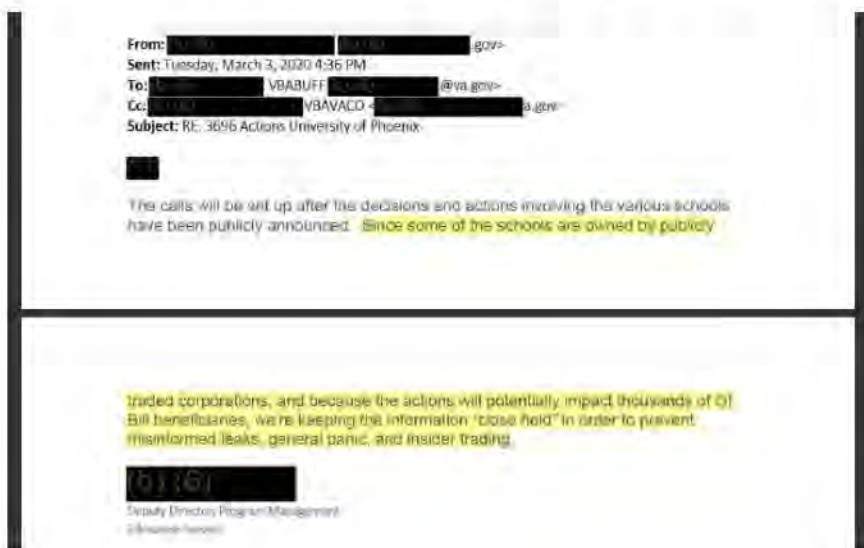
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- 1 a. Carrie Wofford.
- 2 b. Tanya Ang,
- 3 c. Barrett Bogue,
- 4 d. David Halperin,
- 5 e. Robert Norton,
- 6 f. Michael Saunders,
- 7 g. Bradley Safalow, and
- 8 h. Robert Shireman.

9 5) All emails sent or received by any of the Designated VA Persons between
10 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
11 that contain any of the following terms anywhere in the email:

- 12 a. University of Phoenix,
- 13 b. Perdoceo Education,
- 14 c. PRDO,
- 15 d. Career Education,
- 16 e. CECO,
- 17 f. Bellevue University,
- 18 g. Temple University,
- 19 h. Colorado Technical, and
- 20 i. American InterContinental.

21 6) All emails sent or received by any of the Designated VA Persons between
22 March 8 and March 10, 2020, **including** VA internal emails, that contain
23 any of the following phrases in the subject line:

- 24 a. VA intends to suspend enrollment,
- 25 b. Any Background/TPs on this available?
- 26 c. Talking Points on Suspension Actions,
- 27 d. Suspension Action for Five GI Bill Approved Schools, and
- 28 e. Talking Points on Suspension Action for Five GI Bill Approved
Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA
acknowledging the receipt of her FOIA request. A true and correct copy of the said
acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The
VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's
requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office
offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to
facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG’s Office of Counselor. A true and correct copy of the VA
3 OIG’s letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG’s
5 determination. A true and correct copy of Plaintiff’s appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG’s letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG’s appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF’S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff’s November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff’s November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

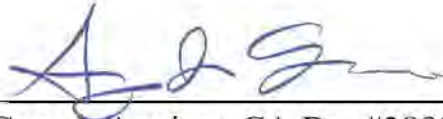
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff’s November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney’s fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

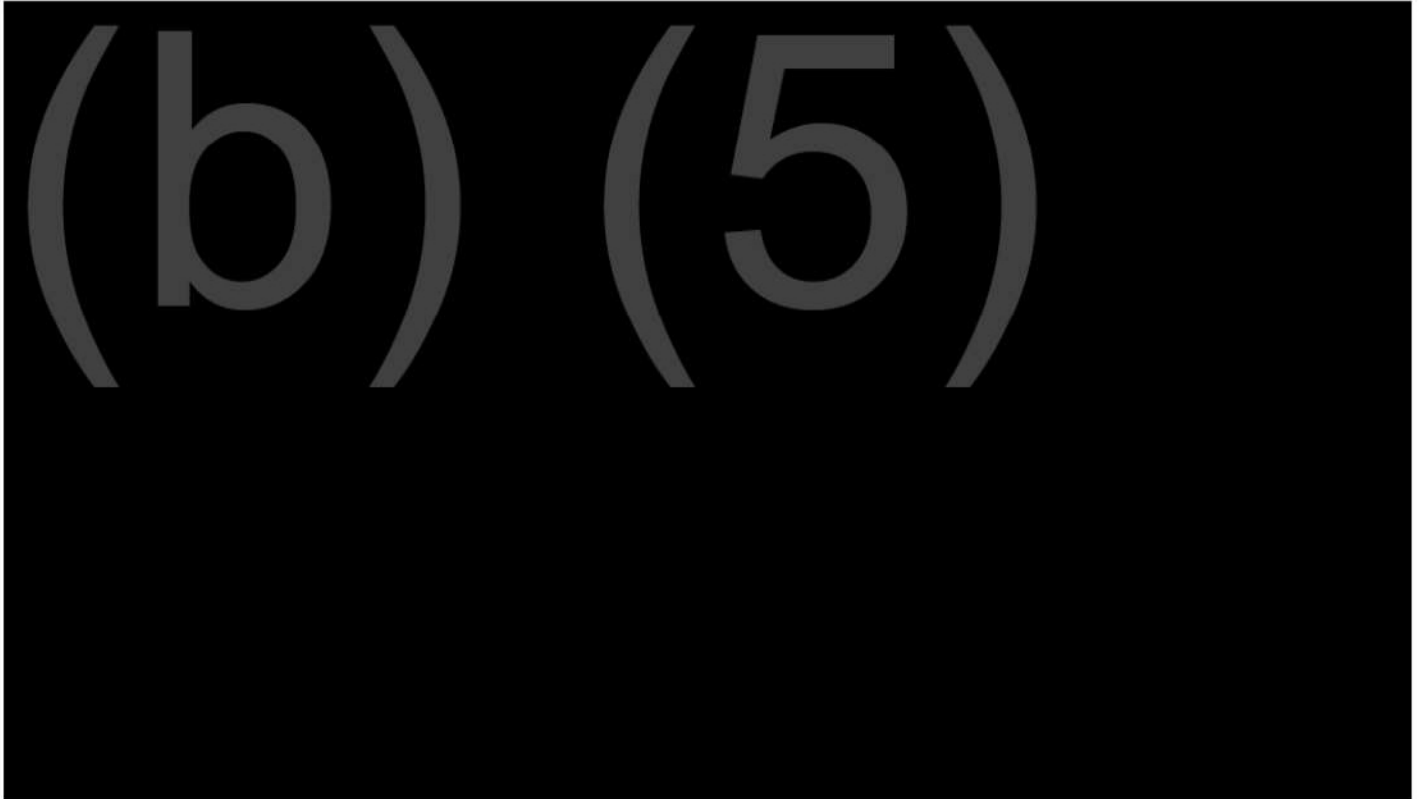
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov>; Mallia, Donna P. (b) (6)@va.gov>
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov>; Marsh, Mitzi A. VBASTL (b) (6)@va.gov>; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

From: Billups, Angela
Sent: Thu, 22 Apr 2021 20:46:11 +0000
To: Hogan, Michael R. (OGC);Christy, Phillip (SES)
Cc: (b)(6)
Subject: RE: VIEWS 04890714 - Grassley question

Hello (b)(5)

Regards,
Angela Billups, Ph.D.
Executive Director
Office of Acquisition and Logistics
Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420



Office of Acquisition, Logistics, and Construction

"We will ACT!"

Accountability • Customer Service • Transformation

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 3:55 PM
To: Billups, Angela (b)(6)@va.gov>; Christy, Phillip (SES) (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

Angela/Phil,

Bob Fleck provided the following:

(b)(5)

Mike
MICHAEL R. HOGAN

Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Billups, Angela (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 3:49 PM
To: Christy, Phillip (SES) (b)(6) @va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

Hello, while I would like to assist, I am not an SME in this area. I also need to get a good summary of the ask related to OGC interpretation of the question from Senator Grassley.

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?

(b)(5)



Regards,
Angela Billups, Ph.D.
Executive Director
Office of Acquisition and Logistics

Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420



Office of Acquisition, Logistics, and Construction

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From: Christy, Phillip (SES) <(b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:27 PM
To: Billups, Angela <(b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) <(b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Angela—this has boomeranged back to us (see below). (b)(5)

(b)(5)

Phil

Phillip W. Christy *EJD, CMRP, CFCM, PMP, FACHE*
Deputy Principal Executive Director
Office of Acquisition, Logistics & Construction
U.S. Department of Veterans Affairs
810 Vermont Ave NW, Washington, DC 20571

(b)(6)@va.gov

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:00 PM
To: Christy, Phillip (SES) <(b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Hi Sir,

Please see the below question (b)(6) received from ExecSec, referred (b)(6) by OGC. They are looking for a SME's name from OALC. However, we have never seen anything like this before. I don't think OPAL is the right SME. Should we refer (b)(6) to OAL, or back to OGC?

Thanks for any insight you can provide.

v/r,

(b)(6)

**Senior Correspondence Analyst
Office of Procurement, Acquisition and Logistics
Front Office Operations (003B)
Department of Veterans Affairs
810 Vermont Avenue, NW
Room 727R
Washington, DC 20420**

Office: (b)(6)

Mobile:

Email: (b)(6)@va.gov



VA Core Values: Integrity Commitment Advocacy Respect Excellence

VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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From: (b)(6)@va.gov>

Sent: Thursday, April 22, 2021 1:33 PM

To: (b)(6)@va.gov>

Subject: VIEWS 04890714 - Grassley question

Importance: High

Hi (b)(6)

Would you please scroll to the bottom of the email and advise if OPAL would be the one to provide the answer. Per (b)(6) in EXECSEC, she just needs an OALC SME to answer the question, and (b)(5) (b)(5) Also, per (b)(6) this is a confidential matter and please limit access to the information about the item to only people that need to know. Thanks as always!

(b)(6)

From: (b)(6)@va.gov>

Sent: Thursday, April 22, 2021 1:21 PM

To: (b)(6)@va.gov>

Subject: RE: Grassley question

Wonderful! The VIEWS number is 4890714. Please note this is a close hold (confidential matter) involving a VBA employee. Please limit access to the information about the item to only people that need to know. This is one of 12 -16 questions asked by Senator Grassley.

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:17 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

Hi (b)(6)

Yes, I can send this to a SME to answer. What is the VIEWS number?

Regards,

(b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:14 PM
To: (b)(6)@va.gov>
Subject: FW: Grassley question
Importance: High

Hi (b)(6)

I talked to (b)(6) briefly yesterday, so I know she wasn't feeling well. I sent this to her yesterday and I was wondering if you could help me since she is out of the office today. All I need is for a OALC SME to answer this question below. (b)(5)

If you can get it to me today, that would be outstanding.

(b)(6)

From: (b)(6)
Sent: Wednesday, April 21, 2021 8:53 AM
To: (b)(6)@va.gov>
Subject: Grassley question

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: PENDING

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs

810 Vermont Avenue NW

(b)(6)

From: (b)(6)
Sent: Thu, 22 Apr 2021 21:20:04 +0000
To: Hogan, Michael R. (OGC)
Cc: McVicker, Carrie A. (b)(6)
Subject: RE: comments from COS on draft Grassley
Attachments: 4890714 ROUGH DRAFT of Enclosure_ v.2.0 04222021.docx
Importance: High

Hi Mike: The most recent version of the rough draft is attached – it includes the language you provided for question 5. Please note that because of the updated response to question 5, question 5a is still outstanding.

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 4:30 PM
To: (b)(6) @va.gov>
Cc: McVicker, Carrie A. (b)(6) @va.gov> (b)(6) @va.gov>
Subject: RE: comments from COS on draft Grassley

Pls send the rough draft.

From: (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 4:21 PM
To: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Cc: McVicker, Carrie A. (b)(6) @va.gov>; (b)(6) @va.gov>
Subject: FW: comments from COS on draft Grassley

Hi Mike,

Below please find below questions from COSVA after reviewing the rough draft of the VA responses to Grassley's questions. You will see that all of these questions pertain to the information provided by OGC. They are as follows:

(b)(5)



Please respond by Noon tomorrow.

From: Hogan, Michael R. (OGC)
Sent: Fri, 23 Apr 2021 12:16:36 +0000
To: Fleck, Robert R. (OGC)
Subject: RE: VIEWS 04890714 - Grassley question

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Fleck, Robert R. (OGC) (b)(6)@va.gov>
Sent: Friday, April 23, 2021 5:02 AM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

Mike,

Attached is our response. Concurrence is requested.

Bob
Robert R. Fleck
Chief Counsel, Procurement Law Group
Office of the General Counsel
Room 1050
810 Vermont Avenue, NW
Washington, DC, 20420
Office (b)(6)
Cell/telework (b)(6)

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information officers or server administrators is not intended to be consent to any party to review the content of the email or a waiver of the attorney-client privilege and/or work product privilege.

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:45 PM
To: Fleck, Robert R. (OGC) (b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Bob,

Has your team advised on this matter already? If so, pls resend. If not, pls do so now.

Thank you.

Mike

From: Christy, Phillip (SES) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:27 PM
To: Billups, Angela (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Angela—this has boomeranged back to us (see below)...(b)(5)

(b)(5)

Phil

Phillip W. Christy *EJD, CMRP, CFCM, PMP, FACHE*
Deputy Principal Executive Director
Office of Acquisition, Logistics & Construction
U.S. Department of Veterans Affairs
810 Vermont Ave NW, Washington, DC 20571

(b)(6)@va.gov

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:00 PM
To: Christy, Phillip (SES) (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Hi Sir,

Please see the below question (b)(6) received from ExecSec, referred by OGC. They are looking for a SME's name from OALC. However, we have never seen anything like this before. I don't think OPAL is the right SME. Should we refer (b)(6) to OAL, or back to OGC?

Thanks for any insight you can provide.

v/r,

(b)(6)

Senior Correspondence Analyst
Office of Procurement, Acquisition and Logistics
Front Office Operations (003B)
Department of Veterans Affairs
810 Vermont Avenue, NW
Room 727R
Washington, DC 20420
Office: (202) 461-6896
Mobile: (202) 695-9145
Email: angela.malloy@va.gov



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From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:33 PM
To: (b)(6)@va.gov>
Subject: VIEWS 04890714 - Grassley question
Importance: High

Hi (b)(6)

Would you please scroll to the bottom of the email and advise if OPAL would be the one to provide the answer. Per (b)(6) in EXECSEC, she just needs an OALC SME to answer the question, and (b)(5). Also, per (b)(6) this is a confidential matter and please limit access to the information about the item to only people that need to know. Thanks as always!

(b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:21 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

Wonderful! The VIEWS number is 4890714. Please note this is a close hold (confidential matter) involving a VBA employee. Please limit access to the information about the item to only people that need to know. This is one of 12 -16 questions asked by Senator Grassley.

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:17 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

Hi (b)(6)

Yes, I can send this to a SME to answer. What is the VIEWS number?

Regards,

(b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:14 PM
To: (b)(6)@va.gov>
Subject: FW: Grassley question
Importance: High

Hi (b)(6)

I talked to (b)(6) briefly yesterday, so I know she wasn't feeling well. I sent this to her yesterday and I was wondering if you could help me since she is out of the office today. All I need is for a OALC SME to answer this question below. (b)(5)

If you can get it to me today, that would be outstanding.

(b)(6)

From: (b)(6)
Sent: Wednesday, April 21, 2021 8:53 AM
To: (b)(6)@va.gov>
Subject: Grassley question

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: PENDING

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

(b)(6)

From: Fleck, Robert R. (OGC)
Sent: Fri, 23 Apr 2021 09:01:57 +0000
To: Hogan, Michael R. (OGC)
Subject: RE: VIEWS 04890714 - Grassley question
Attachments: Fwd: Question

Mike,

Attached is our response. Concurrence is requested.

Bob
Robert R. Fleck
Chief Counsel, Procurement Law Group
Office of the General Counsel
Room 1050
810 Vermont Avenue, NW
Washington, DC, 20420
Office (b)(6)
Cell/telework (b)(6)

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From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:45 PM
To: Fleck, Robert R. (OGC) (b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Bob,

Has your team advised on this matter already? If so, pls resend. If not, pls do so now.

Thank you.

Mike

From: Christy, Phillip (SES) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:27 PM
To: Billups, Angela (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Subject: FW: VIEWS 04890714 - Grassley question

Importance: High

Angela—this has boomeranged back to us (see below)...

(b)(5)

(b)(5)

If you think that fits the scenario we may just be able to reference the policies on how those items are handled?

Phil

Phillip W. Christy *EJD, CMRP, CFCM, PMP, FACHE*
Deputy Principal Executive Director
Office of Acquisition, Logistics & Construction
U.S. Department of Veterans Affairs
810 Vermont Ave NW, Washington, DC 20571

(b)(6) [@va.gov](mailto:(b)(6)@va.gov)

From: (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>

Sent: Thursday, April 22, 2021 2:00 PM

To: Christy, Phillip (SES) (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>

Cc: (b)(6) [@va.gov](mailto:(b)(6)@va.gov)>

Subject: FW: VIEWS 04890714 - Grassley question

Importance: High

Hi Sir,

Please see the below question (b)(6) received from ExecSec, referred by OGC. They are looking for a SME's name from OALC. However, we have never seen anything like this before. I don't think OPAL is the right SME. Should we refer (b)(6) to OAL, or back to OGC?

Thanks for any insight you can provide.

v/r,

(b)(6)

Senior Correspondence Analyst
Office of Procurement, Acquisition and Logistics
Front Office Operations (003B)
Department of Veterans Affairs
810 Vermont Avenue, NW
Room 727R
Washington, DC 20420
Office: (b)(6)
Mobile: (b)(6)
Email: (b)(6) [@va.gov](mailto:(b)(6)@va.gov)



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VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:33 PM
To: (b)(6)@va.gov>
Subject: VIEWS 04890714 - Grassley question
Importance: High

Hi (b)(6)

Would you please scroll to the bottom of the email and advise if OPAL would be the one to provide the answer. Per (b)(6) in EXECSEC, she just needs an OALC SME to answer the question, and (b)(5) (b)(5) Also, per (b)(6) this is a confidential matter and please limit access to the information about the item to only people that need to know. Thanks as always!

(b)(6)

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Sent: Thursday, April 22, 2021 1:21 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

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From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:17 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

Hi (b)(6)

Yes, I can send this to a SME to answer. What is the VIEWS number?

Regards,

(b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:14 PM
To: (b)(6)@va.gov>
Subject: FW: Grassley question
Importance: High

Hi (b)(6)

I talked to (b)(6) briefly yesterday, so I know she wasn't feeling well. I sent this to her yesterday and I was wondering if you could help me since she is out of the office today. All I need is for a OALC SME to answer this question below. (b)(5)

If you can get it to me today, that would be outstanding.

(b)(6)

From: (b)(6)
Sent: Wednesday, April 21, 2021 8:53 AM
To: (b)(6)@va.gov>
Subject: Grassley question

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: PENDING

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

(b)(6)

From: Fleck, Robert R. (OGC)
Sent: Thu, 22 Apr 2021 19:16:02 +0000
To: Hogan, Michael R. (OGC)
Subject: Fwd: Question

Mike,

Here is the answer we provided to you last Friday. Let me know if you need something additional.

Bob
Robert R. Fleck

From: Fleck, Robert R. (OGC) (b)(6)@va.gov>
Sent: Friday, April 16, 2021 5:55 AM
To: Hogan, Michael R. (OGC); Hughes, Michael D. (OGC)
Subject: RE: Question

Mike,

(b)(5)



Bob
Robert R. Fleck
Chief Counsel, Procurement Law Group
Office of the General Counsel
Room 1050
810 Vermont Avenue, NW
Washington, DC, 20420
Office (b)(6)
Cell/telework (b)(6)

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From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, April 15, 2021 3:07 PM
To: Fleck, Robert R. (OGC) (b)(6)@va.gov>; Hughes, Michael D. (OGC) (b)(6)@va.gov>
Subject: Question
Importance: High

Gentlemen,

Please respond to this question (from a Senator's request).

What steps does the VA take to protect retail investors by safeguarding market sensitive information regarding potential enforcement announcements related to publicly-traded companies?

If I should seek an answer from another source (i.e. OALC), please let me know ASAP.

I need an answer before COB Friday. Thank you.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: McVicker, Carrie A.
Sent: Fri, 23 Apr 2021 13:25:27 +0000
To: Farrissee, Gina S.
Subject: FW: comments from COS on draft Grassley
Attachments: 4890714 ROUGH DRAFT of Enclosure_ v.2.0 04222021 (002) - OGC edits.docx
Importance: High

Gina – as discussed.

V/R

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6) @va.gov

From: (b)(6) @va.gov>
Sent: Friday, April 23, 2021 8:53 AM
To: McVicker, Carrie A. (b)(6) @va.gov>
Cc: (b)(6) @va.gov>
Subject: RE: comments from COS on draft Grassley
Importance: High

Carrie:

Below are Mike's responses (in red font) to questions from COSVA. I have also attached the latest version of the rough draft, which includes Mike's changes below, in case it is easier to digest.

(b)(5)



(b)(5)

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:54 PM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: comments from COS on draft Grassley

(b)(6)

(b)(5)

Thanks.

Carrie

Carrie A. McVicker

The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) [@va.gov](#)

From: Office of the Executive Secretary (VACO) - Calendar
Sent: Tue, 27 Apr 2021 14:40:32 +0000
To: Farrissee, Gina S.
Cc: McVicker, Carrie A.;Parise, Ruthann
Subject: FW: comments from COS on draft Grassley
Attachments: 4890714 ROUGH DRAFT of Enclosure_ v.2.0 04222021 (002) - OGC edits.docx

Mike's email below.

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 6:18 PM
To: (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov> (b)(6)@va.gov>
Subject: RE: comments from COS on draft Grassley

(b)(6)

I addressed the questions in the attached file. (b)(5)
investigation.

(b)(5)

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 4:21 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov> (b)(6)@va.gov>
Subject: FW: comments from COS on draft Grassley

Hi Mike,

Below please find below questions from COSVA after reviewing the rough draft of the VA responses to Grassley's questions. You will see that all of these questions pertain to the information provided by OGC. They are as follows:

(b)(5)



Please respond by Noon tomorrow.

From: Office of the Executive Secretary (VACO) - Calendar
Sent: Tue, 27 Apr 2021 13:12:31 +0000
To: Parise, Ruthann;McVicker, Carrie A. (b)(6)
Subject: Grassley Letter Next steps
Attachments: 4890714 ROUGH DRAFT of Enclosure_ v.2.0 04222021 (002) - OGC edits.docx,
Follow-up, RE: comments from COS on draft Grassley, FW: Response to request from US Senator

The most recent version of the enclosure response is attached. I have also attached other emails from Mike that provided guidance.

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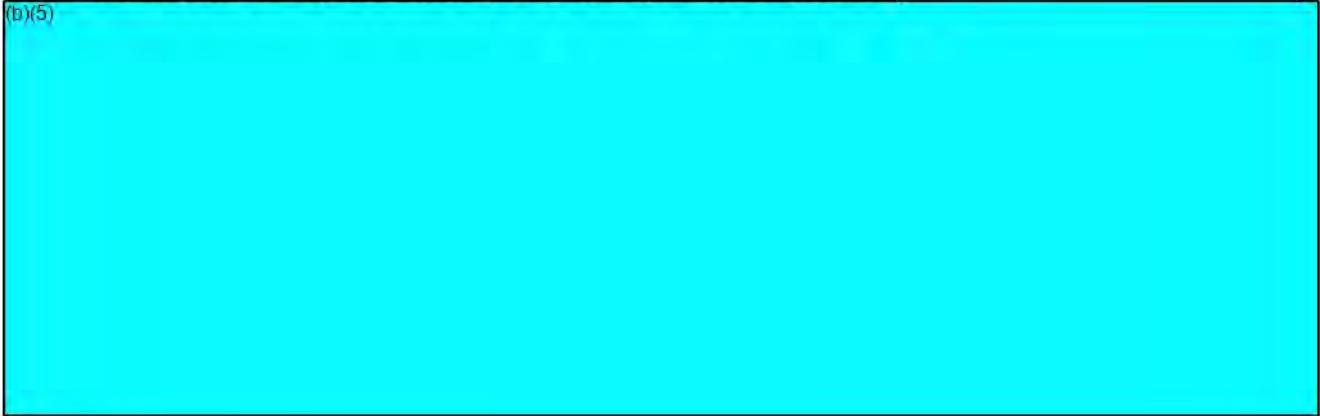
From: Hogan, Michael R. (OGC)
Sent: Fri, 23 Apr 2021 18:12:56 +0000
To: Parise, Ruthann (b)(6)
Subject: Follow-up

Re: Sen Grassley ltr

Ruthanne (b)(6)

The draft response incorporates the full range of responsive information. (b)(5)

(b)(5)



Thank you.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Hogan, Michael R. (OGC)
Sent: Thu, 22 Apr 2021 22:18:13 +0000
To: (b)(6)
Cc: McVicker, Carrie A. (b)(6)
Subject: RE: comments from COS on draft Grassley
Attachments: 4890714 ROUGH DRAFT of Enclosure_ v.2.0 04222021 (002) - OGC edits.docx

(b)(6)

I addressed the questions in the attached file. (b)(5)
investigation.

(b)(5)

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 4:21 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: FW: comments from COS on draft Grassley

Hi Mike,

Below please find below questions from COSVA after reviewing the rough draft of the VA responses to Grassley's questions. You will see that all of these questions pertain to the information provided by OGC. They are as follows:

(b)(5)

(b)(5)



Please respond by Noon tomorrow.

From: Hogan, Michael R. (OGC)
Sent: Fri, 23 Apr 2021 16:31:32 +0000
To: Parise, Ruthann (b)(6)
Subject: FW: Response to request from US Senator

For your awareness.

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Friday, April 23, 2021 12:31 PM
To: (b)(6) (OGC) (b)(6) @va.gov>; Hogan, Michael R. (OGC) (b)(6) @va.gov>
Cc: Tyler, Cynthia (OGC) (b)(6) @va.gov>; Cromwell, Sonya (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: Response to request from US Senator

(b)(5)

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 6:37 PM
To: Hogan, Michael R. (OGC) (b)(6) @va.gov> (b)(6) (OGC) (b)(6) @va.gov>
Cc: Tyler, Cynthia (OGC) (b)(6) @va.gov>; Cromwell, Sonya (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: Response to request from US Senator

(b)(5)

(b)(6)

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 4:58 PM
To: (b)(6) (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Cc: Tyler, Cynthia (OGC) (b)(6) @va.gov>; Cromwell, Sonya (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: Response to request from US Senator

Thank you Mark. I believe we already have them. Just did not know who had authority to release them.

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 5:57 PM
To: Hogan, Michael R. (OGC) (b)(6) @va.gov> (b)(6) (OGC) (b)(6) @va.gov>
Cc: Tyler, Cynthia (OGC) (b)(6) @va.gov>; Cromwell, Sonya (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: Response to request from US Senator

Mike—

(b)(5)

(b)(6)

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 4:52 PM
To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6) (OGC) (b)(6) @va.gov>
Cc: Tyler, Cynthia (OGC) (b)(6) @va.gov>; Cromwell, Sonya (OGC) (b)(6) @va.gov>
Subject: Response to request from US Senator
Importance: High

VA received a request from Sen Grassley seeking information about three senior VBA officials and another SES.

One question seeks copies of PFD reports.

(b)(5)

Thank you.

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure. _

From: (b)(6) OGC)
Sent: Thu, 29 Apr 2021 18:02:07 +0000
To: Parise, Ruthann
Subject: Draft Grassley Letter
Attachments: 4890714 ROUGH DRAFT of Enclosure_ v.3 4272021 (003) FOIA edits.docx

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs

(Office) (b)(6)

(b)(6) [@VA.gov](mailto:(b)(6)@VA.gov)

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From: McVicker, Carrie A.
Sent: Thu, 29 Apr 2021 19:52:56 +0000
To: Farrisee, Gina S.
Subject: Fwd: Grassley
Attachments: 4890714 ROUGH DRAFT of Enclosure_ v.3 4272021 (003) FOIA edits.docx

Just to keep you on the loop.

V/r

Get [Outlook for iOS](#)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Thursday, April 29, 2021 3:45 PM
To: (b)(6)
Cc: McVicker, Carrie A.; (b)(6)
Subject: RE: Grassley

H: (b)(6)

Attached is the Grassley Rough Draft with FOIA edits from (b)(6) and my discussion earlier today. (b)(5)

(b)(5)

Let me know if you have any questions.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: Parise, Ruthann
Sent: Wednesday, April 28, 2021 4:14 PM
To: (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: RE: Grassley

You're welcome (b)(6). Yes, (b)(6) will give me that information tomorrow in our follow up meeting.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) <(b)(6)@va.gov>
Sent: Wednesday, April 28, 2021 4:13 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Cc: McVicker, Carrie A. <(b)(6)@va.gov> <(b)(6)@va.gov>
Subject: RE: Grassley

Thanks for the update Ruthann. (b)(5)

(b)(5)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Wednesday, April 28, 2021 3:48 PM
To: (b)(6) <(b)(6)@va.gov>
Cc: McVicker, Carrie A. <(b)(6)@va.gov> <(b)(6)@va.gov>
Subject: Grassley

Hi (b)(6)

I just had a meeting w/Mike Hogan and (b)(6) (OGC ILG) re the Grassley letter. (b)(5)

(b)(5)

(b)(5), (b)(6)

Hope this clears things up rather than adds to any confusion.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) OGC)
Sent: Thu, 29 Apr 2021 22:00:03 +0000
To: (b)(6) (OGC)
Subject: FW: VIEWS 04890714 - Grassley question

Got a minute for a quick call?

Thanks,

(b)(6)
Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)
(b)(6) @VA.gov

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From: (b)(6) @va.gov>
Sent: Thursday, April 29, 2021 4:38 PM
To: (b)(6) (OGC) (b)(6) @va.gov>
Subject: FW: VIEWS 04890714 - Grassley question

H (b)(6)

I am reaching out to you about the comment (pasted below) that you inserted for the VA's response to question 5:

(b)(5)

(b)(5)

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 3:55 PM
To: Billups, Angela (b)(6)@va.gov>; Christy, Phillip (SES) (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

Angela/Phil,

Bob Fleck provided the following:

(b)(5)

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Billups, Angela (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 3:49 PM
To: Christy, Phillip (SES) (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

Hello, while I would like to assist, I am not an SME in this area. I also need to get a good summary of the ask related to OGC interpretation of the question from Senator Grassley.

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?

(b)(5)



Regards,
Angela Billups, Ph.D.
Executive Director
Office of Acquisition and Logistics
Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420



Office of Acquisition, Logistics, and Construction

"We will ACT!"

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From: Christy, Phillip (SES) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:27 PM
To: Billups, Angela (b)(6)@va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Angela—this has boomeranged back to us (see below). (b)(5)

(b)(5)

Phil

Phillip W. Christy *EJD, CMRP, CFCM, PMP, FACHE*
Deputy Principal Executive Director
Office of Acquisition, Logistics & Construction
U.S. Department of Veterans Affairs
810 Vermont Ave NW, Washington, DC 20571

(b)(6)@va.gov

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 2:00 PM
To: Christy, Phillip (SES) (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Hi Sir,

Please see the below question (b)(6) received from ExecSec, referred by OGC. They are looking for a SME's name from OALC. However, we have never seen anything like this before. I don't think OPAL is the right SME. Should we refer (b)(6) to OAL, or back to OGC?

Thanks for any insight you can provide.

v/r,

(b)(6)

Senior Correspondence Analyst
Office of Procurement, Acquisition and Logistics
Front Office Operations (003B)
Department of Veterans Affairs
810 Vermont Avenue, NW
Room 727R
Washington, DC 20420
Office: (b)(6)
Mobile: (b)(6)
Email: (b)(6)@va.gov



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VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:33 PM
To: (b)(6)@va.gov>
Subject: VIEWS 04890714 - Grassley question
Importance: High

Hi (b)(6)

Would you please scroll to the bottom of the email and advise if OPAL would be the one to provide the answer. Per (b)(6) in EXECSEC, she just needs an OALC SME to answer the question, and (b)(5) (b)(5) Also, per (b)(6) this is a confidential matter and please limit access to the information about the item to only people that need to know. Thanks as always!

(b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:21 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

Wonderful! The VIEWS number is 4890714. Please note this is a close hold (confidential matter) involving a VBA employee. Please limit access to the information about the item to only people that need to know. This is one of 12 -16 questions asked by Senator Grassley.

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:17 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

Hi (b)(6)

Yes, I can send this to a SME to answer. What is the VIEWS number?

Regards,

(b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:14 PM
To: (b)(6)@va.gov>
Subject: FW: Grassley question
Importance: High

Hi (b)(6)

I talked to (b)(6) briefly yesterday, so I know she wasn't feeling well. I sent this to her yesterday and I was wondering if you could help me since she is out of the office today. All I need is for a OALC SME to answer this question below. (b)(5)

If you can get it to me today, that would be outstanding.

(b)(6)

From: (b)(6)
Sent: Wednesday, April 21, 2021 8:53 AM
To: (b)(6)@va.gov>
Subject: Grassley question

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: PENDING

(b)(6)
Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
(b)(6)

From: (b)(6)
Sent: Mon, 3 May 2021 16:34:03 +0000
To: Parise, Ruthann
Cc: (b)(6) McVicker, Carrie A.
Subject: FW: Grassley letter
Attachments: VIEWS 4890714 - Transmittal Letter.docx, 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021.docx
Importance: High

Hi Ruthann:

Attached is the proposed transmittal letter and the rough draft of the enclosure (you provided last week). (b)(5)

(b)(5)

Let me know if you have questions.

(b)(6)

From: McVicker, Carrie A.
Sent: Mon, 3 May 2021 16:51:08 +0000
To: Farrisee, Gina S.
Subject: FW: Grassley letter
Attachments: VIEWS 4890714 - Transmittal Letter.docx, 4890714 FINAL ROUGH DRAFT of Enclosure_v.4 42920213 4272021.docx
Importance: High

Gina – here is the latest we can use for tomorrow. Below is an update on where we are.

V/R\$

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6) @va.gov

From: (b)(6) @va.gov>
Sent: Monday, May 3, 2021 12:29 PM
To: McVicker, Carrie A. <(b)(6) @va.gov>
Cc: (b)(6) @va.gov>
Subject: RE: Grassley letter
Importance: High

Carrie:

The Grassley transmittal letter and the latest version of the enclosure are attached. The enclosure is unchanged from the one I provided last week. (b)(5)

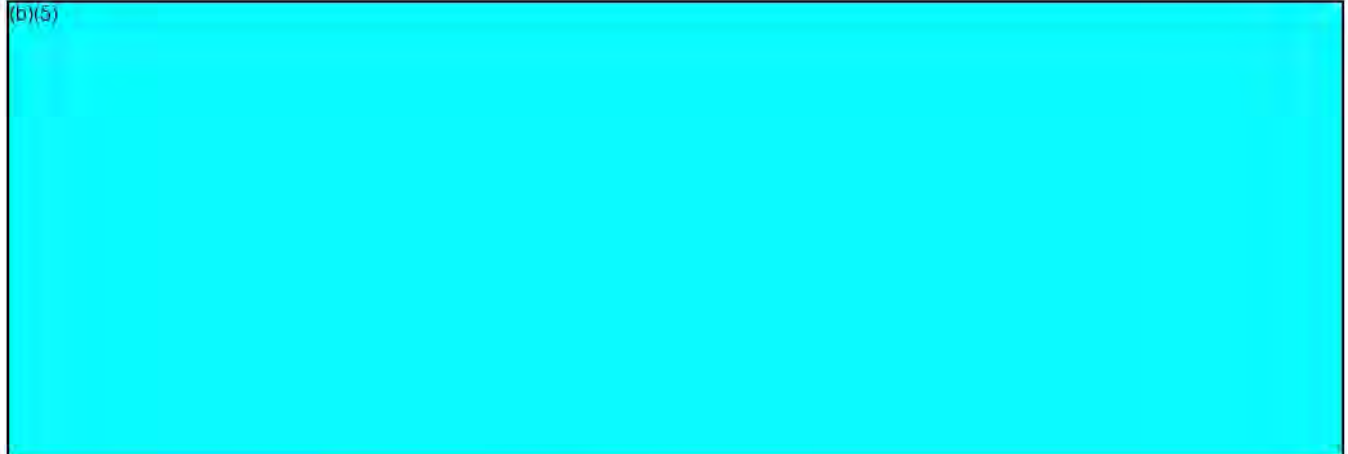
(b)(5)

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 (b)(5)

(b)(5)

(b)(5)



From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Monday, May 3, 2021 11:54 AM
To: (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: Grassley letter

Good afternoon (b)(6)

Just a reminder to send me the latest version of the Grassley response later this afternoon.

Thanks!

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6)@va.gov

From: (b)(6) (OGC)
Sent: Mon, 3 May 2021 18:11:03 +0000
To: (b)(6)
Subject: RE: VIEWS 04890714 - Grassley question

(b)(6)

(b)(5)

Thanks,

(b)(6)

From: (b)(6)@va.gov>
Sent: Monday, May 3, 2021 12:16 PM
To: (b)(6) OGC (b)(6)@va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

H (b)(6)

(b)(5); (b)(6)

(b)(6)

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Thursday, April 29, 2021 6:00 PM
To: (b)(6)@va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

(b)(5); (b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, April 29, 2021 4:38 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Subject: FW: VIEWS 04890714 - Grassley question

H (b)(6)

I am reaching out to you about the comment (pasted below) that you inserted for the VA's response to question 5:

(b)(5)

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: (b)(5)

(b)(5)

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 3:55 PM
To: Billups, Angela (b)(6)@va.gov>; Christy, Phillip (SES) (b)(6)@va.gov>
Cc: (b)(6)@va.gov>
Subject: RE: VIEWS 04890714 - Grassley question

Angela/Phil,

Bob Fleck provided the following:

(b)(5)

(b)(5)

Mike

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

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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?

(b)(5)

Regards,
Angela Billups, Ph.D.
Executive Director
Office of Acquisition and Logistics
Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420



Office of Acquisition, Logistics, and Construction

"We will **ACT!**"

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From: Christy, Phillip (SES) (b)(6) @va.gov>
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To: Billups, Angela (b)(6) @va.gov>
Cc: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Subject: FW: VIEWS 04890714 - Grassley question
Importance: High

Angela—this has boomeranged back to us (see below).. (b)(5)

(b)(5)

Phil

Phillip W. Christy *EJD, CMRP, CFCM, PMP, FACHE*
Deputy Principal Executive Director
Office of Acquisition, Logistics & Construction
U.S. Department of Veterans Affairs
810 Vermont Ave NW, Washington, DC 20571

(b)(6) @va.gov

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Thanks for any insight you can provide.

v/r,

(b)(6)

Senior Correspondence Analyst
Office of Procurement, Acquisition and Logistics
Front Office Operations (003B)
Department of Veterans Affairs
810 Vermont Avenue, NW
Room 727R
Washington, DC 20420
Office: (b)(6)
Mobile: (b)(6)
Email: (b)(6)@va.gov



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VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:33 PM
To: (b)(6)@va.gov>
Subject: VIEWS 04890714 - Grassley question
Importance: High

Hi (b)(6)

Would you please scroll to the bottom of the email and advise if OPAL would be the one to provide the answer. Per (b)(6) in EXECSEC, she just needs an OALC SME to answer the question, and (b)(5) (b)(5) Also, per (b)(6) this is a confidential matter and please limit access to the information about the item to only people that need to know. Thanks as always!

(b)(6)

From: (b)(6)@va.gov>
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To: (b)(6)@va.gov>
Subject: RE: Grassley question

Wonderful! The VIEWS number is 4890714. Please note this is a close hold (confidential matter) involving a VBA employee. Please limit access to the information about the item to only people that need to know. This is one of 12 -16 questions asked by Senator Grassley.

From: (b)(6)@va.gov>
Sent: Thursday, April 22, 2021 1:17 PM
To: (b)(6)@va.gov>
Subject: RE: Grassley question

Hi (b)(6)

Yes, I can send this to a SME to answer. What is the VIEWS number?

Regards,
(b)(6)

From: (b)(6)@va.gov>
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To: (b)(6)@va.gov>
Subject: FW: Grassley question
Importance: High

Hi (b)(6)

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If you can get it t me today, that would be outstanding.

(b)(6)

From: (b)(6)
Sent: Wednesday, April 21, 2021 8:53 AM
To: (b)(6)@va.gov>
Subject: Grassley question

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: PENDING

(b)(6)

Executive Writer

Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

(b)(3)

From: (b)(6)
Sent: Tue, 4 May 2021 13:05:47 +0000
To: Hogan, Michael R. (OGC);Parise, Ruthann
Cc: (b)(6) McVicker, Carrie A.
Subject: RE: Call this morning
Attachments: VIEWS 4890714 - Transmittal Letter.docx, 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021.docx
Importance: High

Good morning Mike:

The Grassley transmittal letter and the latest version of the enclosure are attached.

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, May 4, 2021 9:00 AM
To: (b)(6)@va.gov>; Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: Call this morning
Importance: High

Hello,

Please send the most recent draft of the response to Sen Grassley's request. I would like to review it before our call with Gina at 9:30 am.

Thank you.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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From: (b)(6) (OGC)
Sent: Tue, 4 May 2021 14:12:00 +0000
To: Parise, Ruthann
Subject: FW: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021
Attachments: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021.docx
Importance: High

Hi Ruthann,

Just checking in on the status of all this. This is an old draft, I think. You were going to have us do a second-level review on any released documents, right?

Thanks,

(b)(6)

From: Hogan, Michael R. (OGC (b)(6)@va.gov>
Sent: Tuesday, May 4, 2021 9:24 AM
To: (b)(6) (OGC (b)(6)@va.gov>
Subject: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021
Importance: High

(b)(6)

(b)(5)

Thank you.

Mike

From: Parise, Ruthann
Sent: Tue, 4 May 2021 14:15:55 +0000
To: (b)(6) (OGC)
Subject: RE: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021

Hi (b)(6)

Yes, I'm going to have you do a second review (b)(5)

(b)(5)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Tuesday, May 4, 2021 10:12 AM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: FW: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021
Importance: High

Hi Ruthann,

Just checking in on the status of all this. This is an old draft, I think. You were going to have us do a second-level review on any released documents, right?

Thanks,

(b)(6)

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, May 4, 2021 9:24 AM
To: (b)(6) (OGC) (b)(6) @va.gov>

Subject: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021
Importance: High

(b)(6)

(b)(5)

Thank you.

Mike

From: Parise, Ruthann
Sent: Fri, 14 May 2021 18:02:03 +0000
To: (b)(6)
Cc: McVicker, Carrie A. (b)(6)
Subject: RE: Grassley
Attachments: VIEWS 4890714 - Transmittal Letter (RP edits) (002).docx, (2) Attachment P Murphy Training records.xlsx, (2) Attachment I Training.xlsx, (2) Attachment L Manker Training Records.xlsx

Hi (b)(6)

Attached is the draft transmittal letter and three Excel spreadsheets.

I sent the transmittal letter to (b)(6) a minute ago but didn't want to hold you up. If I hear back from him before I log off at 2:30 I will let you know.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
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From: Parise, Ruthann
Sent: Friday, May 14, 2021 1:25 PM
To: (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>
Subject: RE: Grassley

You're welcome (b)(6) I'm doing the transmittal letter right now. (b)(5)

(b)(5), (b)(6)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer

Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
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From: (b)(6)@va.gov
Sent: Friday, May 14, 2021 1:22 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov
Subject: RE: Grassley

Thanks Ruthann. I will keep looking out for them. (b)(5) (b)(6)

(b)(5)

Carrie (b)(6)

We are going to have figure something out. As you know OSVA approval packages consists of the (1) incoming letter; (2) the response; (3) the enclosure; and any (4) attachments referenced in the enclosure. The first attachment was 578 pages.

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Friday, May 14, 2021 12:46 PM
To: (b)(6)@va.gov
Cc: McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov
Subject: RE: Grassley

Hi (b)(6)

I just finished printing the releasable records and they exceed that which can be sent in one email; as such, I will send them to you via a TEAM attachment. Please know, that are an additional 3 excel spreadsheets that are also responsive. I will send you the Excel spreadsheets through email along with the updated template letter in a bit.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)

ruthann.parise@va.gov
Phone: (202) 461-4866
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Sent: Friday, May 14, 2021 9:22 AM
To: McVicker, Carrie A. <(b)(6)@va.gov>; Parise, Ruthann <(b)(6)@va.gov>
Cc: (b)(6) <(b)(6)@va.gov>
Subject: RE: Grassley

(b)(5)

From: McVicker, Carrie A. <(b)(6)@va.gov>
Sent: Friday, May 14, 2021 8:55 AM
To: Parise, Ruthann <Ruthann.Parise@va.gov> <(b)(6)@va.gov>
Cc: (b)(6) <(b)(6)@va.gov>
Subject: RE: Grassley

Thank you team. Do you think this means we may be able to get it out for concurrence today?
Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

(b)(6) <(b)(6)@va.gov>

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Friday, May 14, 2021 8:52 AM
To: (b)(6) <(b)(6)@va.gov>
Cc: McVicker, Carrie A. <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>
Subject: RE: Grassley

Hi (b)(6)
Just talked w/ (b)(6) at OGC. He heard back from Mike; (b)(6) is doing one last look at the records and will get back to me this morning. I will go in and print the redacted records and then I will add some language to the transmittal letter regarding the redactions/exemptions applied.

Respectfully,
Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: Parise, Ruthann

Sent: Thursday, May 13, 2021 10:52 AM

To: McVicker, Carrie A. (b)(6)@va.gov (b)(6)@va.gov (b)(6)@va.gov

Subject: FW: Grassley

FYI. I let (b)(6) know again.

Respectfully,

Ruthann Parise

OSVA FOIA/Privacy Officer

Office of the Executive Secretary

Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)

ruthann.parise@va.gov

Phone: (202) 461-4866

iPhone: (202) 306-3112

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From: (b)(6) (OGC) (b)(6)@va.gov

Sent: Thursday, May 13, 2021 10:30 AM

To: Parise, Ruthann <Ruthann.Parise@va.gov>

Subject: RE: Grassley

OK – Mike is going to talk with her about it.

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation

Information and Administrative Law Group (024A)

Office of General Counsel

U.S. Dept. of Veterans Affairs

(Office) (b)(6)

(b)(6)@VA.gov

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From: Parise, Ruthann <Ruthann.Parise@va.gov>

Sent: Thursday, May 13, 2021 9:44 AM

To: (b)(6) (OGC) (b)(6)@va.gov

Subject: Grassley

Hey (b)(6)

Just got another email from my Director advising "Gina is hoping we can get this out for concurrence by tomorrow"

Respectfully,

Ruthann Parise

OSVA FOIA/Privacy Officer

Office of the Executive Secretary

Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)

ruthann.parise@va.gov

Phone: (202) 461-4866

iPhone: (202) 306-3112

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First Name	Last Name	Middle Initial	Entity ID	Item Type	Entity Type	Item Revision Date	Entity Title	Completion Date	Completion Status	Total Hours	Credit Hours	Learning Hours
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	3/1/2010 11:56 AM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 12:12 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 12:12 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	3/1/2010 12:53 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	5/7/2010 11:38 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:40 AM America/New York	Prevention of Sexual Harassment	3/28/2011 12:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	2/27/2012 01:37 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	8625	VA	Item	8/11/2010 01:29 PM America/New York	VIA 2010 Leadership Conference: Be the Change You Want to See	8/26/2010 03:00 PM America/New York	VA-Complete	0	15	15
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	2/2/2018 04:45 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	3/28/2011 01:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	4/16/2013 02:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	6/18/2015 01:13 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/11/2013 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2015 10:43 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/20/2016 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/26/2017 12:49 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/2/2018 04:36 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/27/2012 01:55 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/1/2010 12:28 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/28/2011 01:04 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	5/7/2010 12:02 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10213	VA	Item	2/14/2007 03:17 PM America/New York	Privacy and HIPAA Training	7/5/2011 10:31 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	30535	VA	Item	9/12/2016 12:26 PM America/New York	S.A.V.E. Refresher Training	7/14/2017 04:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	31726	VA	Item	2/7/2006 07:58 AM America/New York	Ethics Most Wanted	12/8/2009 08:19 AM America/New York	VA-Complete	1.5	0	1.5
THOMAS	MURPHY	J	32755	VA	Item	4/28/2006 01:19 PM America/New York	General Employee Privacy Awareness	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	33557	VA	Item	8/23/2007 07:27 AM America/New York	Senior Leaders Meet & Hear Meeting (S4677 / BS 4665)	4/27/2017 05:30 PM America/New York	VA-Complete	0	0	12
THOMAS	MURPHY	J	32696	VA	Item	7/24/2017 06:28 AM America/New York	Leadership VA (VIA) / 4528 Session 3	9/15/2017 04:00 PM America/New York	VA-Complete	46	0	28
THOMAS	MURPHY	J	34049	VA	Item	7/31/2017 10:00 AM America/New York	VA Accountability and Whistleblower Protection Act Webinar	10/31/2017 03:43 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	8/3/2009 12:30 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	80761	VA	Item	6/18/2008 09:39 AM America/New York	PII Training	1/13/23 2009 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/11/2013 12:40 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/13/2014 12:27 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/20/2016 02:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	2/6/2015 08:04 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	5/7/2010 12:50 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	7/5/2011 10:34 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	126325	VA	Item	1/8/2010 08:29 AM America/New York	VA Senior Executive Forum	11/6/2009 04:00 PM America/New York	VA-Complete	24	0	24
THOMAS	MURPHY	J	126934	VA	Item	3/15/2010 01:49 PM America/New York	VBA Leadership Conference - Winter FY2010	3/16/2010 01:30 PM America/New York	VA-Complete	20.5	0	20.5
THOMAS	MURPHY	J	126935	VA	Item	3/15/2010 02:03 PM America/New York	Change Management for VBA Executives - Winter FY2010	3/16/2010 01:31 PM America/New York	VA-Complete	7	0	7
THOMAS	MURPHY	J	123485	VA	Item	8/3/2010 10:58 AM America/New York	Diversity & Inclusion for VA Senior Executive Service (SES) Members	8/26/2010 05:00 PM America/New York	VA-Complete	5	0	5
THOMAS	MURPHY	J	124988	VA	Item	8/3/2010 12:14 PM America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010 11:30 AM America/New York	VA-Complete	3	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	2/27/2012 03:34 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	6/26/2014 03:14 PM America/New York	VA-Complete	0	0	7
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/11/2013 11:48 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/26/2017 09:27 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	4/12/2015 11:21 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	2/2/2018 04:56 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	6/26/2014 03:14 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:35 AM America/New York	VA Senior Executive Strategic Leadership Course	7/5/2011 10:34 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:35 AM America/New York	VA Senior Executive Strategic Leadership Course	10/2/2011 09:04 AM America/New York	VA-Complete	40	0	40
THOMAS	MURPHY	J	171812	VA	Item	7/12/2011 11:00 AM America/New York	CARE Discussions	5/16/2012 02:58 PM America/New York	VA-Complete	44	0	40
THOMAS	MURPHY	J	312973	VA	Item	5/9/2012 05:52 PM America/New York	Time & Attendance System (VATAS) - Employees	12/2/2011 09:05 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	3292078	VA	Item	5/24/2012 09:58 AM America/New York	VBA Continues Readiness in Information Security Program - CRISP	4/12/2015 02:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	6/1/2012 05:34 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	7/13/2013 08:06 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	7/10/2013 08:06 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	12/4/2015 11:14 AM America/New York	NFED-Complete	0	0	0.1
THOMAS	MURPHY	J	387792	VA	Item	5/16/2014 11:50 AM America/New York	COMPLIANCE IMPACT: Reasonable Accommodation - The Ask	11/4/2015 01:23 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387792	VA	Item	5/16/2014 11:50 AM America/New York	VBA Executive Leadership Training Plenary Topics 2014	6/26/2014 04:05 PM America/New York	VA-Complete	0	0	8.5
THOMAS	MURPHY	J	387827	VA	Item	5/16/2014 09:52 AM America/New York	Communicating for Effect (Media Interview Techniques)	6/26/2014 04:17 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387829	VA	Item	5/16/2014 09:59 AM America/New York	2014 Budget Formulation and Execution for VBA Executives	6/26/2014 04:11 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387830	VA	Item	5/16/2014 10:05 AM America/New York	2014 Compensation Claims Quality and Training for VBA Executives	6/26/2014 04:12 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387831	VA	Item	5/16/2014 10:08 AM America/New York	2014 Acquisition for VBA Executives	6/26/2014 04:09 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387833	VA	Item	5/16/2014 10:13 AM America/New York	2014 VBMS for VBA Executives	6/26/2014 04:15 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387834	VA	Item	5/16/2014 10:16 AM America/New York	2014 Labor & Employee Relations for VBA Executives by Kimberley Mosley	6/26/2014 04:14 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387836	VA	Item	5/16/2014 10:21 AM America/New York	2014 Data Management for VBA Executives by Mark Seatzorn	6/26/2014 04:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387838	VA	Item	5/16/2014 10:24 AM America/New York	Critical Thinking Skills by Dr. Maureen McGuire-Jules	6/26/2014 04:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387839	VA	Item	5/16/2014 10:27 AM America/New York	Leading a Diverse Workforce by OPM Bruce Stewart	6/26/2014 04:19 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387840	VA	Item	5/16/2014 10:28 AM America/New York	Negotiation Skills - Bob Gilson on Labor Negotiations	6/26/2014 04:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387841	VA	Item	5/16/2014 10:32 AM America/New York	Accountability - Bob Gilson on Holding Federal Employees Accountable	6/26/2014 04:16 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/6/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	1/26/2017 09:24 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/6/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	9/16/2014 10:12 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	1/26/2017 09:16 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	2/2/2018 04:49 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	3/23/2015 04:26 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	391155	NFED	Item	3/5/2015 03:21 PM America/New York	HR Academy: Fair Employment Opportunities (FEO)	3/30/2015 11:39 AM America/New York	VA-Complete for Contact Hours	0	0	

From: Parise, Ruthann
Sent: Fri, 14 May 2021 18:09:27 +0000
To: (b)(6)
Cc: McVicker, Carrie A.; (b)(6)
Subject: FW: 21-05513-F SI Notification
Attachments: VIEWS 4890714 - Transmittal Letter (RP edits).docx

Hi (b)(6)

(b)(6) just got back to me with his markup. I have no problem with what he put on my stuff but the first item was what you had in the original so I leave that up to you. If you agree you can accept his changes for both your stuff and mine.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) (OGC) (b)(6)@va.gov
Sent: Friday, May 14, 2021 2:06 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: RE: 21-05513-F SI Notification

Looks good. A few edits.

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)
(b)(6)@VA.gov

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From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Friday, May 14, 2021 1:56 PM
To: (b)(6) (OGC) (b)(6) @va.gov
Subject: RE: 21-05513-F SI Notification

Hi (b)(6)

Sending so you can red-pen; although, I'm also sending to (b)(6) so she can put it in for concurrence in which I'll mention that you hadn't red-penned it yet.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) (OGC) (b)(6) @va.gov
Sent: Friday, May 14, 2021 11:28 AM
To: Parise, Ruthann (b)(6) @va.gov
Subject: RE: 21-05513-F SI Notification

Ruthann,

(b)(5)



Let me know if there is anything you need. I assume that the letter and the proposed released documents will go into concurrence. Hopefully it will go out quickly.

Thanks,

(b)(6)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Friday, May 14, 2021 8:21 AM
To: (b)(6) (OGC) (b)(6) @va.gov
Subject: RE: 21-05513-F SI Notification

Hi (b)(6)

I'm free now if you are available to talk.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) (OGC) (b)(6) @va.gov
Sent: Friday, May 14, 2021 8:20 AM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: RE: 21-05513-F SI Notification

Ruthann,

(b)(5); (b)(6)

So, I think we are ok to finish up review. Let me know when you're free and we can figure out next steps.

Thanks,

(b)(6)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Thursday, May 13, 2021 2:23 PM
To: (b)(6) (OGC) (b)(6) @va.gov
Subject: RE: 21-05513-F SI Notification

Great. Thanks.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) (OGC) (b)(6) @va.gov
Sent: Thursday, May 13, 2021 1:59 PM
To: Parise, Ruthann <Ruthann.Parise@va.gov>; OGC SI FOIA Notice (b)(6) @va.gov
Subject: RE: 21-05513-F SI Notification

OGC clears

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)
(b)(6) @VA.gov

ATTORNEY CONFIDENTIALITY NOTICE - FOR OFFICIAL USE ONLY.

CAUTION: The information contained in this e-mail constitutes professional communications and any accompanying attachments may contain Health Insurance Portability and Accountability Act (HIPAA), Privacy Act, and/or Freedom of Information Act (FOIA) protected information, including attorney-client or attorney work product privileged information. This information may not be released or forwarded to anyone who is not an authorized user/recipient without appropriate prior authorization from the sender. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is prohibited. If you receive this e-mail in error, please notify this office immediately by return e-mail.

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Thursday, May 13, 2021 1:00 PM
To: OGC SI FOIA Notice (b)(6) @va.gov>
Subject: 21-05513-F SI Notification

Attached to this email is a FOIA request received by OSVA on May 3, 2021, from (b)(6). The details pertaining to this request are outlined below:

What: records found by searching for emails/sent or received between "@health.ny.gov" and/or "@exec.ny.gov" and the following VA employee:

- Robert Wilkie

Search terms:

"medical futility"

And/or "SOFA"

And/or "MSOFA"

And/or "critical care resources"

And/or "allocation guideline"

And/or "life sustaining resources"

And/or "DNR"

Timeframe: 2/1/2020 To 1/1/2021

Assigned FOIA Officer: Ruthann Parise
Number of Processing days Remaining: 7

Attachments:

- a. 21-05513-F FOIA Request
- b. (5-13-21) 21-05513-F Draft IAD (No Records)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6)
Sent: Fri, 14 May 2021 19:58:36 +0000
To: Farrisee, Gina S.
Cc: McVicker, Carrie A. (b)(6)
Subject: VIEWS 4890714 CONCURRENCE ROUGH DRAFT PACKAGE
Attachments: 04890714 - Incoming Letter.pdf, VIEWS 4890714 - Transmittal Letter v.3 051421.docx, 4890714 FINAL ROUGH DRAFT of Enclosure_ v.5 051421.docx, (2) Attachment P Murphy Training records.xlsx, Copy of (2) Attachment I Training.xlsx, Copy of (2) Attachment L Manker Training Records.xlsx
Importance: High

Hello Gina:

Carrie asked that I send you what I had as far as the concurrence package for VIEWS 4890714. Therefore, attached for your preliminary review are the basic rough draft elements of what will be the VIEWS 4890714 concurrence package sent to OGC and OAWP. This includes:

- The incoming letter
- The transmittal letter (rough draft) (which includes standard language added by FOIA SMEs.)
- Enclosure (rough draft)
- 3 Xcel spread sheet attachments that respond to certain requests for documents.
- And the link below which will take you to the 578 pages of releasable records requested under questions 4 and 8 (You are receiving a link to these documents because the file is too large to send via email attachment)

(b)(7)(E)

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

(b)(6)

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
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CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
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MICHAEL S. LEE, UTAH
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JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

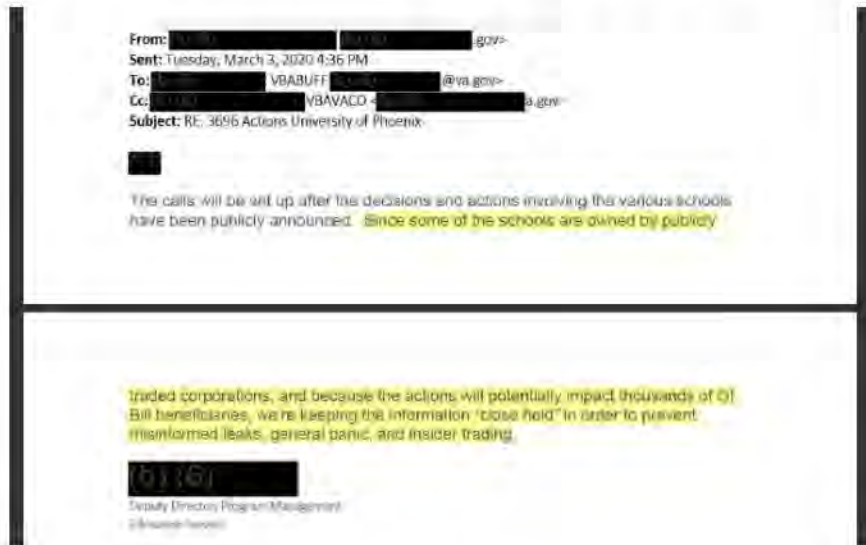
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
26 [group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

27 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
28 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
[https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

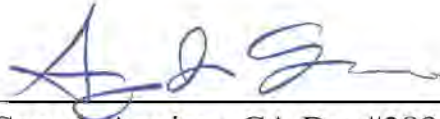
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

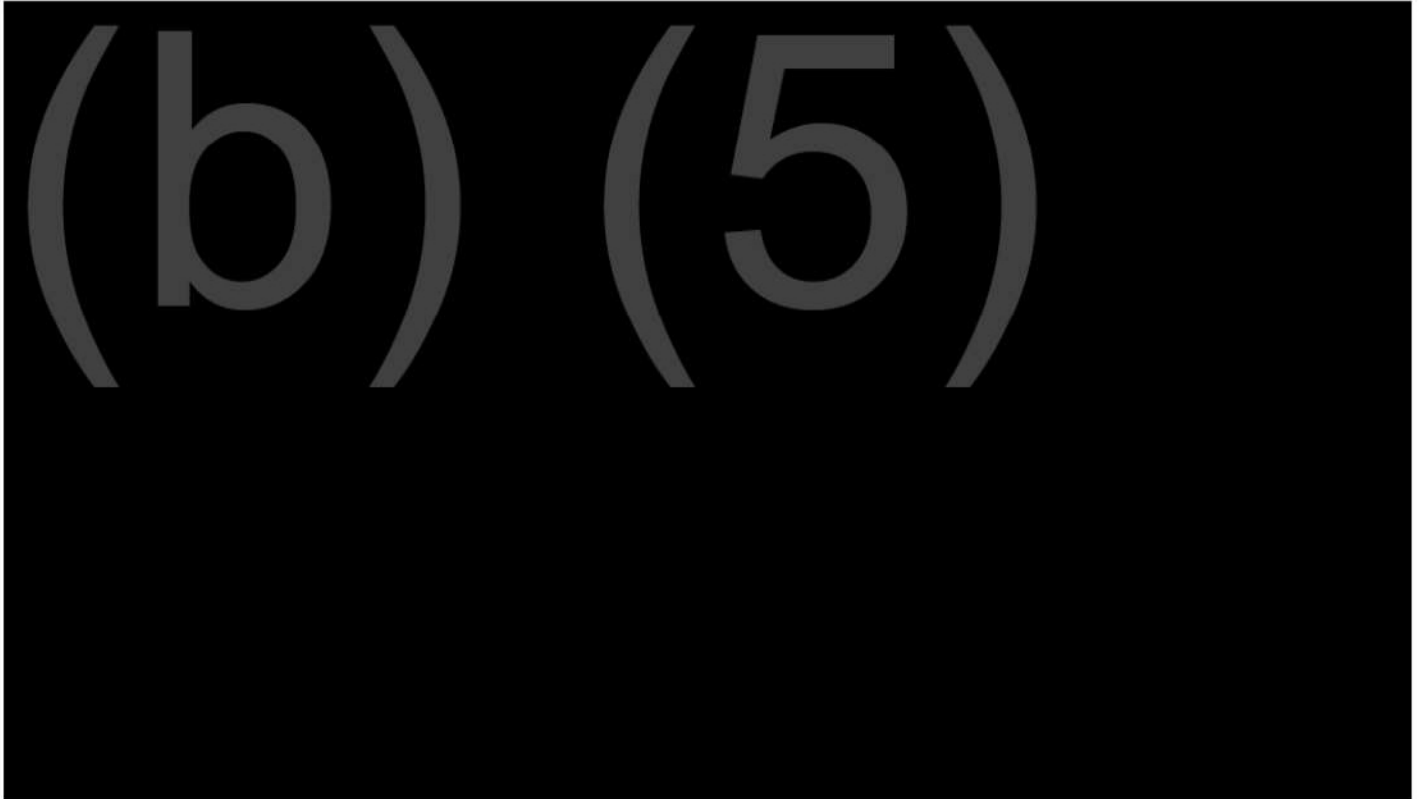
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

First Name	Last Name	Middle Initial	Entity ID	Item Type	Entity Type	Item Revision Date	Entity Title	Completion Date	Completion Status	Total Hours	Credit Hours	Learning Hours
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	3/1/2010 11:56 AM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 01:05 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 12:12 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	3/1/2010 12:53 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	5/7/2010 11:38 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:40 AM America/New York	Prevention of Sexual Harassment	3/28/2011 12:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	2/27/2012 01:37 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	8625	VA	Item	8/11/2010 01:29 PM America/New York	VIA 2010 Leadership Conference: Be the Change You Want to See	8/26/2010 03:00 PM America/New York	VA-Complete	0	15	15
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	2/2/2018 04:45 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	3/28/2011 01:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	4/16/2013 02:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	6/18/2015 01:13 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/11/2013 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2014 12:25 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2015 10:43 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/20/2016 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/26/2017 12:49 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/2/2018 04:36 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/27/2018 01:55 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/1/2010 12:38 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/28/2011 01:04 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	5/7/2010 12:02 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10761	VA	Item	2/14/2007 03:17 PM America/New York	Privacy and HIPAA Training	7/5/2011 10:31 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	30535	VA	Item	9/12/2016 12:26 PM America/New York	S.A.V.E. Refresher Training	7/14/2017 04:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	31726	VA	Item	2/7/2006 07:58 AM America/New York	Ethics Most Wanted	12/8/2009 08:19 AM America/New York	VA-Complete	1.5	0	1.5
THOMAS	MURPHY	J	32755	VA	Item	4/28/2006 01:19 PM America/New York	General Employee Privacy Awareness	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	33157	VA	Item	5/23/2009 12:23 PM America/New York	Senior Leaders Meet/ Hear Meeting (S4677 / BS 4665)	4/27/2017 05:30 PM America/New York	VA-Complete	0	0	12
THOMAS	MURPHY	J	33986	VA	Item	7/24/2017 06:28 AM America/New York	Leadership VA (VIA) / 4528 Session 3	9/15/2017 04:00 PM America/New York	VA-Complete	46	0	28
THOMAS	MURPHY	J	34049	VA	Item	7/31/2017 10:00 AM America/New York	VA Accountability and Whistleblower Protection Act Webinar	10/31/2017 03:43 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	8/5/2009 12:30 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	6128	VA	Item	6/18/2008 09:39 AM America/New York	PII Training	11/23/2009 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/11/2013 12:40 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/13/2014 12:27 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/20/2016 02:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	2/6/2015 08:00 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	5/7/2010 12:50 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	7/5/2011 10:34 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	126325	VA	Item	1/8/2010 08:29 AM America/New York	VA Senior Executive Forum	11/6/2009 04:00 PM America/New York	VA-Complete	24	0	24
THOMAS	MURPHY	J	126934	VA	Item	3/15/2010 01:48 PM America/New York	VBA Leadership Conference - Winter FY2010	3/16/2010 01:30 PM America/New York	VA-Complete	20.5	0	20.5
THOMAS	MURPHY	J	126935	VA	Item	3/15/2010 02:03 PM America/New York	Change Management for VBA Executives - Winter FY2010	3/16/2010 01:31 PM America/New York	VA-Complete	7	0	7
THOMAS	MURPHY	J	123485	VA	Item	8/3/2010 10:58 AM America/New York	Diversity & Inclusion for VA Senior Executive Service (SES) Members	8/26/2010 05:00 PM America/New York	VA-Complete	5	0	5
THOMAS	MURPHY	J	124988	VA	Item	8/3/2010 12:14 PM America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010 11:30 AM America/New York	VA-Complete	3	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	2/27/2012 01:34 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	6/26/2014 04:19 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/11/2013 11:48 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/26/2017 09:27 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	4/12/2015 11:21 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	2/2/2018 04:56 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	6/26/2014 03:14 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:15 AM America/New York	VA Senior Executive Strategic Leadership Course	7/5/2011 10:35 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:15 AM America/New York	VA Senior Executive Strategic Leadership Course	10/2/2011 09:04 AM America/New York	VA-Complete	40	0	40
THOMAS	MURPHY	J	171812	VA	Item	7/12/2011 11:00 AM America/New York	CARE Discussions	5/16/2012 02:58 PM America/New York	VA-Complete	44	0	40
THOMAS	MURPHY	J	1312973	VA	Item	5/9/2012 02:52 PM America/New York	Time & Attendance System (VATAS) - Employees	4/12/2015 02:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	3729078	VA	Item	5/24/2012 09:58 AM America/New York	Continuous Readiness in Information Security Program - CRISP	6/1/2012 05:34 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	7/17/2013 08:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	11/11/2013 03:08 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	7/10/2013 08:06 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	387151	NFED	Item	2/10/2014 01:42 PM America/New York	COMPLIANCE IMPACT: Reasonable Accommodation - The Ask	12/4/2015 11:14 AM America/New York	NFED-Complete	0	0	0.1
THOMAS	MURPHY	J	387736	VA	Item	3/13/2014 01:34 PM America/New York	Records Management for Records Officers and Liaisons (RWIT)	11/24/2015 01:23 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387792	VA	Item	5/6/2014 11:50 AM America/New York	VBA Executive Leadership Training Plenary Topics 2014	6/26/2014 04:05 PM America/New York	VA-Complete	0	0	8.5
THOMAS	MURPHY	J	387827	VA	Item	5/16/2014 09:52 AM America/New York	Communicating for Effect (Media Interview Techniques)	6/26/2014 04:17 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387829	VA	Item	5/16/2014 09:59 AM America/New York	2014 Budget Formulation and Execution for VBA Executives	6/26/2014 04:11 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387830	VA	Item	5/16/2014 10:05 AM America/New York	2014 Compensation Claims Quality and Training for VBA Executives	6/26/2014 04:12 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387831	VA	Item	5/16/2014 10:08 AM America/New York	2014 Acquisition for VBA Executives	6/26/2014 04:09 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387833	VA	Item	5/16/2014 10:13 AM America/New York	2014 VBMS for VBA Executives	6/26/2014 04:15 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387834	VA	Item	5/16/2014 10:16 AM America/New York	2014 Labor & Employee Relations for VBA Executives by Kimberley Moseley	6/26/2014 04:14 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387836	VA	Item	5/16/2014 10:21 AM America/New York	2014 Data Management for VBA Executives by Mark Seatzorn	6/26/2014 04:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387838	VA	Item	5/16/2014 10:24 AM America/New York	Critical Thinking Skills for Dr. Maureen McGuire-Jules	6/26/2014 04:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387839	VA	Item	5/16/2014 10:27 AM America/New York	Leading a Diverse Workforce by OPM Bruce Stewart	6/26/2014 04:19 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387840	VA	Item	5/16/2014 10:28 AM America/New York	Negotiation Skills - Bob Gilson on Labor Negotiations	6/26/2014 04:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387841	VA	Item	5/16/2014 10:32 AM America/New York	Accountability - Bob Gilson on Holding Federal Employees Accountable	6/26/2014 04:16 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/6/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	1/26/2017 09:24 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/6/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	9/16/2014 10:12 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	1/26/2017 09:16 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	2/2/2018 04:49 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	3/23/2015 04:26 PM America/New York	VA-Complete			

From: (b)(6)
Sent: Tue, 18 May 2021 19:38:15 +0000
To: (b)(6)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

(b)(5)

(b)(6)

Director, Congressional Liaison Service and Outreach Team
Office of Congressional and Legislative Affairs

(b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>; Cordeiro, Hansel (OAWP) (b)(6)@va.gov> (b)(6)@va.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov> (b)(6)@va.gov>
W. (OAWP) (b)(6)@va.gov> (b)(6)@va.gov> (OAWP) (b)(6)@va.gov> (b)(6)@va.gov>
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

This is a request for OGC, OCLA, and OAWP final approval of the proposed response package for VIEWS 4890714. **This task is due COB, May, 20, 2021.** Ordinarily this task would be made through VIEWS, but the size of one of the attachments make a VIEWS tasking unfeasible.

The attached elements of this final approval task are as follows:.

- Incoming letter
- Transmittal letter
- Enclosure (rough draft)
- 3 Xcel spread sheet attachments that respond to certain requests for documents.
- And the link below which will take you to the 578 pages of releasable records requested under questions 4 and 8 (You are receiving a link to these documents because the file is too large to send via email attachment)

(b)(7)(E)

(b)(7)(E)

For tracking and version control purposes, please send any last comments you may have to me only. If the comments are significant you will have an opportunity to review again.

Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: (b)(6) OGC)
Sent: Tue, 18 May 2021 21:23:42 +0000
To: (b)(6) (OGC)
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Attachments: 04890714 - Incoming Letter.pdf, (2) Attachment P Murphy Training records.xlsx, Copy of (2) Attachment I Training.xlsx, Copy of (2) Attachment L Manker Training Records.xlsx, VIEWS 4890714 - Transmittal Letter for FINAL APPROVAL.docx, 4890714 DRAFT Enclosure for FINAL Approval IALG edits.docx
Importance: High

(b)(5)

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs

(Office) (b)(6)

(b)(6) @VA.gov

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From: Hogan, Michael R. (OGC) (b)(5) @va.gov>
Sent: Tuesday, May 18, 2021 2:39 PM
To: (b)(5) (OGC) (b)(5) @va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

(b)(6)

For your awareness

(b)(5)

I reviewed the transmittal letter and the primary attachment.

(b)(5)

Thank you.

Mike

From: (b)(6)@va.gov
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov; Cordeiro, Hansel (OAWP) (b)(6)@va.gov; (b)(6)@va.gov
Cc: (b)(6) (OGC) (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; (b)(6)@va.gov; W. (OAWP) (b)(6)@va.gov; (b)(6) Catherine (OAWP) (b)(6)@va.gov; (b)(6)@va.gov; (b)(6) (OAWP) (b)(6)@va.gov
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

This is a request for OGC, OCLA, and OAWP final approval of the proposed response package for VIEWS 4890714. **This task is due COB, May, 20, 2021.** Ordinarily this task would be made through VIEWS, but the size of one of the attachments make a VIEWS tasking unfeasible.

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(b)(7)(E)

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Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary

Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
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MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

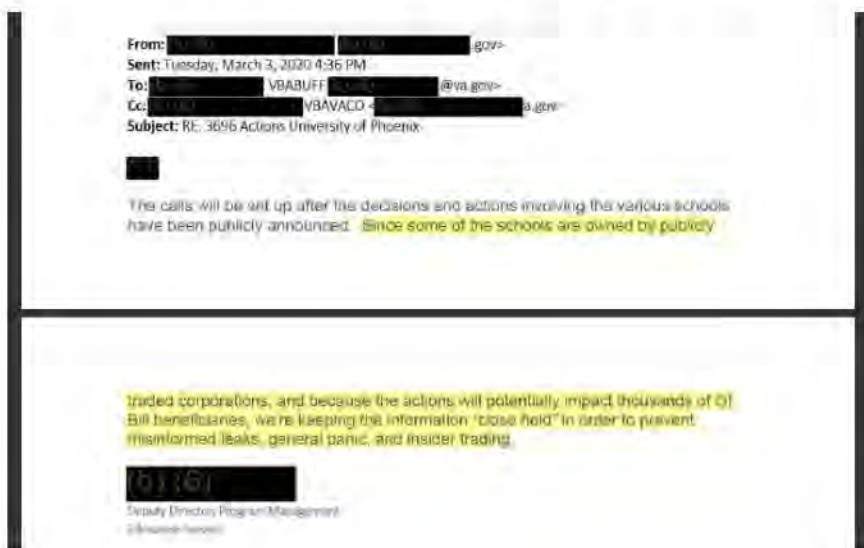
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
 2 Aguirre Law, APC
 3 501 W. Broadway, Ste. 800
 4 San Diego, CA 92101
 5 Tel: 619-400-4960
 6 Fax: 619-501-7072
 7 Email: Gary@aguirrelawapc.com
 8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
 13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
 16 VETERANS AFFAIRS,
 17 Defendant.

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
 carrie.wofford@veteranseducationsuccess.org would make this
 email responsive),
 b. Ang,
 c. Beynon,
 d. Bogue,
 e. Douglas-Gabriel,
 f. Halperin,
 g. Saunders,
 h. Safalow, and
 i. Shireman.
 4) All emails sent or received by any of the Designated VA Persons between
 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
 that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

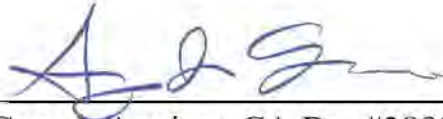
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

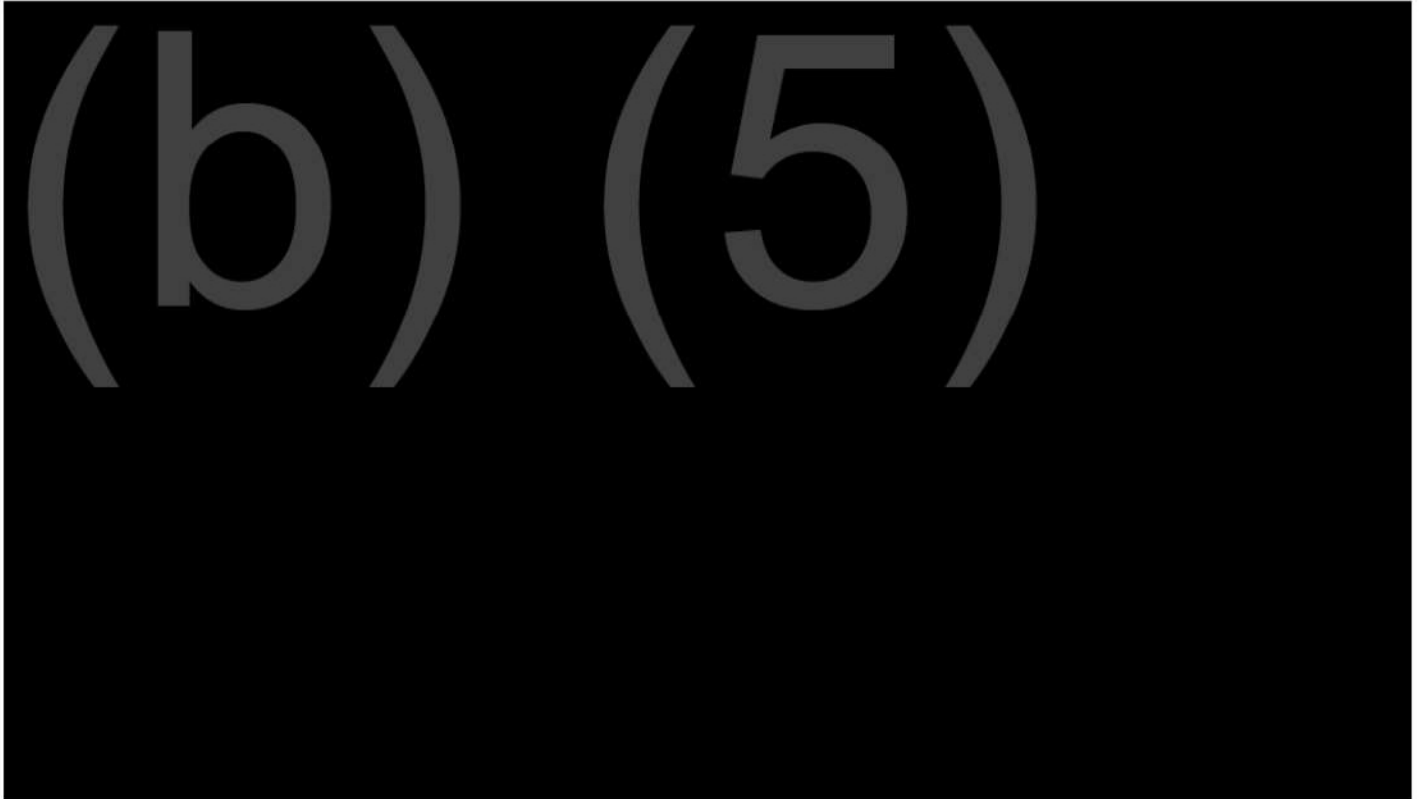
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

First Name	Last Name	Middle Initial	Entity ID	Item Type	Entity Title	Item Revision Date	Entity Title	Completion Date	Completion Status	Total Hours	Credit Hours	Learning Hours
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	3/1/2010 11:56 AM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 01:05 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 12:12 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	3/1/2010 12:53 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	5/7/2010 11:38 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:40 AM America/New York	Prevention of Sexual Harassment	3/28/2011 12:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	2/27/2012 01:37 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	8625	VA	Item	8/11/2010 01:29 PM America/New York	VIA 2010 Leadership Conference: Be the Change You Want to See	8/26/2010 03:00 PM America/New York	VA-Complete	0	15	15
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	2/2/2018 04:45 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	3/28/2011 01:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	4/16/2013 02:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	6/18/2015 01:13 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/11/2013 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2014 12:25 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2015 10:43 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/20/2016 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/26/2017 12:49 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/2/2018 04:36 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/27/2018 01:55 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/1/2010 12:28 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/28/2011 01:04 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	5/7/2010 12:02 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/14/2007 03:17 PM America/New York	Privacy and HIPAA Training	7/13/2011 10:11 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	30535	VA	Item	9/12/2016 12:26 PM America/New York	S.A.V.E. Refresher Training	7/14/2017 04:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	31726	VA	Item	2/7/2006 07:58 AM America/New York	Ethics Most Wanted	12/8/2009 08:19 AM America/New York	VA-Complete	1.5	0	1.5
THOMAS	MURPHY	J	32755	VA	Item	4/28/2006 01:19 PM America/New York	General Employee Privacy Awareness	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	33157	VA	Item	9/23/2009 12:23 PM America/New York	Senior Leaders' Meet & Hear Meeting (S4677 / BS 4665)	4/27/2017 05:30 PM America/New York	VA-Complete	0	0	12
THOMAS	MURPHY	J	33986	VA	Item	7/24/2017 06:28 AM America/New York	Leadership VA (VIA) / 4528 Session 3	9/15/2017 04:00 PM America/New York	VA-Complete	46	0	28
THOMAS	MURPHY	J	34049	VA	Item	7/31/2017 10:00 AM America/New York	VA Accountability and Whistleblower Protection Act Webinar	10/31/2017 03:43 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	8/3/2009 12:30 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	6128	VA	Item	6/18/2008 09:39 AM America/New York	PII Training	11/23/2009 02:29 PM America/New York	VA-Complete	0	1	0.5
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/11/2013 12:40 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/13/2014 12:27 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/20/2016 02:39 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	2/6/2015 08:00 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	5/7/2010 12:50 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	7/5/2011 10:34 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	126325	VA	Item	1/8/2010 08:29 AM America/New York	VA Senior Executive Forum	11/6/2009 04:00 PM America/New York	VA-Complete	24	0	24
THOMAS	MURPHY	J	126934	VA	Item	3/15/2010 01:49 AM America/New York	VBA Leadership Conference - Winter FY2010	3/16/2010 01:30 PM America/New York	VA-Complete	20.5	0	20.5
THOMAS	MURPHY	J	126935	VA	Item	3/15/2010 02:03 AM America/New York	Change Management for VBA Executives - Winter FY2010	3/16/2010 01:31 PM America/New York	VA-Complete	7	0	7
THOMAS	MURPHY	J	123485	VA	Item	8/3/2010 10:58 AM America/New York	Diversity & Inclusion for VA Senior Executive Service (SES) Members	8/26/2010 05:00 PM America/New York	VA-Complete	5	0	5
THOMAS	MURPHY	J	124988	VA	Item	8/3/2010 12:14 PM America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010 11:30 AM America/New York	VA-Complete	3	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	2/27/2012 01:34 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	6/26/2014 04:03 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	Leadership VA (VIA) / 4528 Session 3	1/11/2013 11:48 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/26/2017 09:27 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	4/12/2015 11:21 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	2/2/2018 04:56 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	6/26/2014 03:14 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	7/5/2011 10:35 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:15 AM America/New York	VA Senior Executive Strategic Leadership Course	10/2/2011 09:04 AM America/New York	VA-Complete	40	0	40
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:15 AM America/New York	VA Senior Executive Strategic Leadership Course	5/16/2012 02:58 PM America/New York	VA-Complete	44	0	40
THOMAS	MURPHY	J	171812	VA	Item	7/12/2011 11:00 AM America/New York	CARE Discussions	8/15/2011 09:00 AM America/New York	VA-Complete	1	0	1
THOMAS	MURPHY	J	312973	VA	Item	5/9/2012 05:52 PM America/New York	Time & Attendance System (VATAS)- Employees	4/12/2015 02:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	329078	VA	Item	5/24/2012 09:58 AM America/New York	Continuous Readiness in Information Security Program - CRISP	6/1/2012 05:34 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	7/13/2013 08:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	11/11/2013 03:18 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	7/10/2013 08:06 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	387151	NFED	Item	2/10/2014 01:42 PM America/New York	COMPLIANCE IMPACT: Reasonable Accommodation - The Ask	12/4/2015 11:14 AM America/New York	NFED-Complete	0	0	0.1
THOMAS	MURPHY	J	387336	VA	Item	3/12/2014 01:34 PM America/New York	Records Management for Records Officers and Liaisons (RWIT)	11/24/2015 01:23 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387492	VA	Item	5/6/2014 11:50 AM America/New York	VBA Executive Leadership Training Plenary Topics 2014	6/26/2014 04:05 PM America/New York	VA-Complete	0	0	8.5
THOMAS	MURPHY	J	387827	VA	Item	5/16/2014 09:52 AM America/New York	Communicating for Effect (Media Interview Techniques)	6/26/2014 04:17 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387829	VA	Item	5/16/2014 09:59 AM America/New York	2014 Budget Formulation and Execution for VBA Executives	6/26/2014 04:11 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387830	VA	Item	5/16/2014 10:05 AM America/New York	2014 Compensation Claims Quality and Training for VBA Executives	6/26/2014 04:12 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387831	VA	Item	5/16/2014 10:08 AM America/New York	2014 Acquisition for VBA Executives	6/26/2014 04:09 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387833	VA	Item	5/16/2014 10:13 AM America/New York	2014 VBMS for VBA Executives	6/26/2014 04:15 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387834	VA	Item	5/16/2014 10:16 AM America/New York	2014 Labor & Employee Relations for VBA Executives by Kimberley Moseley	6/26/2014 04:14 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387836	VA	Item	5/16/2014 10:21 AM America/New York	2014 Data Management for VBA Executives by Mark Seatzorn	6/26/2014 04:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387838	VA	Item	5/16/2014 10:24 AM America/New York	Critical Thinking Skills by Dr. Maureen McGuire-Jules	6/26/2014 04:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387839	VA	Item	5/16/2014 10:27 AM America/New York	Leading a Diverse Workforce by OPM Bruce Stewart	6/26/2014 04:19 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387840	VA	Item	5/16/2014 10:28 AM America/New York	Negotiation Skills - Bob Gilson on Labor Negotiations	6/26/2014 04:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387841	VA	Item	5/16/2014 10:32 AM America/New York	Accountability - Bob Gilson on Holding Federal Employees Accountable	6/26/2014 04:16 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/8/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	1/26/2017 09:24 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/8/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	9/16/2014 10:12 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	1/26/2017 09:16 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	390127	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	2/2/2018 04:49 PM America/New York	VA-Complete			

Sent: Tue, 18 May 2021 21:27:18 +0000
To: Hogan, Michael R. (OGC)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

(b)(5), (b)(6)

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)

(b)(6)

@VA.gov

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From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, May 18, 2021 2:39 PM
To: (b)(6) (OGC) (b)(6) @va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

(b)(6)

For your awareness, (b)(5)

(b)(5)

Thank you.

Mike

From: (b)(6) @va.gov>
Sent: Tuesday, May 18, 2021 2:15 PM

From: (b)(6) (OGC)
Sent: Tue, 18 May 2021 22:33:20 +0000
To: (b)(6) (OGC)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Attachments: 4890714 DRAFT Enclosure for FINAL Approval (EC edits to #12).docx
Importance: High

OK. (b)(5)

(b)(6)

Attorney
Office of General Counsel, Information & Administrative Law Group
Washington, DC – outstationed in the Bay Area

(b)(6)

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:24 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

(b)(5)

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)

(b)(6)@VA.gov

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From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:39 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

(b)(6)

For your awareness. (b)(5)

(b)(5)

Thank you.

Mike

From: (b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>; Cordeiro, Hansel (OAWP) (b)(6)@va.gov> (b)(6)@va.gov>
Cc: (b)(6) (OGC) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov>; (b)(6) W. (OAWP) (b)(6)@va.gov>; (b)(6) (OAWP) (b)(6) (b)(6)@va.gov> (b)(6) (OAWP) (b)(6)@va.gov>
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

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(b)(7)(E)

(b)(7)(E)

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Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

Sent: Wed, 19 May 2021 12:28:35 +0000
To: Hogan, Michael R. (OGC)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Attachments: 4890714 DRAFT Enclosure for FINAL Approval (IALG edits to #12).docx

Mike,

(b)(5); (b)(6)

Aside from that looks good.

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office (b)(6)

(b)(6)

@VA.gov

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Sent: Tuesday, May 18, 2021 2:39 PM

To: (b)(6) (OGC) (b)(6) @va.gov>

Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Importance: High

(b)(6)

For your awareness. (b)(5); (b)(6)

(b)(5); (b)(6)

Thank you.

Mike

From: (b)(6) <(b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) <(b)(6)@va.gov>; Cordeiro, Hansel (OAWP) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>
Cc: (b)(6) (OGC) <(b)(6)@va.gov>; McVicker, Carrie A. <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; Farrisee, Gina S. <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; W. (OAWP) <(b)(6)@va.gov>; (b)(6) (OAWP) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; (b)(6) (OAWP) <(b)(6)@va.gov>
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

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(b)(7)(E)

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(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs

810 Vermont Avenue NW
Washington, DC

(b)(6)

From: Parise, Ruthann
Sent: Wed, 19 May 2021 13:17:18 +0000
To: (b)(6) (OGC)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi (b)(6)

I just sent you the records in TEAMS as they are too large to send via email.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 8:28 AM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Ruthann,

I couldn't open the documents although they did appear in Teams when I followed the link. Can you shoot them over again so I can take a quick look?

(b)(6)

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:39 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

(b)(6)

For your awareness (b)(5)

(b)(5)

Thank you.

Mike

From: (b)(6)@va.gov>

Sent: Tuesday, May 18, 2021 2:15 PM

To: Hogan, Michael R. (OGC) (b)(6)@va.gov>; Cordeiro, Hansel (OAWP)

(b)(6)@va.gov>; (b)(6)@va.gov>

Cc: (b)(6) (OGC) (b)(6)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>;

(b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov> (b)(6)

W. (OAWP) (b)(6)@va.gov> (b)(6) (OAWP) <(b)(6)

(b)(6)@va.gov>; (b)(6) (OAWP) (b)(6)@va.gov>

Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Importance: High

Hello All:

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(b)(7)(E)

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(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: Hogan, Michael R. (OGC)
Sent: Wed, 19 May 2021 18:07:52 +0000
To: (b)(6) Cordeiro, Hansel (OAWP); (b)(6)
Cc: (b)(6) (OGC); McVicker, Carrie A.; (b)(6) Farrissee, Gina
(b)(6) (OAWP); (b)(6) (OAWP); (b)(6) (OAWP)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Attachments: 4890714 DRAFT Enclosure for FINAL Approval (IALG edits to #12).docx

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

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Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC); (b)(6)@va.gov>; Cordeiro, Hansel (OAWP)
(b)(6)@va.gov>; (b)(6)@va.gov>
Cc: (b)(6) (OGC); (b)(6)@va.gov>; McVicker, Carrie A.; (b)(6)@va.gov>;
(b)(6)@va.gov>; Farrissee, Gina S.; (b)(6)@va.gov>; (b)(6)
W. (OAWP); (b)(6)@va.gov>; (b)(6) (OAWP) <Catherine.Delacruz-
(b)(6)@va.gov>; (b)(6) (OAWP); (b)(6)@va.gov>
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

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(b)(6)

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Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: (b)(6) (OGC)
Sent: Wed, 19 May 2021 18:11:19 +0000
To: Hogan, Michael R. (OGC)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

No problem – luckily Ruthann is a very experienced FOIA officer. Her first pass was most of the heavy lifting.

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 2:08 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Thank you very much for your guidance and assistance on this (b)(6)

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 10:38 AM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Mike,

(b)(5), (b)(6)

Aside from that looks good.

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)
(b)(6)@VA.gov

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From: Hogan, Michael R. (OGC) <(b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:39 PM
To: (b)(6) OGC <(b)(6)@va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

(b)(6)

For your awareness

(b)(5)

Thank you.

Mike

From: (b)(6)@va.gov
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) <(b)(6)@va.gov>; Cordeiro, Hansel (OAWP) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>
Cc: (b)(6) OGC <(b)(6)@va.gov>; McVicker, Carrie A. <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; Farrisee, Gina S. <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; W. (OAWP) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>
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(b)(6)

(b)(6)

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(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

Sent: Wed, 19 May 2021 18:32:56 +0000
To: Cordeiro, Hansel (OAWP);Parise, Ruthann
Cc: McVicker, Carrie A. (b)(6) Farrisee, Gina S. (b)(6)
(OAWP) (b)(6) (OAWP) (b)(6) (OAWP)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi Hansel. Thank you for your email. I am sorry to hear you weren't able to access the link to documents. Ruthann Parise provided me with documents and I am adding her to the email so that she can send the

From: Cordeiro, Hansel (OAWP) (b)(6) @va.gov>
Sent: Wednesday, May 19, 2021 2:27 PM
To: (b)(6) @va.gov>
Cc: McVicker, Carrie A. (b)(6) @va.gov> (b)(6) @va.gov>;
Farrisee, Gina S. (b)(6) @va.gov>; (b)(6) (OAWP) (b)(6) @va.gov>
(b)(6) @va.gov> (b)(6) (OAWP) (b)(6) @va.gov> (b)(6) (OAWP)
(b)(6) @va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi (b)(6)

I was unable to access the link to the documents and (b)(5)
(b)(5)

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs
Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6) @va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC

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To: (b)(6) @va.gov>; Cordeiro, Hansel (OAWP) (b)(6) @va.gov>; (b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>; (b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov> (b)(6) @va.gov>
W. (OAWP) (b)(6) @va.gov>; (b)(6) (OAWP) (b)(6)

(b)(6) @va.gov (b)(6) (OAWP) (b)(6) @va.gov

Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

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From: (b)(6) @va.gov

Sent: Tuesday, May 18, 2021 2:15 PM

To: Hogan, Michael R. (OGC) (b)(6) @va.gov; Cordeiro, Hansel (OAWP)

(b)(6) @va.gov (b)(6) @va.gov

Cc: (b)(6) (OGC) (b)(6) @va.gov; McVicker, Carrie A. (b)(6) @va.gov;

(b)(6) @va.gov; Farrisee, Gina S. (b)(6) @va.gov; (b)(6)

W. (OAWP) (b)(6) @va.gov (b)(6) (OAWP) (b)(6)

(b)(6) @va.gov (b)(6) (OAWP) (b)(6) @va.gov

Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Importance: High

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(b)(7)(E)

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(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: (b)(6) (OAWP)
Sent: Wed, 19 May 2021 18:40:29 +0000
To: Cordeiro, Hansel (OAWP)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi Hansel,

I think they have to give you Team access for the link.

(b)(6)
Executive Assistant to the Assistant Secretary
Office of Accountability and Whistleblower Protection
Department of Veterans Affairs
Office: (b)(6)
Mobile Phone: (b)(6)

Anonymous Toll-Free Disclosure Hotline: (855) 429-6669 | Email (b)(6)@va.gov | Web: <https://www.va.gov/accountability>

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Sent: Wednesday, May 19, 2021 2:27 PM
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Farrisee, Gina S. (b)(6)@va.gov>; (b)(6) (OAWP) (b)(6)@va.gov>;
(b)(6)@va.gov>; (b)(6) (OAWP) (b)(6)@va.gov>; (b)(6) (OAWP)
(b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi (b)(6)

I was unable to access the link to the documents and (b)(5)

(b)(5)

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420
To make a disclosure: Complete the optional form found at <https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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(b)(6)@va.gov
Cc: (b)(6) (OGC) (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov;
(b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; (b)(6)
W. (OAWP) (b)(6)@va.gov; (b)(6) (OAWP) (b)(6)
(b)(6)@va.gov; (b)(6) (OAWP) (b)(6)@va.gov
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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(b)(6)@va.gov>(b)(6) (OAWP) (b)(6)@va.gov>

Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Importance: High

Hello All:

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(b)(7)(E)

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Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: Parise, Ruthann
Sent: Wed, 19 May 2021 18:48:32 +0000
To: (b)(6) Cordeiro, Hansel (OAWP)
Cc: McVicker, Carrie A. (b)(6) Farrisee, Gina S. (b)(6)
(OAWP) (b)(6) (OAWP) (b)(6) (OAWP)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi (b)(6)

I've sent it to Hansel via TEAMS.

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

This message and attachments, if any, are For Official Use Only, not to be shared outside intended parties, and may be exempt from disclosure pursuant to 5 U.S.C. § 552. If you received this message and attachments, if any, in error, you must inform the FOIA Officer and destroy them immediately.

From: (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 2:36 PM
To: Cordeiro, Hansel (OAWP) (b)(6)@va.gov>; Parise, Ruthann <Ruthann.Parise@va.gov>
Cc: McVicker, Carrie A. <Carrie.McVicker@va.gov>; (b)(6)@va.gov>;
Farrisee, Gina S. (b)(6)@va.gov>; (b)(6) (OAWP) (b)(6)
(b)(6)@va.gov>; (b)(6) (OAWP) (b)(6)@va.gov>; (b)(6) (OAWP)
(b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi Hansel. Thank you for your email. I am sorry to hear you weren't able to access the link to documents. I have asked Ruthann Parise, who I have added to the email chain, to send them to you.

From: Cordeiro, Hansel (OAWP) (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 2:27 PM
To: (b)(6)@va.gov>
Cc: McVicker, Carrie A. (b)(6)@va.gov>; (b)(6)@va.gov>;
Farrisee, Gina S. (b)(6)@va.gov>; (b)(6) (OAWP) (b)(6)
(b)(6)@va.gov>; (b)(6) (OAWP) (b)(6)@va.gov>; (b)(6) (OAWP)
(b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi (b)(6)

I was unable to access the link to the documents and (b)(5)

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

To make a disclosure: Complete the optional form found at <https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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Sent: Wednesday, May 19, 2021 2:08 PM

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(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: Farrisee, Gina S.
Sent: Wed, 19 May 2021 19:35:49 +0000
To: McVicker, Carrie A.
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Carrie,
Mike Hogan and Hansel have responded. Do you think I'll see this package tonight to get to COS?
Thank you,
Gina

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Wednesday, May 19, 2021 2:08 PM
To: (b)(6) @va.gov>; Cordeiro, Hansel (OAWP) (b)(6) @va.gov>;
(b)(6) @va.gov>
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(b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>; (b)(6)
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MICHAEL R. HOGAN
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(b)(6)



Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)



From: Hogan, Michael R. (OGC)
Sent: Wed, 19 May 2021 20:13:28 +0000
To: Sauber, Richard A. (OGC); Hipolit, Richard (OGC)
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Attachments: 04890714 - Incoming Letter.pdf, (2) Attachment P Murphy Training records.xlsx, Copy of (2) Attachment I Training.xlsx, Copy of (2) Attachment L Manker Training Records.xlsx, VIEWS 4890714 - Transmittal Letter for FINAL APPROVAL.docx, 4890714 DRAFT Enclosure for FINAL Approval (IALG edits to #12).docx
Importance: High

Dick,

(b)(5)

I am available to discuss this if you'd like.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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(b)(6)@va.gov>; (b)(6) (OAWP) <(b)(6)@va.gov>

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Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

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RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

21 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
26 [group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

27 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
28 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
[https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
 carrie.wofford@veteranseducationsuccess.org would make this
 email responsive),
 b. Ang,
 c. Beynon,
 d. Bogue,
 e. Douglas-Gabriel,
 f. Halperin,
 g. Saunders,
 h. Safalow, and
 i. Shireman.
 4) All emails sent or received by any of the Designated VA Persons between
 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
 that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

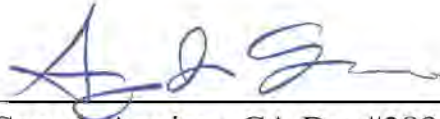
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

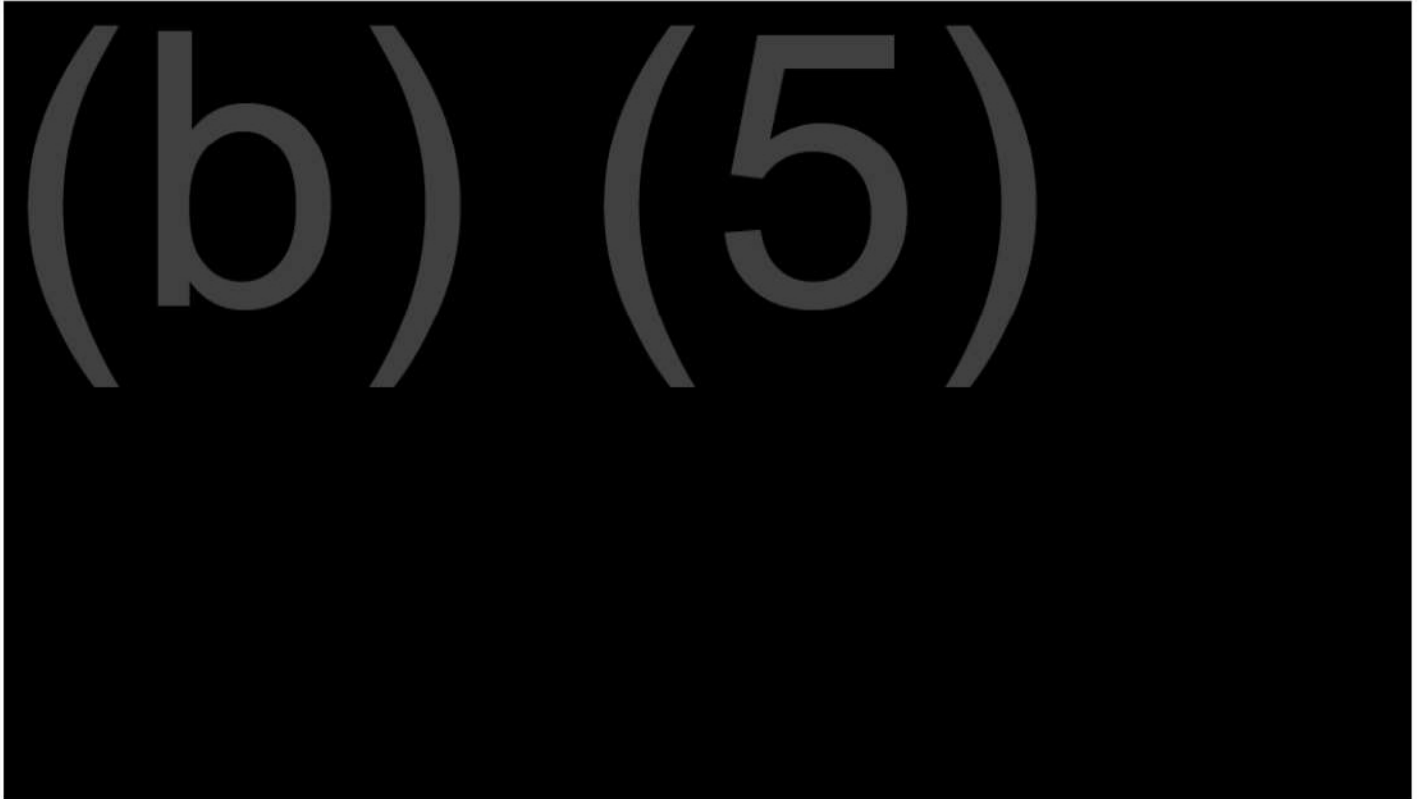
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

First Name	Last Name	Middle Initial	Entity ID	Item Type	Entity Type	Item Revision	Date	Entity Title	Completion Date	Completion Status	Total Hours	Credit Hours	Learning Hours			
THOMAS	MURPHY	J	565	VA	Item	8/5/2005	08:34 AM	America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	3/1/2010	11:56 AM	America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005	08:34 AM	America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010	11:56 AM	America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005	08:34 AM	America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010	12:12 PM	America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007	01:44 PM	America/New York	Prevention of Sexual Harassment	3/1/2010	12:53 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007	01:44 PM	America/New York	Prevention of Sexual Harassment	5/7/2010	11:38 AM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007	01:40 AM	America/New York	Prevention of Sexual Harassment	3/28/2011	12:33 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009	06:44 AM	America/New York	Insider Ethics	1/11/2013	02:06 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009	06:44 AM	America/New York	Insider Ethics	2/27/2012	01:37 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	8625	VA	Item	8/13/2010	01:29 PM	America/New York	VIA 2010 Leadership Conference: Be the Change You Want to See	8/26/2010	03:00 PM	America/New York	VA-Complete	0	15	15
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010	01:18 PM	America/New York	Prevention of Workplace Harassment/No FEAR	2/2/2018	04:45 PM	America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010	01:18 PM	America/New York	Prevention of Workplace Harassment/No FEAR	3/28/2011	01:18 PM	America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010	01:18 PM	America/New York	Prevention of Workplace Harassment/No FEAR	4/16/2013	02:07 PM	America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010	01:18 PM	America/New York	Prevention of Workplace Harassment/No FEAR	6/18/2015	01:13 PM	America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/11/2013	02:29 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2014	12:25 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2015	10:43 AM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/20/2016	02:29 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/26/2017	12:49 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/2/2018	04:36 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/27/2018	01:55 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/7/2010	12:28 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/28/2011	01:04 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007	10:53 AM	America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	5/7/2010	12:02 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10761	VA	Item	2/14/2007	03:17 PM	America/New York	Privacy and HIPAA Training	7/5/2011	10:31 AM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	30535	VA	Item	9/12/2016	12:26 PM	America/New York	S.A.V.E. Refresher Training	7/14/2017	04:33 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	31726	VA	Item	2/7/2006	07:58 AM	America/New York	Ethics Most Wanted	12/8/2009	08:19 AM	America/New York	VA-Complete	1.5	0	1.5
THOMAS	MURPHY	J	32755	VA	Item	4/28/2006	01:19 PM	America/New York	General Employee Privacy Awareness	5/7/2010	11:30 AM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	33557	VA	Item	8/23/2007	07:27 AM	America/New York	Senior Leaders Meet- Hear Meeting (S4677 / BS 4665)	4/27/2017	05:30 PM	America/New York	VA-Complete	0	0	12
THOMAS	MURPHY	J	32696	VA	Item	7/24/2017	06:28 AM	America/New York	Leadership VA (VIA) / 4528 Session 3	9/15/2017	04:00 PM	America/New York	VA-Complete	46	0	28
THOMAS	MURPHY	J	34049	VA	Item	7/31/2017	10:00 AM	America/New York	VA Accountability and Whistleblower Protection Act Webinar	10/31/2017	03:43 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007	04:27 PM	America/New York	VA Privacy Awareness Training	5/7/2010	11:30 AM	America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007	04:27 PM	America/New York	VA Privacy Awareness Training	8/3/2009	12:30 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	6128	VA	Item	6/18/2008	09:39 AM	America/New York	PII Training	11/23/2009	02:29 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009	12:23 PM	America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/11/2013	12:40 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009	12:23 PM	America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/13/2014	12:27 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009	12:23 PM	America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/20/2016	02:39 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009	12:23 PM	America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	2/6/2015	08:00 AM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009	12:23 PM	America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	5/7/2010	12:50 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009	12:23 PM	America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	7/5/2011	10:34 AM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	126325	VA	Item	1/8/2010	08:29 AM	America/New York	VA Senior Executive Forum	11/6/2009	04:00 PM	America/New York	VA-Complete	24	0	24
THOMAS	MURPHY	J	126934	VA	Item	3/15/2010	01:48 PM	America/New York	VBA Leadership Conference - Winter FY2010	3/16/2010	01:30 PM	America/New York	VA-Complete	20.5	0	20.5
THOMAS	MURPHY	J	126935	VA	Item	3/15/2010	02:03 PM	America/New York	Change Management for VBA Executives - Winter FY2010	3/16/2010	01:12 PM	America/New York	VA-Complete	7	0	7
THOMAS	MURPHY	J	123485	VA	Item	8/3/2010	10:58 AM	America/New York	Diversity & Inclusion for VA Senior Executive Service (SES) Members	8/26/2010	05:00 PM	America/New York	VA-Complete	5	0	5
THOMAS	MURPHY	J	124988	VA	Item	8/3/2010	12:14 PM	America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010	11:30 AM	America/New York	VA-Complete	3	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010	08:06 AM	America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	2/27/2012	01:34 PM	America/New York	VA-Complete	0	0	0.1
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010	08:06 AM	America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	6/26/2014	03:14 PM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011	10:12 AM	America/New York	VBA Continuity of Operations Awareness	1/11/2013	11:48 AM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011	10:12 AM	America/New York	VBA Continuity of Operations Awareness	1/26/2017	09:27 AM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011	10:12 AM	America/New York	VBA Continuity of Operations Awareness	1/4/2015	11:21 AM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011	10:12 AM	America/New York	VBA Continuity of Operations Awareness	2/2/2018	04:56 PM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	117248	VA	Item	3/16/2011	10:12 AM	America/New York	VBA Continuity of Operations Awareness	6/26/2014	03:14 PM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011	07:35 AM	America/New York	VA Senior Executive Strategic Leadership Course	7/5/2011	10:34 AM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011	07:35 AM	America/New York	VA Senior Executive Strategic Leadership Course	10/2/2011	09:04 AM	America/New York	VA-Complete	40	0	40
THOMAS	MURPHY	J	171812	VA	Item	7/12/2011	11:00 AM	America/New York	CARE Discussions	5/16/2012	02:58 PM	America/New York	VA-Complete	44	0	40
THOMAS	MURPHY	J	312973	VA	Item	5/9/2012	02:52 PM	America/New York	Time & Attendance System (VATAS)- Employees	4/1/2015	02:13 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	329078	VA	Item	5/24/2012	09:58 AM	America/New York	Continuous Readiness in Information Security Program - CRISP	6/1/2012	05:34 PM	America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012	10:08 AM	America/New York	Manual Recording of Annual Ethics Training	6/16/2014	01:41 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012	10:08 AM	America/New York	Manual Recording of Annual Ethics Training	7/17/2013	08:06 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013	01:25 PM	America/New York	Government Ethics - The Essentials	1/11/2013	11:48 AM	America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013	01:25 PM	America/New York	Government Ethics - The Essentials	6/16/2014	01:41 PM	America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013	01:25 PM	America/New York	Government Ethics - The Essentials	7/10/2013	08:06 AM	America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	387151	NFED	Item	2/10/2014	01:42 PM	America/New York	COMPLIANCE IMPACT: Reasonable Accommodation - The Ask	12/4/2015	11:14 AM	America/New York	NFED-Complete	0	0	0.1
THOMAS	MURPHY	J	387336	VA	Item	3/13/2014	01:34 PM	America/New York	Records Management for Records Officers and Liaisons (RWIT)	11/24/2015	01:29 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387492	VA	Item	5/6/2014	11:50 AM	America/New York	VBA Executive Leadership Training Plenary Topics 2014	6/26/2014	04:05 PM	America/New York	VA-Complete	0	0	8.5
THOMAS	MURPHY	J	387827	VA	Item	5/16/2014	09:52 AM	America/New York	Communicating for Effect (Media Interview Techniques)	6/26/2014	04:17 PM	America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387829	VA	Item	5/16/2014	09:59 AM	America/New York	2014 Budget Formulation and Execution for VBA Executives	6/26/2014	04:11 PM	America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387830	VA	Item	5/16/2014	10:05 AM	America/New York	2014 Compensation Claims Quality and Training for VBA Executives	6/26/2014	04:12 PM	America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387831	VA	Item	5/16/2014	10:10 AM	America/New York	2014 Acquisition for VBA Executives	6/26/2014	04:09 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387833	VA	Item	5/16/2014	10:13 AM	America/New York	2014 VBMS for VBA Executives	6/26/2014	04:15 PM	America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387834	VA												

From: McVicker, Carrie A.
Sent: Wed, 19 May 2021 20:15:15 +0000
To: (b)(6)
Subject: FW: can you send me updated Grassley package
Attachments: 4890714 DRAFT Enclosure for FINAL Approval (updated).docx, VIEWS 4890714 - Transmittal Letter for FINAL APPROVAL.docx

To print

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 4:12 PM
To: McVicker, Carrie A. (b)(6)@va.gov>
Subject: RE: can you send me updated Grassley package

Sending you 2 docs at a time. Every time I try to upload a third document, outlook stops working.

From: McVicker, Carrie A. (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 4:00 PM
To: (b)(6)@va.gov>
Subject: can you send me updated Grassley package

Without the big FOIA file? Gina wants to show COS today. COS is out next two days.

Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs
(b)(6)@va.gov

From: (b)(6)
Sent: Wed, 19 May 2021 20:22:39 +0000
To: McVicker, Carrie A.
Subject: Updated copies for Gina to give COS
Attachments: 04890714 - Incoming Letter.pdf, (2) Attachment P Murphy Training records.xlsx, Copy of (2) Attachment I Training.xlsx, Copy of (2) Attachment L Manker Training Records.xlsx, VIEWS 4890714 - Transmittal Letter for FINAL APPROVAL.docx, 4890714 DRAFT Enclosure for FINAL Approval (updated).docx
Importance: High

I know it's crazy but it was easier (more like possible) to forward you the email I sent out for final approval with the updated enclosure than even one of the other docs that make up the package.

From: (b)(6)
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov; Cordeiro, Hansel (OAWP) (b)(6)@va.gov; (b)(6)@va.gov
Cc: (b)(6) (OGC) (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; (b)(6)@va.gov; W. (OAWP) (b)(6)@va.gov; (b)(6) (OAWP) (b)(6)@va.gov; (b)(6)@va.gov; (b)(6) (OAWP) (b)(6)@va.gov
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

This is a request for OGC, OCLA, and OAWP final approval of the proposed response package for VIEWS 4890714. **This task is due COB, May, 20, 2021.** Ordinarily this task would be made through VIEWS, but the size of one of the attachments make a VIEWS tasking unfeasible.

The attached elements of this final approval task are as follows.:

- Incoming letter
- Transmittal letter
- Enclosure (rough draft)
- 3 Xcel spread sheet attachments that respond to certain requests for documents.
- And the link below which will take you to the 578 pages of releasable records requested under questions 4 and 8 (You are receiving a link to these documents because the file is too large to send via email attachment)

(b)(7)(E)

(b)(7)(E)

For tracking and version control purposes, please send any last comments you may have to me only. If the comments are significant you will have an opportunity to review again.

Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

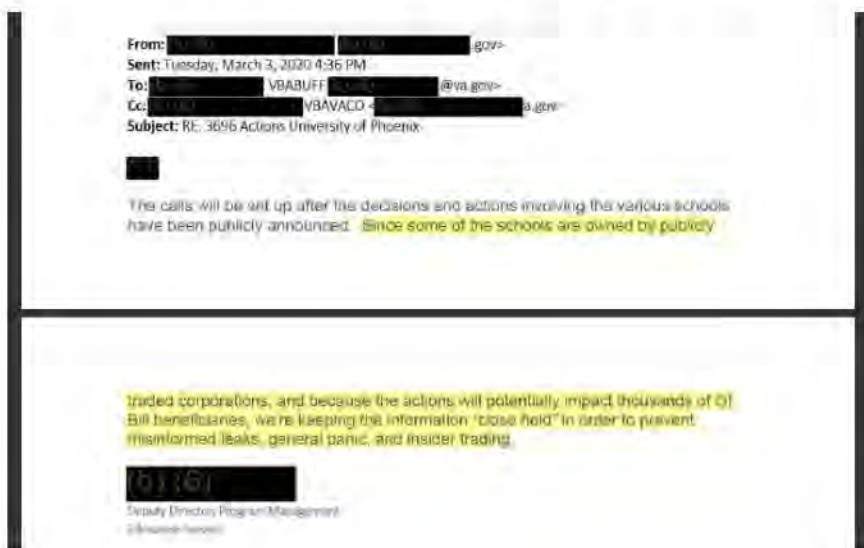
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG’s Office of Counselor. A true and correct copy of the VA
3 OIG’s letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG’s
5 determination. A true and correct copy of Plaintiff’s appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG’s letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG’s appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF’S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff’s November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff’s November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

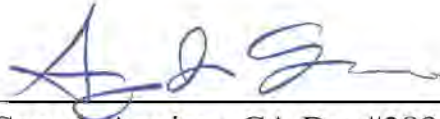
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff’s November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney’s fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

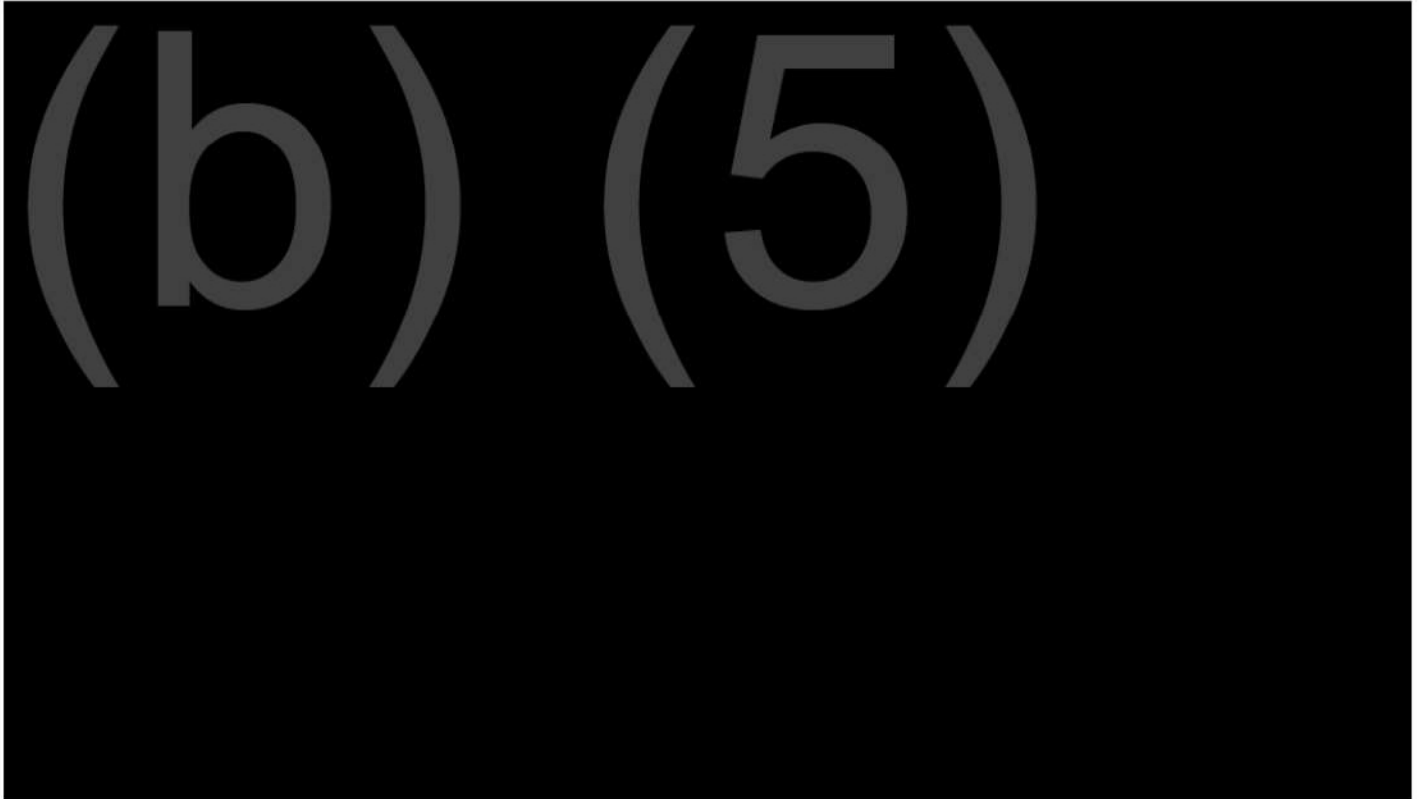
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

First Name	Last Name	Middle Initial	Entity ID	Item Type	Entity Type	Item Revision Date	Entity Title	Completion Date	Completion Status	Total Hours	Credit Hours	Learning Hours
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	3/1/2010 11:56 AM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 11:56 AM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	565	VA	Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 12:12 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	3/1/2010 12:53 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	5/7/2010 11:38 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	5506	VA	Item	9/24/2007 01:40 AM America/New York	Prevention of Sexual Harassment	3/28/2011 12:33 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505	VA	Item	8/21/2009 06:44 AM America/New York	Insider Ethics	2/27/2012 01:37 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	8625	VA	Item	8/11/2010 01:29 PM America/New York	VIA 2010 Leadership Conference: Be the Change You Want to See	8/26/2010 03:00 PM America/New York	VA-Complete	0	15	15
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	2/2/2018 04:45 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	3/28/2011 01:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	4/16/2013 02:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	8872	VA	Item	10/14/2010 01:18 PM America/New York	Prevention of Workplace Harassment/No FEAR	6/18/2015 01:13 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/11/2013 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2014 12:25 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2015 10:43 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/20/2016 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	1/26/2017 12:49 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/2/2018 04:36 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	2/27/2012 01:55 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/1/2010 12:28 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	3/28/2011 01:04 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10176	VA	Item	2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior	5/7/2010 12:02 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	10213	VA	Item	2/14/2007 03:17 PM America/New York	Privacy and HIPAA Training	7/5/2011 10:31 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	30535	VA	Item	9/12/2016 12:26 PM America/New York	S.A.V.E. Refresher Training	7/14/2017 04:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	31726	VA	Item	2/7/2006 07:58 AM America/New York	Ethics Most Wanted	12/8/2009 08:19 AM America/New York	VA-Complete	1.5	0	1.5
THOMAS	MURPHY	J	32755	VA	Item	4/28/2006 01:19 PM America/New York	General Employee Privacy Awareness	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	33157	VA	Item	5/23/2009 12:23 PM America/New York	VA Senior Leaders Mid Year Meeting (S4677 / BS 4665)	4/27/2017 05:00 PM America/New York	VA-Complete	0	0	12
THOMAS	MURPHY	J	33986	VA	Item	7/24/2017 06:28 AM America/New York	Leadership VA (VIA) / 4528 Session 3	9/15/2017 04:00 PM America/New York	VA-Complete	46	0	28
THOMAS	MURPHY	J	34049	VA	Item	7/31/2017 10:00 AM America/New York	VA Accountability and Whistleblower Protection Act Webinar	10/31/2017 03:43 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	5/7/2010 11:30 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	58879	VA	Item	9/26/2007 04:27 PM America/New York	VA Privacy Awareness Training	8/3/2009 12:30 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	80761	VA	Item	6/18/2008 09:39 AM America/New York	PII Training	11/23/2009 02:29 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/11/2013 12:40 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/13/2014 12:27 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/20/2016 02:39 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	2/6/2015 08:00 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	5/7/2010 12:50 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931	VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	7/5/2011 10:34 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	126325	VA	Item	1/8/2010 08:29 AM America/New York	VA Senior Executive Forum	11/6/2009 04:00 PM America/New York	VA-Complete	24	0	24
THOMAS	MURPHY	J	126934	VA	Item	3/15/2010 01:48 PM America/New York	VBA Leadership Conference - Winter FY2010	3/16/2010 01:30 PM America/New York	VA-Complete	20.5	0	20.5
THOMAS	MURPHY	J	126935	VA	Item	3/15/2010 02:03 PM America/New York	Change Management for VBA Executives - Winter FY2010	3/16/2010 01:31 PM America/New York	VA-Complete	7	0	7
THOMAS	MURPHY	J	123485	VA	Item	8/3/2010 10:58 AM America/New York	Diversity & Inclusion for VA Senior Executive Service (SES) Members	8/26/2010 05:00 PM America/New York	VA-Complete	5	0	5
THOMAS	MURPHY	J	124988	VA	Item	8/3/2010 12:14 PM America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010 11:30 AM America/New York	VA-Complete	3	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	2/27/2012 01:34 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	123872	VA	Item	9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors	6/26/2014 03:14 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/11/2013 11:48 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/26/2017 09:27 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	4/12/2015 11:21 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	2/2/2018 04:56 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	137248	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	6/26/2014 03:14 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:15 AM America/New York	VA Senior Executive Strategic Leadership Course	7/5/2011 10:34 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	156310	VA	Item	5/24/2011 07:15 AM America/New York	VA Senior Executive Strategic Leadership Course	10/2/2011 09:04 AM America/New York	VA-Complete	40	0	40
THOMAS	MURPHY	J	171812	VA	Item	7/12/2011 11:00 AM America/New York	CARE Discussions	5/16/2012 02:58 PM America/New York	VA-Complete	44	0	40
THOMAS	MURPHY	J	1312973	VA	Item	5/9/2012 02:52 PM America/New York	Time & Attendance System (VATAS) - Employees	4/12/2015 02:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	3729078	VA	Item	5/24/2012 09:58 AM America/New York	Continuous Readiness in Information Security Program - CRISP	6/1/2012 05:34 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	378533	VA	Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	7/17/2013 08:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	11/11/2013 11:48 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	6/16/2014 01:41 PM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	381293	VA	Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	7/10/2013 08:06 AM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	387151	NFED	Item	2/10/2014 01:42 PM America/New York	COMPLIANCE IMPACT: Reasonable Accommodation - The Ask	12/4/2015 11:14 AM America/New York	NFED-Complete	0	0	0.1
THOMAS	MURPHY	J	387336	VA	Item	3/13/2014 01:34 PM America/New York	Records Management for Records Officers and Liaisons (RWIT)	11/24/2015 01:23 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	3877492	VA	Item	5/6/2014 11:50 AM America/New York	VBA Executive Leadership Training Plenary Topics 2014	6/26/2014 04:05 PM America/New York	VA-Complete	0	0	8.5
THOMAS	MURPHY	J	387827	VA	Item	5/16/2014 09:52 AM America/New York	Communicating for Effect (Media Interview Techniques)	6/26/2014 04:17 PM America/New York	VA-Complete	0	0	3
THOMAS	MURPHY	J	387829	VA	Item	5/16/2014 09:59 AM America/New York	2014 Budget Formulation and Execution for VBA Executives	6/26/2014 04:11 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387830	VA	Item	5/16/2014 10:05 AM America/New York	2014 Compensation Claims Quality and Training for VBA Executives	6/26/2014 04:12 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387831	VA	Item	5/16/2014 10:08 AM America/New York	2014 Acquisition for VBA Executives	6/26/2014 04:09 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387833	VA	Item	5/16/2014 10:13 AM America/New York	2014 VBMS for VBA Executives	6/26/2014 04:15 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387834	VA	Item	5/16/2014 10:16 AM America/New York	2014 Labor & Employee Relations for VBA Executives by Kimberley Moseley	6/26/2014 04:14 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387836	VA	Item	5/16/2014 10:21 AM America/New York	2014 Data Management for VBA Executives by Mark Seatzorn	6/26/2014 04:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	387838	VA	Item	5/16/2014 10:24 AM America/New York	Critical Thinking Skills for Dr. Maureen McGuire-Jules	6/26/2014 04:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387839	VA	Item	5/16/2014 10:27 AM America/New York	Leading a Diverse Workforce by OPM Bruce Stewart	6/26/2014 04:19 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387840	VA	Item	5/16/2014 10:28 AM America/New York	Negotiation Skills - Bob Gilson on Labor Negotiations	6/26/2014 04:07 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	387841	VA	Item	5/16/2014 10:32 AM America/New York	Accountability - Bob Gilson on Holding Federal Employees Accountable	6/26/2014 04:16 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/8/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	1/26/2017 09:24 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	388349	VA	Item	8/8/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training	9/16/2014 10:12 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	3901227	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	1/26/2017 09:16 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	3901227	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	2/2/2018 04:49 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	3901227	VA	Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommendation)	3/23/2015 04:26 PM America/New York	VA-Complete			

Hi (b)(6)

I was unable to access the link to the documents and (b)(5)

Thank you,
Hansel

Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs

Tel: (b)(6) | Fax: (202) 495-5601 | Email: (b)(6)@va.gov | Address: 810 Vermont Avenue, NW, Mail Stop 70, Washington, DC 20420

To make a disclosure: Complete the optional form found at <https://www.va.gov/accountability> | Contact us toll-free at: (855) 429-6669 | Contact us by email at OAWP@va.gov.

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From: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Sent: Wednesday, May 19, 2021 2:08 PM

To: (b)(6)@va.gov>; Cordeiro, Hansel (OAWP) (b)(6)@va.gov>;

(b)(6)@va.gov>

Cc: (b)(6) (OGC) (b)(5)@va.gov>; McVicker, Carrie A. (b)(6)@va.gov>;

(b)(6)@va.gov>; Farrisee, Gina S. (b)(6)@va.gov> (b)(6)

W. (OAWP) (b)(6)@va.gov> (b)(6) (OAWP) (b)(6)

(b)(6)@va.gov> (b)(6) (OAWP) (b)(6)@va.gov>

Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

(b)(5)

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the

right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: (b)(6)@va.gov
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov; Cordeiro, Hansel (OAWP) (b)(6)@va.gov
Cc: (b)(6) (OGC) (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; (b)(6)@va.gov; W. (OAWP) (b)(6)@va.gov; (b)(6)@va.gov; (OAWP) (b)(6)@va.gov
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

This is a request for OGC, OCLA, and OAWP final approval of the proposed response package for VIEWS 4890714. **This task is due COB, May, 20, 2021.** Ordinarily this task would be made through VIEWS, but the size of one of the attachments make a VIEWS tasking unfeasible.

The attached elements of this final approval task are as follows:

- Incoming letter
- Transmittal letter
- Enclosure (rough draft)
- 3 Xcel spread sheet attachments that respond to certain requests for documents.
- And the link below which will take you to the 578 pages of releasable records requested under questions 4 and 8 (You are receiving a link to these documents because the file is too large to send via email attachment)

(b)(5)



For tracking and version control purposes, please send any last comments you may have to me only. If the comments are significant you will have an opportunity to review again.

Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: Sauber, Richard A. (OGC)
Sent: Thu, 20 May 2021 19:27:50 +0000
To: Hogan, Michael R. (OGC); Hipolit, Richard (OGC)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

(b)(5)

Richard A. Sauber
General Counsel
Department of Veterans Affairs
O- (b)(6)
C- (b)(6)
Privileged and Confidential

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, May 20, 2021 3:26 PM
To: Sauber, Richard A. (OGC) (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Dick,

(b)(5); (b)(6)

(b)(5); (b)(6)

I can call at 4 pm (on the weekly COS call right now). If you'd like to speak sooner, I can drop from the call.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Sauber, Richard A. (OGC) (b)(6)@va.gov>
Sent: Thursday, May 20, 2021 3:17 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

(b)(5)

Richard A. Sauber
General Counsel
Department of Veterans Affairs
O (b)(6)
C
Privileged and Confidential

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 4:13 PM
To: Sauber, Richard A. (OGC) (b)(6)@va.gov>; Hipolit, Richard (OGC) (b)(6)@va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Dick,

(b)(5)

I am available to discuss this if you'd like.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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From: (b)(6)@va.gov
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov; Cordeiro, Hansel (OAWP) (b)(6)@va.gov; (b)(6)@va.gov
Cc: (b)(6) (OGC) (b)(6)@va.gov; McVicker, Carrie A (b)(6)@va.gov; (b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; (b)(6)@va.gov; W. (OAWP) (b)(6)@va.gov; (b)(6)@va.gov (OAWP) (b)(6)@va.gov; (b)(6)@va.gov; (b)(6)@va.gov (OAWP) (b)(6)@va.gov
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

This is a request for OGC, OCLA, and OAWP final approval of the proposed response package for VIEWS 4890714. **This task is due COB, May, 20, 2021.** Ordinarily this task would be made through VIEWS, but the size of one of the attachments make a VIEWS tasking unfeasible.

The attached elements of this final approval task are as follows:

- Incoming letter
- Transmittal letter
- Enclosure (rough draft)
- 3 Xcel spread sheet attachments that respond to certain requests for documents.
- And the link below which will take you to the 578 pages of releasable records requested under questions 4 and 8 (You are receiving a link to these documents because the file is too large to send via email attachment)

(b)(7)(C)

For tracking and version control purposes, please send any last comments you may have to me only. If the comments are significant you will have an opportunity to review again.

Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

Sent: Thu, 20 May 2021 19:56:14 +0000
To: (b)(6)
Cc: McVicker, Carrie A.; (b)(6)
Subject: OSVA Approval Package for VIEWS 4890714
Attachments: Tab 1 4890714 Grassley Transmittal Letter.docx, Tab 2 4890714 Enclosure.docx, Tab 3 4890714 Information about Attachments.docx, Tab 4 04890714 - Incoming Letter.pdf, 4890714 VA Form 0907.pdf
Importance: High

(b)(6)

Attached for your review is the OSVA approval package for VIEWS 4890714/Grassley which includes the following:

- Tab 1 Transmittal Response
- Tab 2 Enclosure
- Tab 3 Information about Enclosure (this document will appended to the attachments. The language in this document was originally in the transmittal letter but COSVA thought this information should not be in the letter that SECVA signs. Per Gina's guidance, I made it a separate document)
 - The attachments are not included in this email because of the size of the files. All the attachments total about 600 pages. All of the documents have been printed out and were provided to you today in a folder.
- Tab 4 -Incoming Letter
- VA Form 0907



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This is a follow-up to the April 6, 2021, Department of Veterans Affairs (VA) interim response to your April 2, 2021, letter about conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). I appreciate this opportunity to respond.

As stated in the interim response, VA takes this matter very seriously. The free flow of information, especially information that identifies malfeasance, underperformance or abuse is critical to strong agency performance and since arriving at VA, I have taken several opportunities to communicate that to all employees and underscore it to our accountability partners at VA. One such partner is the VA Office of Accountability and Whistleblower Protection (OAWP), which is charged to, among other responsibilities, investigate allegations of VA senior leader misconduct and poor performance.

In this case, not only is this matter the subject of an active investigation by OAWP, it is also being investigated by the VA Office of Inspector General. As for the specific questions raised in your letter, enclosed are enumerated responses to each question, and attached thereto are copies of the documents you requested that are releasable to you under the Freedom of Information Act (FOIA)

Although the President's nominee for head of OAWP will have her hearing later this month, and we eagerly await her confirmation, I want to assure you that if there has been any misconduct by a VA senior official, OAWP and OIG will identify it and, if warranted, the VA senior official will be held appropriately accountable.

In closing, thank you for your patience with the length of time it has taken to respond, and I trust this information is helpful to you.

Sincerely,

Denis McDonough

Enclosure

**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:

(b)(5)

(b)(5)

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

VA Response:

(b)(5)

(b)(5)

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

VA Response:

(b)(5)

(b)(5)

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

VA Response:

(b)(5)

(b)(5)

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

VA Response:

(b)(5)

(b)(5)

(b)(5)

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

VA Response: (b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

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: (b)(5)

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: (b)(5)

(b)(5)

[Redacted response area]

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: (b)(5)

(b)(5)

[Redacted response area]

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: (b)(5)

(b)(5)

[Redacted response area]

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: (b)(5)

(b)(5)

[Redacted response area]

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

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

VA Response: (b)(5)

(b)(5)

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: (b)(5)

(b)(5)

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: (b)(5)

(b)(5)

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: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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: (b)(5)

(b)(5)

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

VA Response:

(b)(5)

(b)(5)

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:

(b)(5)

(b)(5)

May 2021

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

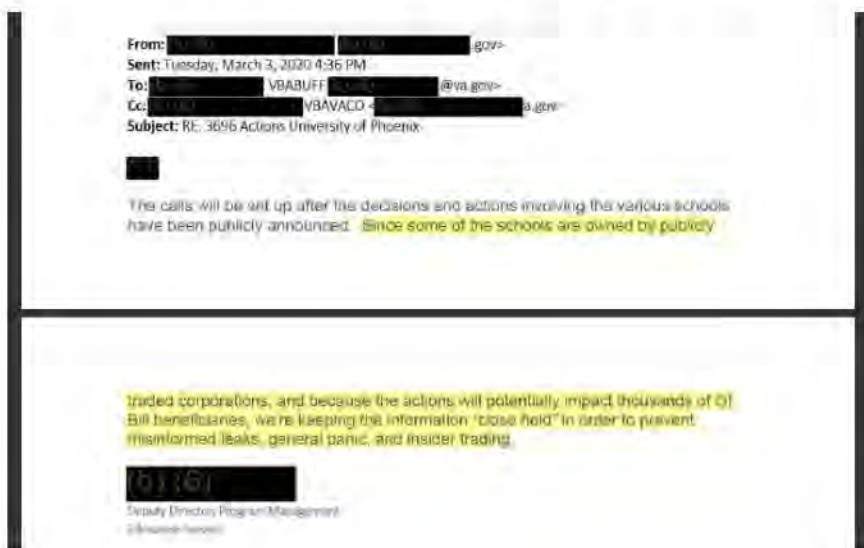
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11
- 12 1. Is there any internal rule or regulation (CFR) that defines, states, or
13 discusses the different tier? For example, what is the guidance for deciding
14 what is tier 2 versus tier 3?
 - 15 2. Is there any internal rule or regulation (CFR) that expand the period to
16 respond to a FOIA request when the agency transfers a request to a new
17 tier?
 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

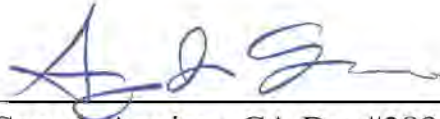
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

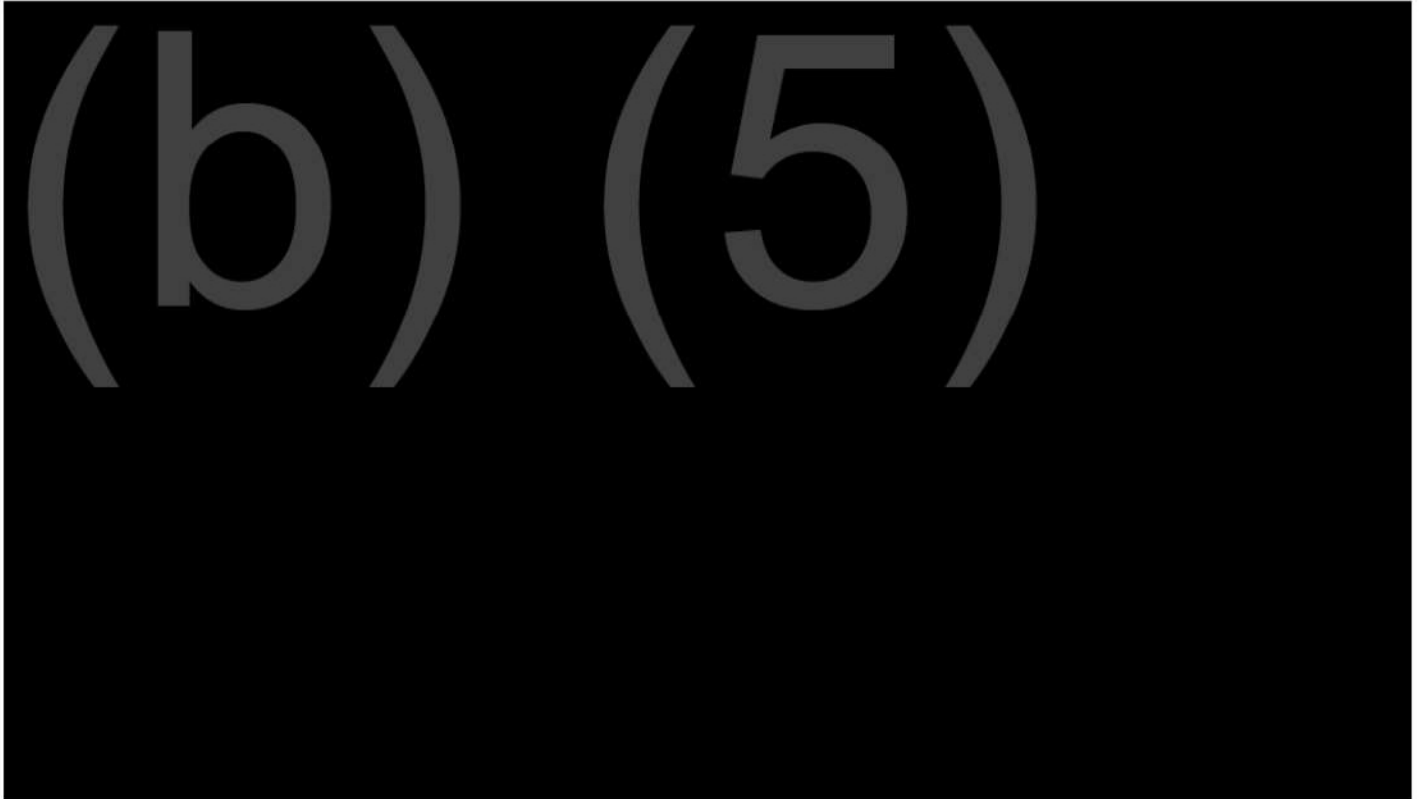
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

SUMMARY AND APPROVAL SHEET

NAME OF ORIGINATOR	VIEWS NO. 4890714	DATE 05/20/2021	DATE DUE
--------------------	----------------------	--------------------	----------

NAME OF EXECUTIVE SECRETARY STAFF (b)(6)	SUBJECT Response to Incoming Letter from Senator Grassley
---	--

ROUTING	INITIALS	DATE	COMMENTS
<input checked="" type="checkbox"/> EXEC SEC			
<input type="checkbox"/> DEPCOSVA			
<input checked="" type="checkbox"/> DEPCOSVA/WHL			
<input checked="" type="checkbox"/> COSVA			
<input type="checkbox"/> DEPSECVA			
<input checked="" type="checkbox"/> SECVA			

CONCURRENCE
 Cordeiro (OAWP) 05/20/2021; Hogan (OGC) 5/19/2021; (b)(6) (OCLA) 5/18/2022

EXECUTIVE SUMMARY

Executive Summary Instruction

Purpose - Discussion - Recommendation

Purpose: To obtain SECVA approval of a response (which includes an enclosure and attachments) to an incoming letter from Senator Grassley.

Discussion: Senator Grassley's incoming letter alleges conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA), and asks that VA respond to 12+ questions related to these conflicts as well as provided copies of certain documents. The response firmly affirms SECVA's position on the issue of senior leader identifies malfeasance, under performance, or abuse and advises that the matter that is the subject of the incoming letter is already under investigation by OAWP and OIG. The answers to Senator Grassley's 12+ questions are in the enclosure.

Recommendation: (b)(5)

From: Farrisee, Gina S.
Sent: Fri, 21 May 2021 21:57:30 +0000
To: Hogan, Michael R. (OGC)
Cc: McVicker, Carrie A.
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Mike,
Thank you very much, we will add him to the concurrence.
Gina

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Friday, May 21, 2021 3:15 PM
To: Farrisee, Gina S. (b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Gina,

(b)(5) Please let me know if you need anything else on this matter.

V/r,

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: Farrisee, Gina S. (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 5:38 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Thank you Mike (b)(5)

(b)(5)

Thank you,
Gina

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Wednesday, May 19, 2021 4:04 PM
To: Farrisee, Gina S. (b)(6) @va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Gina,

(b)(5)

V/r,

Mike

From: Farrisee, Gina S. (b)(6) @va.gov>
Sent: Wednesday, May 19, 2021 3:40 PM
To: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Mike,

Good afternoon and thanks for your quick turn on this. (b)(5)

(b)(5)

Thanks,
Gina

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Wednesday, May 19, 2021 2:08 PM
To: (b)(6) @va.gov>; Cordeiro, Hansel (OAWP) (b)(6) @va.gov>;
(b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>;
(b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov>; (b)(6) @va.gov>;
W. (OAWP) (b)(6) @va.gov>; (b)(6) (OAWP) (b)(6) @va.gov>;
(b)(6) @va.gov>; (b)(6) OAWP (b)(6) @va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

OGC concurs subject to the attached edits to #12.

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

(b)(6) (Direct)

Whistleblower Protections: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, without a threat of retaliation. You are not limited to your supervisory chain when making a protected disclosure.

From: (b)(6)@va.gov
Sent: Tuesday, May 18, 2021 2:15 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov; Cordeiro, Hansel (OAWP) (b)(6)@va.gov; (b)(6)@va.gov
Cc: (b)(6) (OGC) (b)(6)@va.gov; McVicker, Carrie A. (b)(6)@va.gov; (b)(6)@va.gov; Farrisee, Gina S. (b)(6)@va.gov; (b)(6)@va.gov; W. (OAWP) (b)(6)@va.gov; (b)(6) (OAWP) (b)(6)@va.gov; (b)(6)@va.gov; (b)(6) OAWP (b)(6)@va.gov
Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

Hello All:

This is a request for OGC, OCLA, and OAWP final approval of the proposed response package for VIEWS 4890714. **This task is due COB, May, 20, 2021.** Ordinarily this task would be made through VIEWS, but the size of one of the attachments make a VIEWS tasking unfeasible.

The attached elements of this final approval task are as follows:

- Incoming letter
- Transmittal letter
- Enclosure (rough draft)
- 3 Xcel spread sheet attachments that respond to certain requests for documents.
- And the link below which will take you to the 578 pages of releasable records requested under questions 4 and 8 (You are receiving a link to these documents because the file is too large to send via email attachment)

(b)(7)(E)

For tracking and version control purposes, please send any last comments you may have to me only. If the comments are significant you will have an opportunity to review again.

Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

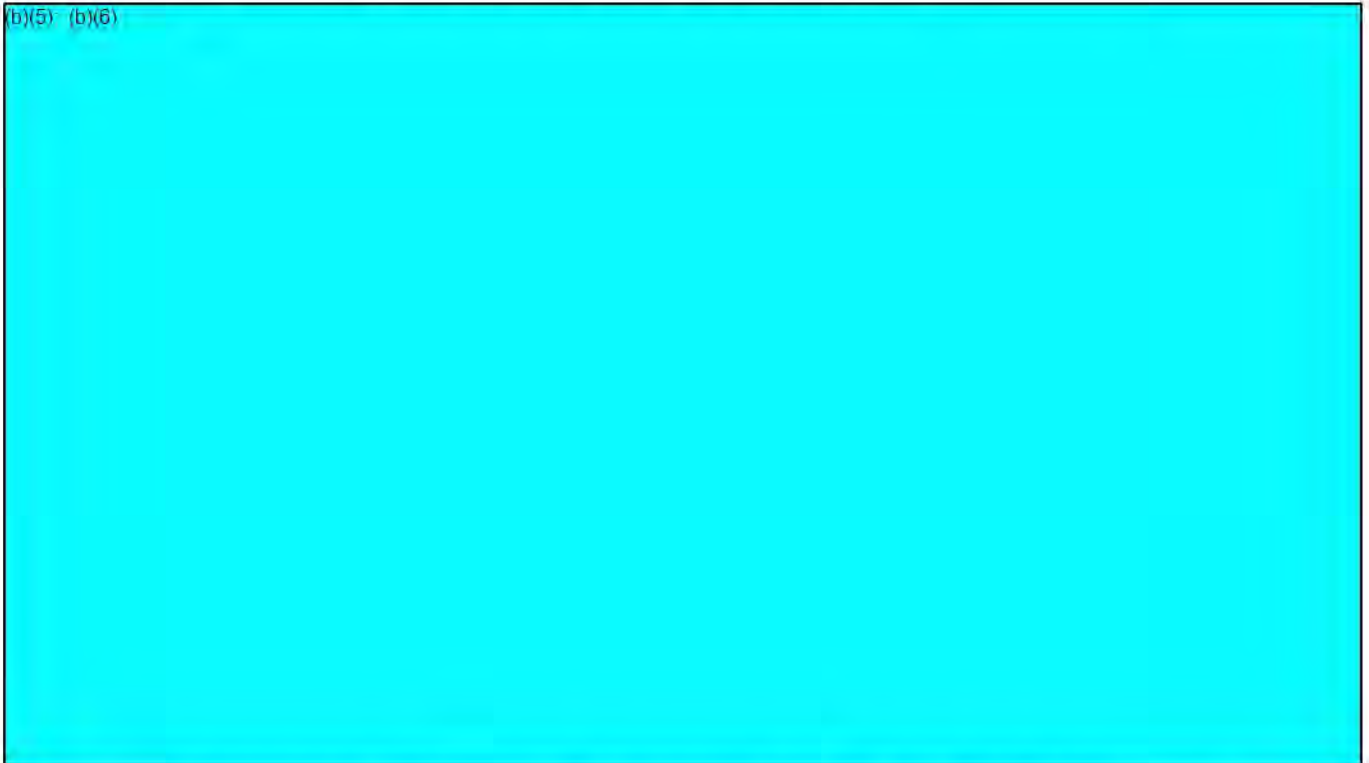
(b)(6)

From: (b)(6) (OGC)
Sent: Mon, 24 May 2021 16:09:53 +0000
To: Hogan, Michael R. (OGC)
Cc: Cromwell, Sonya (OGC); (b)(6) (OGC); (b)(6) (OGC); (b)(6) (OGC)
Subject: RE: 04890714 - Letter from Senator Grassley to SECVA
Attachments: 1. Enclosure 4890714 template - PLG Final.docx, 1a. PLG Final (CATT-338564).pdf, 2. (b)(6) Responses from VIEWS Task Response Notes.pdf
Importance: High

Good Morning Mr. Hogan,

My apologies for the delay but I've been pulling all data together in order to be able to provide you with a reason for the ongoing inquiry and to obtain your assistance in answering the unanswered questions and where/who the answers should come from.

(b)(5) (b)(6)



Also, if you'll provide me with a copy of the concurrence that you provided the Chief of Staff's office I can upload it into the VIEWS case.

Without a fully completed final and the concurrence in the VIEWS case, we are unable to completely close all of our tasks.

Please advise.

V/r,

(b)(6)

(b)(6)@va.gov

Department of Veterans Affairs
OGC Lead Correspondence Analyst
Office of General Counsel (OGC)
810 Vermont Ave NW, Suite 1030
Washington DC 20420

OGC Main: (b)(6)

Direct: (b)(6)

Fax: 202-273-9299

Cell: (b)(6)

(b)(6)

Proud to be a Disabled Veteran serving Veterans

My Name Is (b)(6) And I Care!

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>

Sent: Monday, May 24, 2021 8:12 AM

To: (b)(6) (OGC) (b)(6)@va.gov>

Cc: Cromwell, Sonya (OGC) (b)(6)@va.gov>; (b)(6) (OGC) (b)(6)@va.gov>

Subject: FW: 04890714 - Letter from Senator Grassley to SECVA

Importance: High

Constance,

(b)(5)

Let me know if you need anything more on this matter.

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

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From: Cromwell, Sonya (OGC) (b)(6) @va.gov>
Sent: Monday, May 24, 2021 8:09 AM
To: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>
Subject: FW: 04890714 - Letter from Senator Grassley to SECVA
Importance: High

Hello Mike, (b)(5); (b)(6)

(b)(5)

Thanks,
Sonya

Sonya Marie Cromwell
Chief Counsel
OGC Information and Administrative Law Group (IALG)

Department of Veterans Affairs
810 Vermont Avenue, NW, 1156A
Washington, DC 20020
Office Phone: (b)(6)
VA cell: (b)(6)
Fax: 202-273-6388



Choose VA

Suicide Prevention is Everyone's Business - [#BeThere](#).
The Veterans Crisis Line is 1-800-273-8255 and Press 1

VA Core Values: Integrity Commitment Advocacy Respect Excellence
VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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From: Cromwell, Sonya (OGC)
Sent: Friday, May 21, 2021 4:02 PM
To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov> (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: 04890714 - Letter from Senator Grassley to SECVA

Hello (b)(6) including (b)(6) I was not a part of this concurrence.

Thanks,
Sonya

Sonya Marie Cromwell
Chief Counsel
OGC Information and Administrative Law Group (IALG)

Department of Veterans Affairs
810 Vermont Avenue, NW, 1156A
Washington, DC 20020
Office Phone (b)(6)

VA cell: (b)(6)
Fax: 202-273-6388



Suicide Prevention is Everyone's Business - #BeThere.
The Veterans Crisis Line is 1-800-273-8255 and Press 1

VA Core Values: Integrity Commitment Advocacy Respect Excellence
VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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From: (b)(6) (OGC) <(b)(6)@va.gov>
Sent: Friday, May 21, 2021 3:32 PM
To: Cromwell, Sonya (OGC) <(b)(6)@va.gov>
Cc: (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: FW: 04890714 - Letter from Senator Grassley to SECVA

Sonya,

Hi, based on (b)(6) email below, I checked in VIEWS, I did not see a task that was made to Mike Hogan, should there be? Thanks.

(b)(6)

Legal Assistant
Office of General Counsel (024), Room 1157A
Information and Administrative Law Group
810 Vermont Avenue, NW

Washington, DC 20420

(b)(6)
(b)(6)@va.gov

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Friday, May 21, 2021 3:21 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Cc: OGC Information Law Group Supervisors (b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: Re: 04890714 - Letter from Senator Grassley to SECVA

Hi (b)(6)

(b)(5); (b)(6)



Get [Outlook for iOS](#)

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Friday, May 21, 2021 3:10:48 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Cc: OGC Information Law Group Supervisors (b)(6)@va.gov>; (b)(6) (OGC) (b)(6)@va.gov>
Subject: FW: 04890714 - Letter from Senator Grassley to SECVA

(b)(6)

Hi. As noted below, would you please give us a status update on gcl 154271, Chuck Greasley, thank you.

(b)(6)
Legal Assistant
Office of General Counsel (024), Room 1157A
Information and Administrative Law Group
810 Vermont Avenue, NW
Washington, DC 20420

(b)(6)
(b)(6)@va.gov

From: (b)(6) (OGC) (b)(6)@va.gov
Sent: Friday, May 21, 2021 3:05 PM
To: (b)(6) (OGC) (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov; (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov
Cc: (b)(6) (OGC) (b)(6)@va.gov; (b)(6)@va.gov; (b)(6)@va.gov; (b)(6) (OGC) (b)(6)@va.gov
Subject: 04890714 - Letter from Senator Grassley to SECVA
Importance: High

Greetings IALG Team,

I am inquiring on the status of this request for information, the due date was 16 April 2021 and it (b)(5)

For your convenience I've attached links for all of the associated/collaborated tasks, please complete the task as soon as possible or provide an expected completion date and reason for the delay.

Thank you in advance for your assistance.

Link to IALG Task: Original Task

(b)(7)(E)

Link to (b)(6) (OGC 02EST Ethics Specialty Team) Task: Comments

(b)(7)(E)

Link to Doris Gruntmeir's Task: Comments

(b)(7)(E)

Link to (OGC 02EST Ethics Specialty Team) Task: Comments

(b)(7)(E)

Link to New Task created by (b)(6) For Review

(b)(7)(E)

V/r,

(b)(6)

(b)(6)@va.gov

Department of Veterans Affairs
OGC Lead Correspondence Analyst
Office of General Counsel (OGC)
810 Vermont Ave NW, Suite 1030
Washington DC 20420

OGC Main: (b)(6)

Direct (b)(6)

Fax: 202-273-9299

Cell: (b)(6)

(b)(6)

Proud to be a Disabled Veteran serving Veterans

My Name Is (b)(6) And I Care!

**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: (b)(5)
(b)(5)

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

VA Response: (b)(5)
(b)(5)

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

(b)(5)

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

(b)(5)

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

(b)(5)

(b)(5)

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

VA Response: (b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

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:

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:

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:

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: (b)(5)

(b)(5)

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:

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

VA Response:

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:

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:

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:

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:

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:

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

VA Response:

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:

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

VA Response:

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:

Department of Veterans Affairs
April 2021

(b)(5)

(b)(5)

Enclosure

**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: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

(b)(5)

(b)(5)

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

VA Response: (b)(5)

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

VA Response (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: (b)(5)

(b)(5)

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

VA Response: — — —

? **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?** (b)(5)

VA Response: — — —

? **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: - - - -

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: (b)(5)

(b)(5)



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? (b)(5)

VA Response: - - - -

(b)(5)

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

VA Response: - - - -

(b)(5)

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: - - - -

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: - - - -

(b)(5)

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VA Response: - - - -

(b)(5)

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: - - - -

(b)(5)

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: — — —

(b)(5)

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

VA Response: — — —

(b)(5)

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?

(b)(5)

VA Response: — — —

?

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

(b)(5)

VA Response: — — —

?

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?

(b)(5)

VA Response: — — —

Department of Veterans Affairs
April 2021

Sent: Thu, 27 May 2021 17:44:33 +0000
To: Harper, Prevolia
Subject: RE: Tab 1 4890714 Grassley Transmittal Letter Aa (004)

(b)(6)

(b)(5)

Please contact me with any questions about this matter.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

From: (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 1:23 PM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: Tab 1 4890714 Grassley Transmittal Letter Aa (004)

From: (b)(6)
Sent: Thu, 27 May 2021 18:10:18 +0000
To: Hogan, Michael R. (OGC)
Subject: Tab 1 4890714 Grassley Transmittal Letter Final 1
Attachments: Tab 1 4890714 Grassley Transmittal Letter Final 1.docx

Mike, sending you the clean final copy. Thanks

From: (b)(6)
Sent: Thu, 27 May 2021 18:12:56 +0000
To: Hogan, Michael R. (OGC)
Subject: RE: Tab 1 4890714 Grassley Transmittal Letter Final 1

Ok thanks

From: Hogan, Michael R. (OGC) <(b)(6)@va.gov>
Sent: Thursday, May 27, 2021 2:13 PM
To: (b)(6)@va.gov>
Subject: Re: Tab 1 4890714 Grassley Transmittal Letter Final 1

(b)(6)

I am waiting to brief Mr. Sauber before sending my email.

Michael R. Hogan

Get [Outlook for iOS](#)

From: (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 2:10:18 PM
To: Hogan, Michael R. (OGC) <(b)(6)@va.gov>
Subject: Tab 1 4890714 Grassley Transmittal Letter Final 1

Mike, sending you the clean final copy. Thanks

From: (b)(6) OGC)
Sent: Thu, 27 May 2021 16:15:51 +0000
To: Hogan, Michael R. (OGC)
Subject: RE: Follow-up
Attachments: FW_VIE~1.pdf

(b)(5)

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Thursday, May 27, 2021 11:56 AM
To: (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: Follow-up

(b)(5)

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Thursday, May 27, 2021 11:41 AM
To: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Subject: RE: Follow-up

(b)(5)

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Thursday, May 27, 2021 11:11 AM
To: (b)(6) (OGC) (b)(6) @va.gov>
Subject: Follow-up

Re: Senator's request

(b)(6)

(b)(5)



Thank you,

Mike

Get [Outlook for iOS](#)

From: [REDACTED]
To: [REDACTED]
Date: 08/12/2013 09:04
Attachments: [REDACTED]

CC: [REDACTED]

From: [REDACTED]
To: [REDACTED]
Subject: [REDACTED]

Just to remind you of the [REDACTED]

App Task Assignment [REDACTED]

A case (number) [REDACTED] is assigned to [REDACTED] (Information) [REDACTED]

Management [REDACTED]

System [REDACTED]

Office [REDACTED]

Organization [REDACTED]

Task [REDACTED]

App [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
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TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
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THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

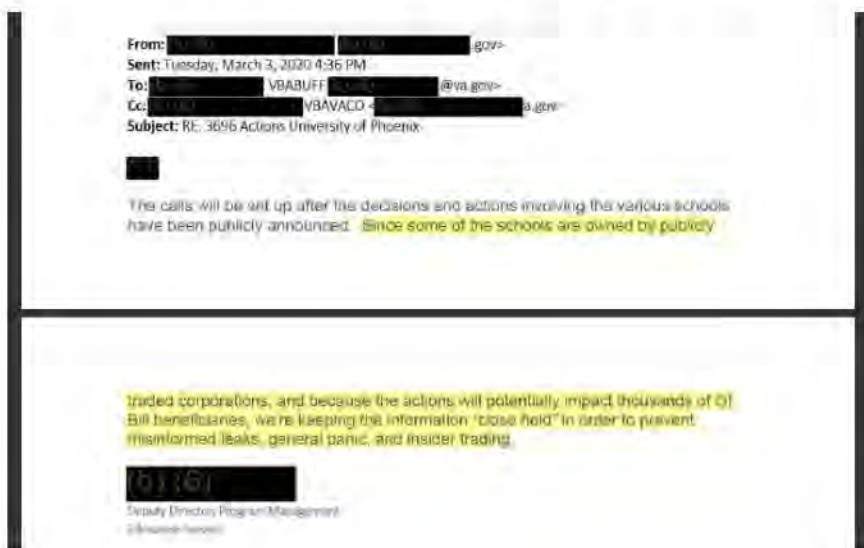
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

18 **COMPLAINT FOR DECLARATORY**
19 **AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>, last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
 14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
 15 implement VES's January 21 letter is unknown and may never be known, given the
 16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
 17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
 18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
 19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
 21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
 22 husband is self-employed through a consulting firm, but did not identify the firm or
 23 answer questions about the value of his firm and the amount of his income. She merely
 24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
 27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
 28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

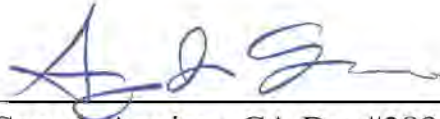
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927

6 Aguirre Law, A.P.C.

7 501 W Broadway, Ste 800

8 San Diego, CA 92101

9 Telephone: 619-400-4960

10 Facsimile: 619-501-7072

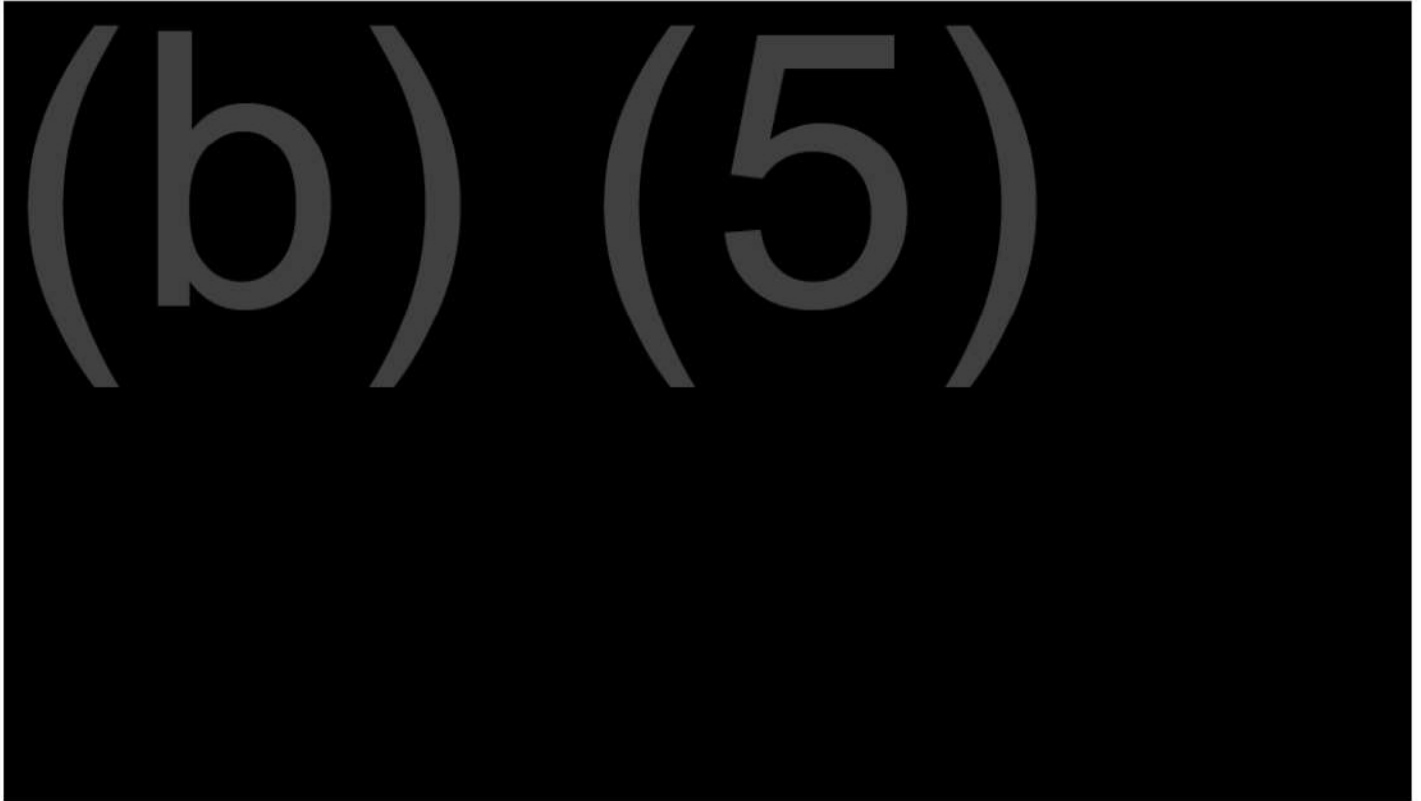
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

**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:

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:

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:

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:

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:

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:

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

VA Response:

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:

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:

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:

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:

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:

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

VA Response:

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:

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

VA Response:

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:

Department of Veterans Affairs
April 2021

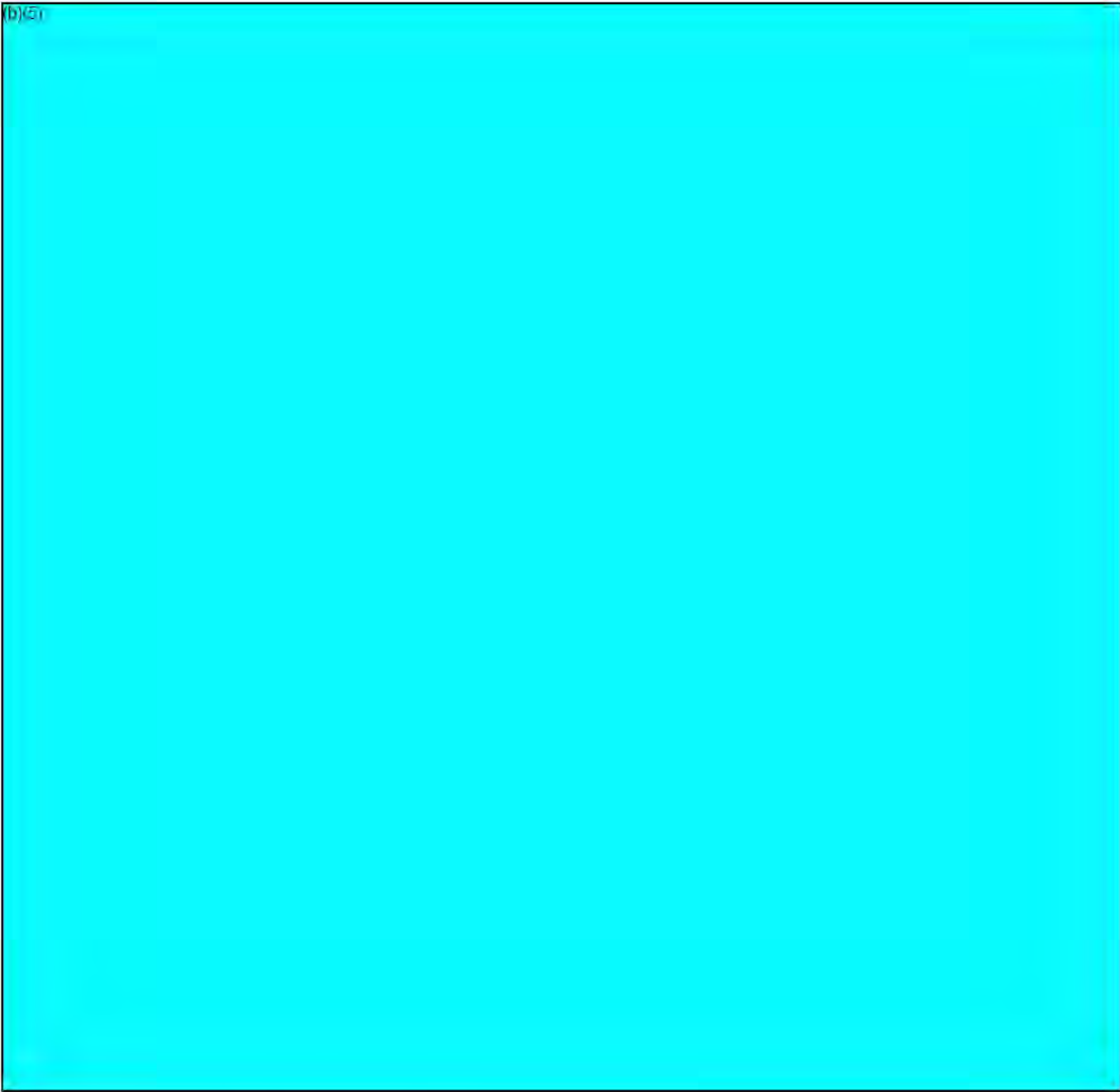
From: (b)(6)
Sent: Fri, 9 Apr 2021 20:18:56 +0000
To: Hogan, Michael R. (OGC)
Cc: (b)(6) McVicker, Carrie A.
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)
Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf
Importance: High

Good afternoon Mike;

(b)(5)



(b)(5)



Please let me know if you have any questions.

(b)(5)

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

(b)(5)

(b)(6) (mobile)

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Senator Charles Grassley**

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VA Response:

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

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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?

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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:

Department of Veterans Affairs
April 2021

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
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THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

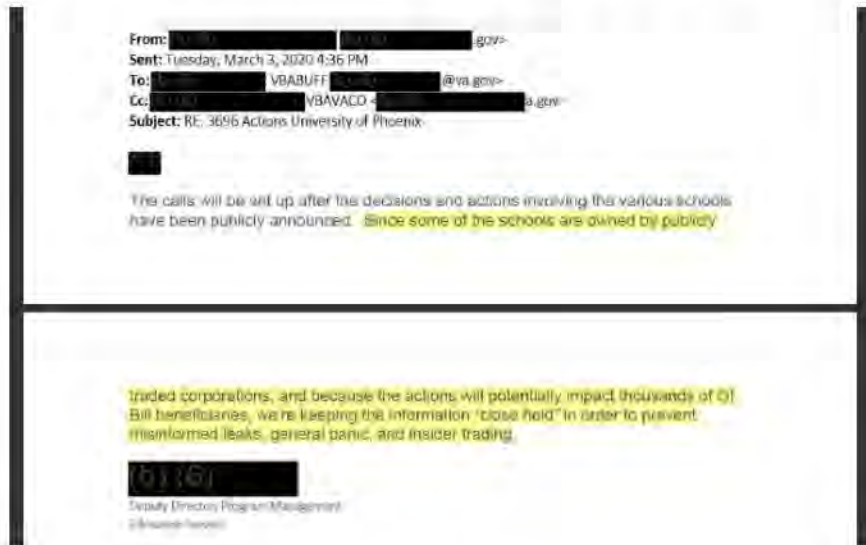
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



17. The VA’s selective release of nonpublic information during the trading day shows its lack of understanding how nonpublic information can dramatically move the market. It also suggests the possibility the VA may have released nonpublic information between the arrival of the VES letter on January 21, 2020, and the VA’s press release on March 9, 2020. VES also has a history of prior connections with at least one hedge fund that engaged in short selling the stocks of for-profit educational companies.¹³

18. The chart below shows the fall of CEC stock from January 21 to March 18, 2020, is consistent with the VA’s selective release of nonpublic information of the impending enforcement proceeding against CEC that found its way to market participants during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

///

¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old Tricks?* Nov. 4, 2020, <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>, last visited Jan. 15, 2021.



13 19. Barrett Bogue, Director Bogue's husband, is VES Senior Communications
14 Advisor.¹⁴ The full extent of his involvement in VES's effort to persuade the VA to
15 implement VES's January 21 letter is unknown and may never be known, given the
16 nature of his relationship with Director Bogue. He clearly supported VES's efforts to get
17 the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019,
18 when he tweeted an article focused on how the VA was failing to hold for-profit colleges
19 accountable.¹⁵

20 20. Director Bogue's Public Financial Disclosure Report does not disclose her
21 husband's financial relationships with VES. On the form, Director Bogue disclosed her
22 husband is self-employed through a consulting firm, but did not identify the firm or
23 answer questions about the value of his firm and the amount of his income. She merely
24

25 ¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

26 ¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired*
27 *in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019,
28 <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
 carrie.wofford@veteranseducationsuccess.org would make this
 email responsive),
 b. Ang,
 c. Beynon,
 d. Bogue,
 e. Douglas-Gabriel,
 f. Halperin,
 g. Saunders,
 h. Safalow, and
 i. Shireman.
 4) All emails sent or received by any of the Designated VA Persons between
 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
 that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

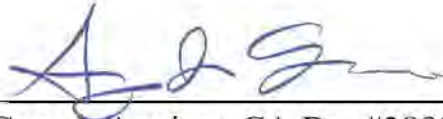
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

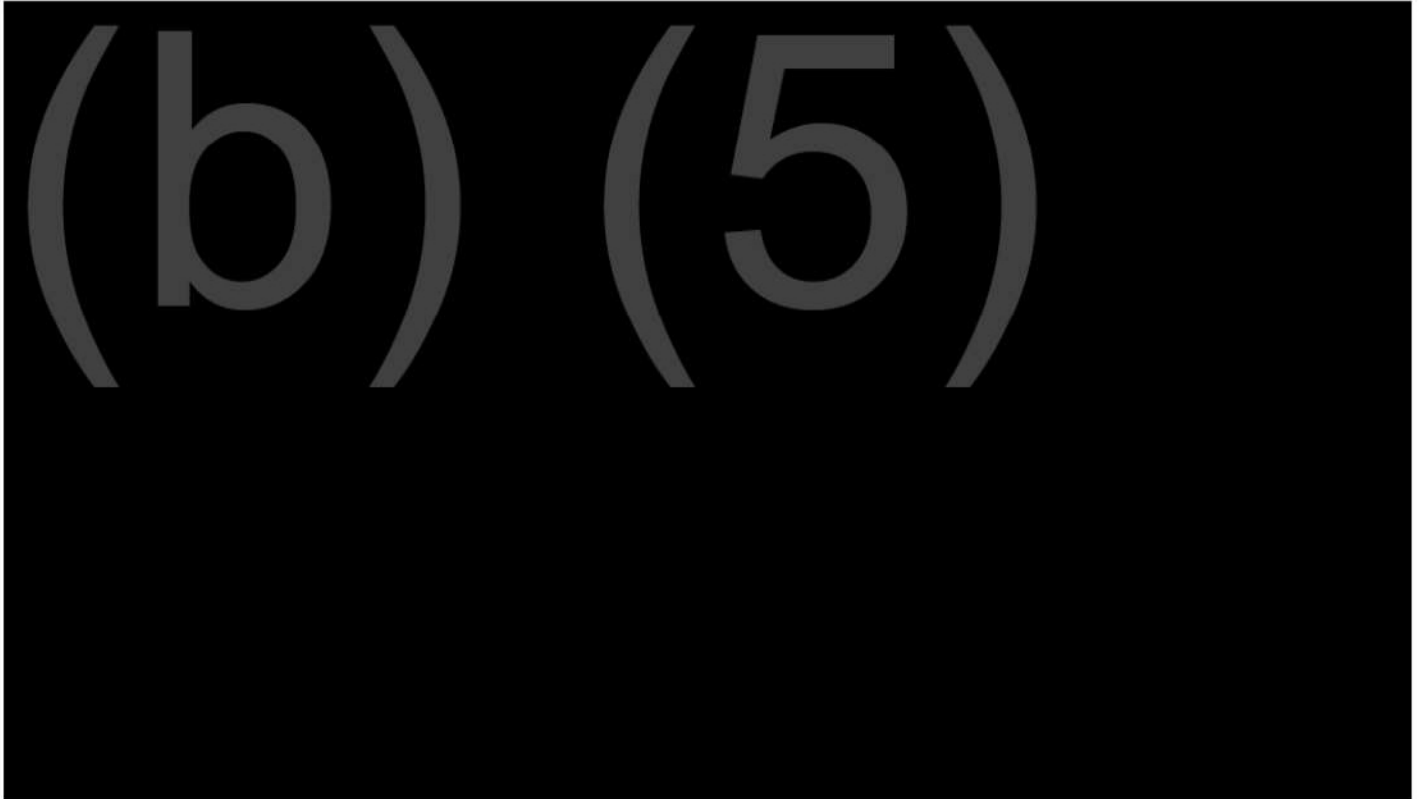
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

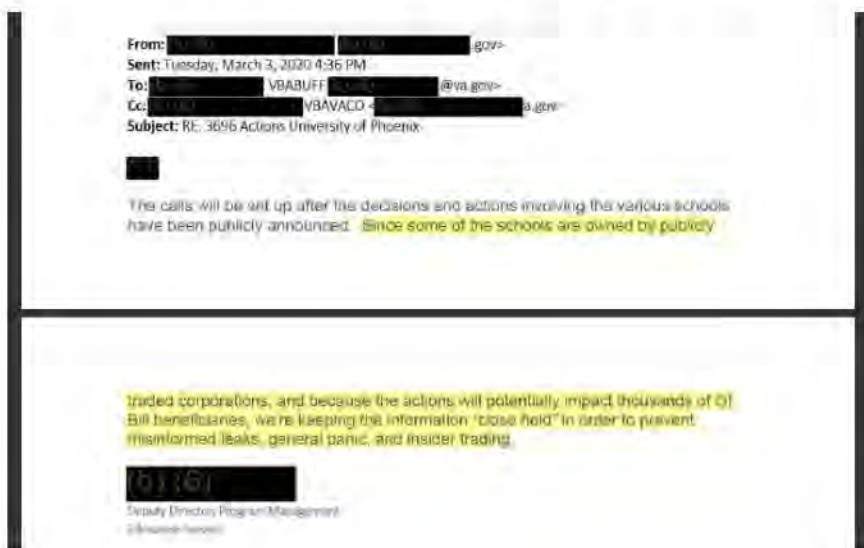
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
27 last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.



19. Barrett Bogue, Director Bogue’s husband, is VES Senior Communications Advisor.¹⁴ The full extent of his involvement in VES’s effort to persuade the VA to implement VES’s January 21 letter is unknown and may never be known, given the nature of his relationship with Director Bogue. He clearly supported VES’s efforts to get the VA to crackdown on for-profit schools, as he demonstrated on December 18, 2019, when he tweeted an article focused on how the VA was failing to hold for-profit colleges accountable.¹⁵

20. Director Bogue’s Public Financial Disclosure Report does not disclose her husband’s financial relationships with VES. On the form, Director Bogue disclosed her husband is self-employed through a consulting firm, but did not identify the firm or answer questions about the value of his firm and the amount of his income. She merely

¹⁴ See: <https://vetsedsuccess.org/who-we-are/barrett-bogue/>, last visited Jan. 15, 2021.

¹⁵ Jasper Craven, *Scrutiny of Colleges that Get Billions in GI Bill Money Remains Mired in Bureaucracy*, THE HECHINGER REPORT, Dec. 11, 2019, <https://hechingerreport.org/scrutiny-of-colleges-that-get-billions-in-gi-bill-money-remains-mired-in-bureaucracy/>, last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- 1 b. Any email address ending with this domain: @evocatillc.com;
2 c. Any email address ending with this domain: @paaresearch.com;
3 d. Any email address ending with this domain: @republicreport.org;
4 e. Any email address ending with this domain: @stripes.com;
5 f. Any email address ending with this domain: @tcf.org;
6 g. Any email address ending with this domain:
7 @veteranseducationsuccess.org;
8 h. Any email address ending with this domain: @vetsedsuccess.org;
9 and
10 i. Any email address ending with this domain: @washpost.com.
- 11 2) All emails received by any of the Designated VA Persons from one or more
12 of the following email addresses between December 15, 2019, and March
13 15, 2020:
14 a. Any email address ending with this domain: @eangus.org;
15 b. Any email address ending with this domain: @evocatillc.com;
16 c. Any email address ending with this domain: @paaresearch.com;
17 d. Any email address ending with this domain: @republicreport.org;
18 e. Any email address ending with this domain: @stripes.com;
19 f. Any email address ending with this domain: @tcf.org;
20 g. Any email address ending with this domain:
21 @veteranseducationsuccess.org;
22 h. Any email address ending with this domain: @vetsedsuccess.org;
23 and
24 i. Any email address ending with this domain: @washpost.com.
- 25 3) All emails sent or received by any of the Designated VA Persons between
26 December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
27 that contain any of the following names in the email address:
28 a. Wofford(e.g., Wofford in
carrie.wofford@veteranseducationsuccess.org would make this
email responsive),
b. Ang,
c. Beynon,
d. Bogue,
e. Douglas-Gabriel,
f. Halperin,
g. Saunders,
h. Safalow, and
i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between
December 15, 2019, and March 15, 2020, **excluding** VA internal emails,
that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
an hour or less. That will give you the number of hits.

3 Second, the requests seek emails with various organizations which are
4 unlikely to be subject to exemptions. In particular, they seek communications
with the media and non-governmental organizations.

5 Third, I would like to discuss any problems you see that could delay the early
6 release of the records sought.

7 A true and correct copy of this email is attached hereto and incorporated by reference as
8 Exhibit 4.

9 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
10 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
11 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
12 FOIA specialist explained, if any of the FOIA officers processing the requests needed
13 clarification, they "will submit their request to me. I have requested they provide me a
14 response by close of business on Monday, November 16, 2020 so that I may send you one
15 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
16 specialist further explained that "each FOIA Officer will process the portion of the request
17 pertaining to their directorate and will provide a response directly to you." A true and
18 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

19 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
20 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
21 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
22 clarifications to the FOIA officers in the different administrations working on Plaintiff's
23 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
24 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
25 A true and correct copy of this email chain is attached hereto and incorporated herein as
26 Exhibit 6.

27 ///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

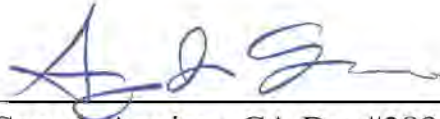
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

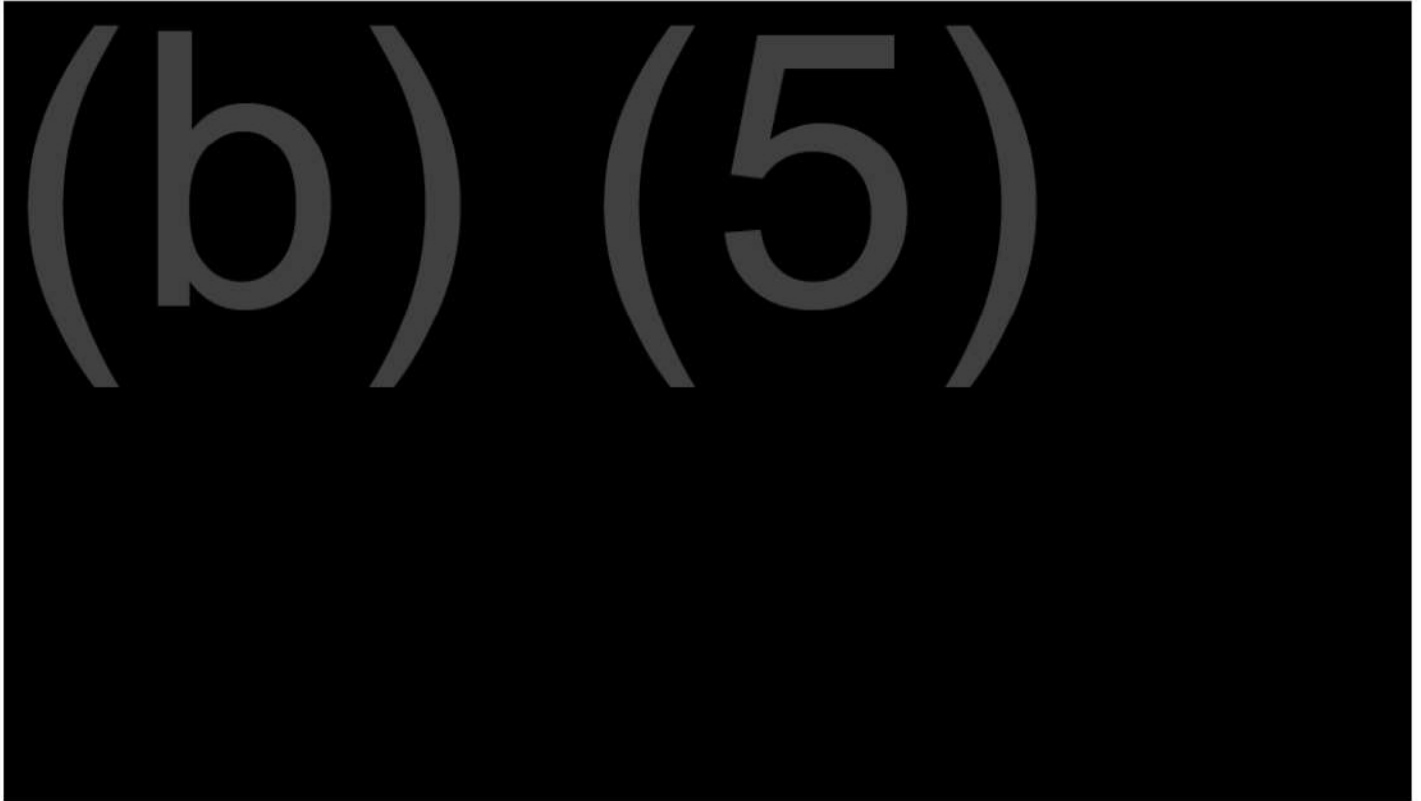
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

**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:

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:

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:

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:

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:

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:

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

VA Response:

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:

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:

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:

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:

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:

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

VA Response:

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:

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

VA Response:

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:

Department of Veterans Affairs
April 2021

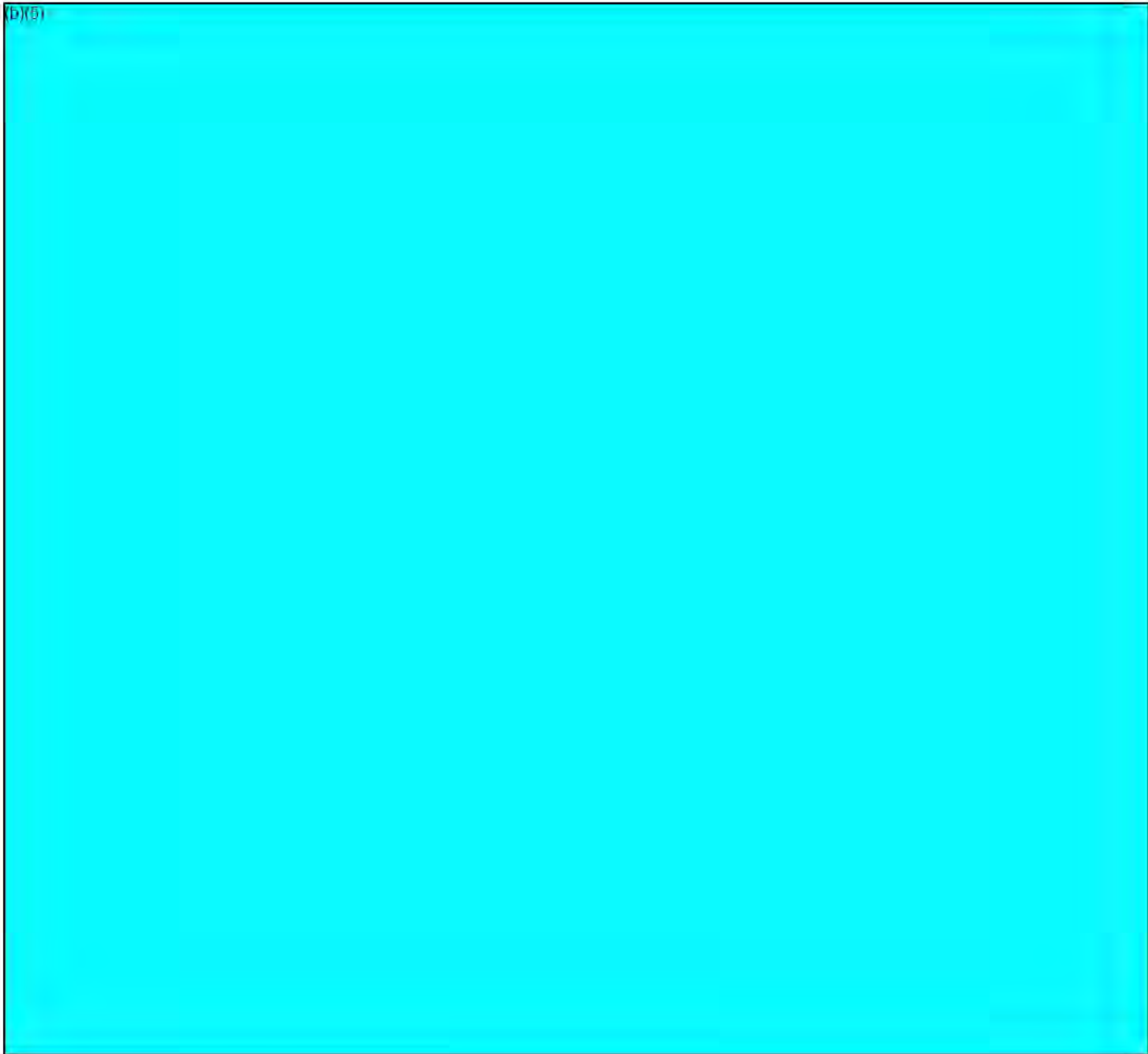
From: (b)(6)
Sent: Fri, 9 Apr 2021 20:18:56 +0000
To: Hogan, Michael R. (OGC)
Cc: (b)(6) McVicker, Carrie A.
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)
Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf
Importance: High

Good afternoon Mike:

(b)(6)



(b)(6)



Please let me know if you have any questions.

(b)(6)

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

(b)(6)

(b)(6)

mobile)

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

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

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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:

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:

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:

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

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VA Response:

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:

Department of Veterans Affairs
April 2021

RICHARD J. DURBIN, ILLINOIS, CHAIR
PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
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TOM COTTON, ARKANSAS
JOHN KEMRITY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2021

VIA ELECTRONIC TRANSMISSION

Dennis McDonough
Secretary
U.S. Department of Veterans Affairs

Dear Secretary McDonough:

According to multiple whistleblowers and witnesses interviewed by my staff, the U.S. Department of Veterans Affairs (VA) appears to be sweeping under the rug a history of conflicts and ethical issues among senior officials at the Veterans Benefits Administration (VBA). These concerns and allegations have been highlighted in both the media as well as in recent court filings, raising numerous challenges as you begin your tenure leading the VA.¹

After reviewing both witness statements and documents provided to my office, I write to you to express concern over allegations of improper contracting practices, whistleblower reprisal, and VA officials allegedly failing to protect internal deliberative information which may have led to individuals trading on non-public information. I also understand that several whistleblowers have disclosed these concerns to the Office of Special Counsel (OSC), as well as the VA Inspector General (VA OIG). In November 2020, the National Legal and Policy Center (NLPC) reported on some of these very issues.² Of specific concern, whistleblowers have alleged that a VBA official has participated in VA business while her husband engaged in employment and consulting arrangements for companies with business before her, including Student Veterans of America (SVA) and Veterans Education Success (VES). In February of 2018, VA ethics lawyers allegedly determined that the VBA senior official, Charmain Bogue, should recuse herself from engaging in

¹ See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>; Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

² See NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>; NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>; NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

activity involving her husband's clients and employers, VES and SVA. Chairman Bogue serves as Executive Director of VBA's Education Service, and her husband, Barrett Bogue, serves as a Senior Communication Advisor for VES.³ Although this legal opinion was supposedly provided to Mrs. Bogue, as well as some other VA officials, it is unclear whether she ever did recuse herself, and if she did, when.

Mr. Bogue reportedly runs a consulting firm that has "a contract with VES ... generous enough to allow him to quit his day job and focus on his consulting business full time."⁴ It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork.⁵ Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.⁶

Whistleblowers further allege that the Bagues are indicative of a broader culture of corruption and cronyism at the VBA, one which is hostile to enforcing basic ethical standards, and punishes those who bring concerns to the forefront. For example, Paul Lawrence, former Undersecretary of Benefits, allegedly recommended three senior officials for suspension who were reported to have improperly, and potentially illegally, accepted gifts from outside stakeholders. However, these suspensions were supposedly overturned by the previous Secretary of the VA. One of the officials, former Principal Undersecretary Jamie Manker, abruptly retired, and another, Tom Murphy, is currently serving as Acting Undersecretary of Benefits.

Of additional concern, according to allegations in a federal Freedom of Information Act (FOIA) lawsuit, is that the VA is currently fighting the release of documents that would further shed light on another controversy surrounding the Bagues.⁷ According to the lawsuit, in January 2020, Mr. Bogue's employer, VES, wrote a letter to Mrs. Bogue, "which sought severe penalties against several for-profit educational institutions, [and] began with this salutation, 'Dear Charmain.'"⁸ Mr. Bogue's employer proposed that Mrs. Bogue and VBA "put four schools and a public company out of business," pushing her "to choke off the schools' income flow" by preventing veterans from using their GI Bill benefits at those institutions.⁹

In a March 3, 2020 email provided to my office, obtained via FOIA, as the VA prepared to publicly announce its intent to grant VES's request, one individual is seen to have cautioned those on the email chain that the information, and pending actions surrounding various schools, needed

³ Veterans Education Service, Who We Are, Barret Bogue, <https://vetsedsuccess.org/who-we-are/barrett-bogue/>.

⁴ NLPC Staff, *Are For-Profit College 'Critics' Up to Their Old Tricks?*, NATIONAL LEGAL AND POLICY CENTER (Nov. 4, 2020), <https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/>.

⁵ NLPC Staff, *VA Official Charmain Bogue Did Not Disclose Links to Outside Group*, NATIONAL LEGAL AND POLICY CENTER (Nov. 12, 2020), <https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/>.

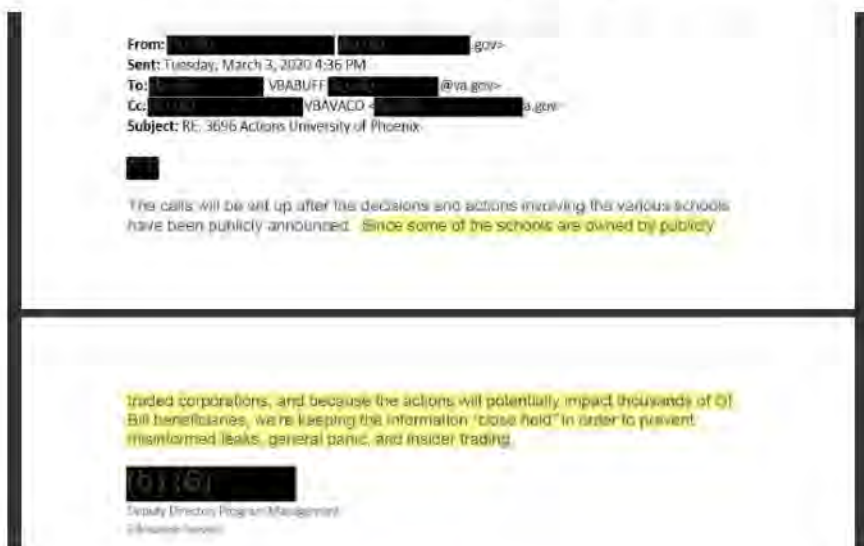
⁶ NLPC Staff, *On Tax Return, Group Did Not Disclose Payments to Husband of VA Official*, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), <https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/>.

⁷ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

to be safeguarded.¹⁰ That official cautioned that the VA's impending announcement needed to be kept "close hold" in order to prevent misinformed leaks, general panic, and insider trading."



Unfortunately, the VA appears to have failed to observe that advice, and as the lawsuit alleges, retail investors, without access to this privileged information, were harmed as a result.

According to the complaint, "[o]n March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA issued a press release announcing it was threatening to do exactly what VES had asked it to do ... to choke off the schools' income flow..."¹¹

However, someone appears to have released market sensitive information about the VA's impending announcement during the trading day and may have done so in the months between the January letter and the March 9 announcement as well. At least one recipient of the early heads-up was Mr. Bogue's employer, VES. "The VA gave early notice of its decision to some, including VES. During the trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement."¹² For that reason, the lawsuit:

...seeks records ... relating to the VA's selective release of nonpublic information during the period from January through March 2020 that adversely affected the stock price of ... a U.S. publicly traded company. During this period, the stock price (ticker symbol: PRDO) fell from \$18.83 to \$7.96, a loss of 58 percent of its price and over \$800 million in market capitalization. By July 2020, the VA had decided it would take no action against CEC but for many investors who sold during the near panic, their losses had already been realized, and for the

¹⁰ Attached as Exhibit B.

¹¹ Complaint, *Pomares v. United States Department of Veterans Affairs*, Case # 21-cv-00084-H-MSB, at 5 (S.D. Cal., Jan 15, 2021) (Attached as Exhibit A).

¹² *Id.* at 6-7.

professional traders, who may have received those tips, their profits had already been banked.¹³

The Senate Judiciary Committee has jurisdiction over FOIA-related matters and an obligation to conduct oversight of FOIA compliance issues. Moreover, the allegations described by whistleblowers and witnesses interviewed by my staff raise broader, serious questions about potential ethics violations and whistleblower reprisal at the VA.

To that end, I respectfully request that you answer the following questions no later than April 16, 2021.

1. Has Acting Undersecretary Tom Murphy ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Murphy ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
2. Had former Deputy Undersecretary Robert Reynolds ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Reynolds ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
3. Had former Principal Undersecretary Jamie Manker ever been recommended for suspension for accepting gifts as prohibited by law?
 - a. If so, was Mr. Manker ever suspended?
 - b. Was a recommendation for suspension ever overturned? If so, why and by who?
4. Please provide all records, communications, and memorandums related to the suspensions, or proposed suspensions, of Tom Murphy, Jamie Manker, and Robert Reynolds.
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?

¹³ *Id.* at 1-2.

- a. Is it possible these steps failed in this instance? If so, what will VA do to prevent this from happening again in the future?
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.
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?
 - a. Did the legal opinion recommend Mrs. Bogue recuse herself from any involvement with her husband's companies? If not, why not?
8. Please provide all records relating to any written ethics opinion by VA attorneys regarding Mrs. Bogue's recusal, whether and when this recusal occurred, and all communications regarding Mrs. Bogue's recusal obligations with respect to her husband's companies.
9. Did Mrs. Bogue engage in, participate in, or contribute to VA business with her husband's businesses? If so, why did VA allow Mrs. Bogue to participate?
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 Ms. Bogue list her husband?
 - a. 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?
 - b. 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?
 - c. Please provide Mrs. Bogue's public financial disclosure reports dating back five (5) years.
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?¹⁴ If not, why not?
12. Why has the VA attempted to block FOIA requests seeking information regarding these matters?
 - a. Does the VA plan to comply with FOIA requests in a timely and reasonable manner in order to afford the public greater transparency?

¹⁴ 18 U.S.C. § 208.

Secretary McDonough
U.S. Department of Veterans Affairs
April 2, 2021

Should you have questions, please contact my Committee staff at (202) 224-5225. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley

Ranking Member

Committee on the Judiciary

Exhibit A

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawapc.com
8 Attorney for Plaintiff Maria A. Pomares

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Case No.: '21CV84 H MSB

12 MARIA A. POMARES,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 VETERANS AFFAIRS,
17 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 panic, their losses had already been realized, and for the professional traders, who may
2 have received those tips, their profits had already been banked.

3 6. Plaintiff is informed and believes, and thereon alleges, that the agency
4 decisions and the release of this nonpublic information involved a relationship between a
5 high-level agency official and an individual in the private sector that should have
6 required the agency official to recuse herself pursuant to agency regulations, which she
7 did not do, and that she should have fully disclosed in her Public Financial Disclosure
8 Report, which she also did not do.

9 7. The VA took the action at the prompting of a nonprofit organization with
10 prior and current relationships with market participants who may have profited by the
11 price movement of the public company.

12 8. Plaintiff seeks VA records containing information relating to (i) its decision
13 to make selective releases of nonpublic information, (ii) the identity of those who
14 received the selective releases of the nonpublic information, and (iii) the possible
15 conduits through which this nonpublic information may have flowed to market
16 participants who profited by its use.

17 9. On January 21, 2020, the nonprofit organization Veterans Education Success
18 (“VES”) delivered a letter to Charmain Bogue, Executive Director of the Veterans
19 Benefits Administration (“VBA”) Education Service in the VA.³ The letter, which sought
20 severe penalties against several for-profit educational institutions, began with this
21 salutation, “Dear Charmain.” From this first-name greeting, VES proposed that Director
22 Bogue take action to put four schools and a public company out of business in the letter’s
23 first sentence: “We are writing to bring information to your attention troubling
24 complaints alleging misleading advertising and enrollment practices by schools, *making*

25 _____
26 ³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA
27 Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),
28 <https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/>, last visited Jan. 15, 2021.

1 *those schools ineligible for educational benefits under 38 U.S.C. § 3696* (emphasis
2 added).”⁴

3 10. VES’s letter sought this extraordinary sanction based on evidence it had
4 helped prepare and deliver to the VA: “our staff has gathered evidence that these schools
5 aggressively recruit veterans and other GI Bill beneficiaries, making it especially
6 important that VA take appropriate action to address their behavior.”⁵

7 11. Based on this evidence, VES’s letter pushed the VA to choke off the
8 schools’ income flow by declaring the schools were ineligible for educational benefits
9 under 38 U.S.C. § 3696.

10 12. The VES letter also pressed the VA to accept as its own all veterans’
11 purported complaints submitted by VES to the VA regarding for-profit educational
12 institutions and forward all VES generated complaints to law enforcement. To these ends,
13 the VES letter urged the VA to:

- 14 A. Modify its tracking system of veterans’ complaints, the GI Bill tool, so it
15 would contain all complaints VES had collected from veterans and
16 submitted to the VA;
- 17 B. Modify its GI Bill tool to reflect student disagreement with the school’s
18 response to a VA complaint, similar to the way the U.S. Consumer Financial
19 Protection Bureau reports that information;
- 20 C. Upload all complaints delivered by VESS to the VA “into Consumer
21 Sentinel, which law enforcement relies upon”⁶ in its investigations of for-
22 profit schools; and
- 23 D. Explain why the VA had not reported all 1,189 complaints VES had
24 submitted to it.

25 ///

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ *Id.*

1 13. On March 9, 2020, at 5:59 p.m., after the stock market had closed, the VA
2 issued a press release announcing it was threatening to do exactly what VES had asked it
3 to do in its January 21, 2020, letter—to choke off the schools’ income flow—using similar
4 language to the VES letter and citing the same federal statute.⁷

5 14. In particular, on March 9, the VA “notified the University of Phoenix [and]
6 Career Education Corporation (Colorado Technical University and American
7 InterContinental University) of the agency’s intent to disapprove the enrollment of new GI
8 Bill students at these institutions.”⁸ In particular, the VA took the following actions:

9 A. “The U.S. Department of Veterans Affairs (VA), acting within its required
10 approval authority under the law limiting certain advertising, sales, and
11 enrollment practices, notified the University of Phoenix, Career Education
12 Corporation (Colorado Technical University, American InterContinental
13 University), Bellevue University and Temple University, March 9, of the
14 agency’s intent to disapprove the enrollment of new GI Bill students at these
15 institutions.”⁹

16 B. “After careful review and consideration of findings provided by the Federal
17 Trade Commission and State Attorneys General Offices, VA has concluded
18 there is sufficient evidence to support a finding that these schools have utilized
19 advertising, sales, or enrollment practices that are erroneous, deceptive, or
20 misleading either by actual statement, omission, or intimation against GI Bill
21 beneficiaries, in violation of the law.”¹⁰

22 ///

23 _____
24 ⁷ Press Release, VA, VA intends to suspend enrollment of new GI Bill students at
25 University of Phoenix, Career Education Corporation, Bellevue University and Temple
26 University (Mar 9, 2020), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399>,
last visited Jan. 15, 2021.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 15. The VA issued its press release almost two hours after the markets had
2 closed, but the press release was not news to those who sold CEC stock short that day.¹¹
3 During trading hours on March 9, 2020, the market traded 1.640 million shares of CEC
4 stock, roughly 370 percent of its daily average volume since the beginning of the year.
5 Traders also sold short 512,000 shares, roughly 350 percent of its average daily short sale
6 volume since the beginning of the year. The price of CEC stock fell from \$18.83 on
7 January 21, 2020, to \$7.96 on March 18, 2020, a fall of 58 percent of its value.

8 16. The VA gave early notice of its decision to some, including VES. During the
9 trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA
10 announcement. The VES press release identified CEC and stated the VA had “notified
11 military and veterans service organizations today” of its impending enforcement action.¹²

12 ///

13 ///

14 ///

15 ///

16 _____
17 ¹¹ The Securities and Exchange Commission provides this concise description of a short
18 sale:

19 A short sale is generally the sale of a stock you do not own (or that you will
20 borrow for delivery). Short sellers believe the price of the stock will fall, or
21 are seeking to hedge against potential price volatility in securities that they
22 own.

23 If the price of the stock drops, short sellers buy the stock at the lower price
24 and make a profit. If the price of the stock rises, short sellers will incur a loss.

25 Short sales must be done in compliance with SEC Regulation SHO.

26 <https://www.sec.gov/investor/pubs/regsho.htm>. last visited Jan. 14, 2021.

27 ¹² Press Release, VES, Veterans Education Success Praises Decision by the Department
28 of Veterans Affairs to Suspend New GI Bill Students from Enrolling at the University of
Phoenix, Career Education Corporation Institutions, Bellevue University, and Temple
University (March 9, 2020),

<https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-by-the-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-the-university-of-phoenix-career-education-corporati/>, last visited Jan. 15, 2021.



15 17. The VA’s selective release of nonpublic information during the trading day
16 shows its lack of understanding how nonpublic information can dramatically move the
17 market. It also suggests the possibility the VA may have released nonpublic information
18 between the arrival of the VES letter on January 21, 2020, and the VA’s press release on
19 March 9, 2020. VES also has a history of prior connections with at least one hedge fund
20 that engaged in short selling the stocks of for-profit educational companies.¹³

21 18. The chart below shows the fall of CEC stock from January 21 to March 18,
22 2020, is consistent with the VA’s selective release of nonpublic information of the
23 impending enforcement proceeding against CEC that found its way to market participants
24 during this period. As the chart illustrates, the price fell from \$18.83 to \$7.96:

25 ///

26 ¹³ National Legal and Policy Center, *Are For-Profit College ‘Critics’ Up to Their Old*
27 *Tricks?* Nov. 4, 2020, [https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/)
28 [their-old-tricks/](https://nlpc.org/2020/11/04/are-for-profit-college-critics-up-to-their-old-tricks/), last visited Jan. 15, 2021.

1 disclosed that he is paid a salary and receives an unspecified amount in “consulting
2 fees.”¹⁶ The public interest in the release of information and its implications are growing,
3 as a recent series of posts by a national ethics watchdog confirms.¹⁷

4 21. Plaintiff is informed and believes and thereon alleges that Director Bogue
5 was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed
6 to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant
7 VA is withholding records relating to Director Bogue’s failure to enforce 18 U.S.C. § 208
8 and 5 C.F.R. 2640.101.

9 22. Plaintiff is further informed and believes and thereon alleges, that the VA
10 Office of the Inspector General (“OIG”) conducted an investigation of Director Bogue’s
11 failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully
12 withholding nonexempt agency records relating to that investigation.

13 23. On January 15, 2021, Defendant VA’s OIG delivered a letter to Plaintiff in
14 which it asserted a “Glomar” response and, on that basis, neither admitted nor denied
15 whether any of the following inquiries of investigative records exist:

- 16 1. Any OIG inquiry or investigation or audit where Charmain Bogue was
17 the subject.
- 18 2. Any OIG inquiry or investigation or audit where Charmain Bogue a
19 witness.
- 20 3. Any OIG inquiry or investigation or audit relating to the handling or
21 material nonpublic information.

22 ///

23 ¹⁶ National Legal and Policy Center, *VA Official Charmain Bogue Did Not Disclose Links*
24 *to Outside Group*, Nov. 12, 2020,
25 [https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/)
[group/](https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/), last visited Jan. 15, 2021.

26 ¹⁷ *Id.*, See also: *supra*, n. 13 and National Legal and Policy Center, *On Tax Return, Group*
27 *Did Not Disclose Payments to Husband of VA Official*, Dec. 4, 2020,
28 [https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/)
[of-va-official/](https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/), last visited Jan. 15, 2021.

1 Plaintiff is informed and believes, and thereon alleges, that the records requests that are
2 the subject matter of this complaint also sought records which Defendant VA is
3 withholding on the basis of its “Glomar” response. Defendant VA failed to assert a
4 “Glomar” response in any of its communications with Plaintiff in relation to the records
5 sought by this complaint and therefore waived it.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 24. Plaintiff has submitted two FOIA requests to Defendant VA that are the
8 subject of this complaint seeking records relating to the facts alleged in paragraphs 5
9 through 22.¹⁸ Defendant VA in effect restructured Plaintiff’s two FOIA requests into 12
10 FOIA requests with separate tracking numbers, separate processing by different offices
11 and administrations within the VA, separate appeal processes, and separate dates for
12 exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief
13 regarding two tracks of the VA’s restructured FOIA requests where the administrative
14 remedies have been exhausted. Plaintiff will seek leave of this Court to amend this
15 complaint as necessary to incorporate Plaintiff’s claims relating to the other tracks of her
16 FOIA requests as the administrative remedies are exhausted.

17 **FIRST CAUSE OF ACTION**

18 25. On November 9, 2020, pursuant to the applicable provisions of FOIA,
19 Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified
20 documents as follows:

- 21 1) All emails sent by any of the Designated VA Persons²⁰ to one or more of
22 the following email addresses between December 15, 2019, and March 15,
23 2020:
24 a. Any email address ending with this domain: @eangus.org;

25 ¹⁸ Plaintiff’s FOIA requests were submitted on November 9 and 13, 2020. A true and correct
26 copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2.

27 ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

28 ²⁰ The term “Designated VA Persons” was defined in the letter to include specific officials
and staff with the VA. *Id.*, at 3.

- b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 2) All emails received by any of the Designated VA Persons from one or more of the following email addresses between December 15, 2019, and March 15, 2020:
- a. Any email address ending with this domain: @eangus.org;
 - b. Any email address ending with this domain: @evocatillc.com;
 - c. Any email address ending with this domain: @paaresearch.com;
 - d. Any email address ending with this domain: @republicreport.org;
 - e. Any email address ending with this domain: @stripes.com;
 - f. Any email address ending with this domain: @tcf.org;
 - g. Any email address ending with this domain:
@veteranseducationsuccess.org;
 - h. Any email address ending with this domain: @vetsedsuccess.org;
and
 - i. Any email address ending with this domain: @washpost.com.
- 3) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names in the email address:
- a. Wofford(e.g., Wofford in carrie.wofford@veteranseducationsuccess.org would make this email responsive),
 - b. Ang,
 - c. Beynon,
 - d. Bogue,
 - e. Douglas-Gabriel,
 - f. Halperin,
 - g. Saunders,
 - h. Safalow, and
 - i. Shireman.
- 4) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following names anywhere in the email:

- a. Carrie Wofford,
- b. Tanya Ang,
- c. Barrett Bogue,
- d. David Halperin,
- e. Robert Norton,
- f. Michael Saunders,
- g. Bradley Safalow, and
- h. Robert Shireman.

5) All emails sent or received by any of the Designated VA Persons between December 15, 2019, and March 15, 2020, **excluding** VA internal emails, that contain any of the following terms anywhere in the email:

- a. University of Phoenix,
- b. Perdoceo Education,
- c. PRDO,
- d. Career Education,
- e. CECO,
- f. Bellevue University,
- g. Temple University,
- h. Colorado Technical, and
- i. American InterContinental.

6) All emails sent or received by any of the Designated VA Persons between March 8 and March 10, 2020, **including** VA internal emails, that contain any of the following phrases in the subject line:

- a. VA intends to suspend enrollment,
- b. Any Background/TPs on this available?
- c. Talking Points on Suspension Actions,
- d. Suspension Action for Five GI Bill Approved Schools, and
- e. Talking Points on Suspension Action for Five GI Bill Approved Schools.

26. On November 10, 2020, Plaintiff received a letter from the VA acknowledging the receipt of her FOIA request. A true and correct copy of the said acknowledgment letter is attached hereto and incorporated by reference as Exhibit 3. The VA's November 10 letter assigned five different FOIA Tracking numbers to Plaintiff's requests.

27. On November 11, 2020, Plaintiff's counsel contacted the VA FOIA Office offering to clarify any issues relating to the November 9 Plaintiff's FOIA request to facilitate its processing as follows:

1 First, the request was drafted so the searches could be conducted
2 electronically. I would estimate the electronic searches could be conducted in
3 an hour or less. That will give you the number of hits.

4 Second, the requests seek emails with various organizations which are
5 unlikely to be subject to exemptions. In particular, they seek communications
6 with the media and non-governmental organizations.

7 Third, I would like to discuss any problems you see that could delay the early
8 release of the records sought.

9 A true and correct copy of this email is attached hereto and incorporated by reference as
10 Exhibit 4.

11 28. On November 13, 2020, Plaintiff's counsel was contacted by a different
12 FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request,
13 because it had "been assigned to multiple VA FOIA directorates." In this way, the lead
14 FOIA specialist explained, if any of the FOIA officers processing the requests needed
15 clarification, they "will submit their request to me. I have requested they provide me a
16 response by close of business on Monday, November 16, 2020 so that I may send you one
17 request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA
18 specialist further explained that "each FOIA Officer will process the portion of the request
19 pertaining to their directorate and will provide a response directly to you." A true and
20 correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.

21 29. On November 17, the lead FOIA specialist and Plaintiff's counsel
22 exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the
23 requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the
24 clarifications to the FOIA officers in the different administrations working on Plaintiff's
25 FOIA request. The email also clarified the Veterans Benefits Administration ("VBA")
26 was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F."
27 A true and correct copy of this email chain is attached hereto and incorporated herein as
28 Exhibit 6.

///

1 30. On November 17, 2020, Plaintiff received a letter via email from the VBA,
2 which once again acknowledged receipt of her FOIA request and assigned it tracking
3 number 21-00931-F. A true and correct copy of said letter is attached hereto and
4 incorporated by reference as Exhibit 7.

5 31. On November 27, 2020, Plaintiff's counsel received an email from the
6 VBA's FOIA specialist extending the response time 20 business days and setting the date
7 for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
8 of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

9 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA
10 specialist November 27 email pointing out the extension failed "to comply with at least
11 two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached
12 hereto and incorporated by reference as Exhibit 8 at 29-30.

13 33. On the same day, November 30, 2020, the VBA FOIA specialist replied
14 reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss
15 with Plaintiff's counsel the extension. A true and correct copy of said email is attached
16 hereto and incorporated by reference as Exhibit 8 at 29.

17 34. After several email exchanges on November 30, the VBA FOIA specialist
18 and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his
19 email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an
20 update on December 2, 2020, regarding (1) when the VBA's Office of Information
21 Technology ("OIT") would provide the search results to the FOIA specialist and (2) how
22 many pages had to be reviewed. A true and correct copy of said email is attached hereto
23 and incorporated by reference as the bottom email in Exhibit 9 at 35-36.

24 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's
25 counsel the OIT was working on the ticket and "it should be resolved in a matter of a few
26 days." A true and correct copy of said email is attached hereto and incorporated by
27 reference as the second email from the bottom in Exhibit 9 at 35.

1 36. On December 11, 2020, Plaintiff's counsel confirmed with his email the
2 conference call he held the day before with the VBA FOIA specialist. During the
3 conversation, Plaintiff's counsel was informed the FOIA request had been transferred to
4 "tier 3... because it involves upper or senior management, which will delay the release of
5 these records." Plaintiff's counsel stated his position as follows:

6 As you know, I disagreed with any extension of time for this request, since it
7 involves an electronic search of records that did not appear to be subject to
8 any exemption. I also understand you have nearly completed your review, so
9 there should be little justification for delay, absent the late decision to transfer
this matter to Tier 3.

10 Plaintiff's counsel requested further information. Specifically:

- 11 1. Is there any internal rule or regulation (CFR) that defines, states, or
12 discusses the different tier? For example, what is the guidance for deciding
13 what is tier 2 versus tier 3?
- 14 2. Is there any internal rule or regulation (CFR) that expand the period to
15 respond to a FOIA request when the agency transfers a request to a new
16 tier?
- 17 3. What is the definition and rule or regulation applied in determining that
Ms. Bogue is at a sufficient high level of management within the VBA that
this request should now be transferred to Tier 3?

18 A true and correct copy of this email is attached hereto and incorporated by reference as
19 Exhibit 9, at 34.

20 37. On December 15, 2020, since the VBA FOIA specialist had not responded,
21 Plaintiff's counsel followed up with an email. On the same date, December 15, the VBA
22 FOIA specialist informed Plaintiff's counsel the request was being reviewed by the
23 Office of General Counsel (OGC). The email continued:

24 Once I receive feedback from OGC, I'm hopeful that a disclosure will be made
25 this week. Secondly, I have reviewed your questions below concerning IT
26 processes. I have contacted the Chief of VBACO Desktop Support Services
27 for question #1.... This request is being reviewed by OGC because the subject
28 matter is of interest of senior leadership and, as such, has been designated as

1 a Substantial Interest (SI) request. Prior to issuing a disclosure determination,
2 OGC must review it before its release. This is an agency policy.

3 A true and correct copy of this email is attached hereto and incorporated by reference as
4 Exhibit 9, at 33.

5 38. Defendant VA's time for responding to restructured FOIA request 21-
6 00931-F has expired for each of the following reasons:

- 7 A. Defendant VA knew the grounds for its designation of this request as a
8 Substantial Interest request from the date of its receipt of Plaintiff's November
9 9, 2020, request and thus Defendant VA was dilatory in making said
10 designation;
- 11 B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this
12 request; and
- 13 C. All conceivable time periods have expired for Defendant VA to comply with
14 this request under FOIA and 38 § C.F.R. § 1.556.

15 **SECOND CAUSE OF ACTION**

16 39. On November 13, 2020, pursuant to the applicable provisions of FOIA,
17 Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of
18 the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information
19 Technology by email and first-class mail. Plaintiff requested access to and copies of
20 specified documents as follows:

- 21 1) All FOIA requests received by the VA or any of its Administrations,
22 Offices, and Centers that contain the following name: Charmain Bogue.
- 23 2) All FOIA requests received by the VA or any of its Administrations,
24 Offices, and Centers that contain any of the following terms:
- 25 a) University of Phoenix,
 - 26 b) Perdoceo,
 - 27 c) Bellevue University,
 - 28 d) Temple University,
 - e) Colorado Technical,

- f) American InterContinental, and
- g) Career Education.

3) All records released in electronic format in response to any of the FOIA requests identified in response to requests 1 and 2 above pursuant to 5 USCS § 552(a)(2)(D)(i).

A true and correct copy of the Plaintiff's FOIA request is attached hereto and incorporated by reference as Exhibit 2.

40. On November 18, the VA FOIA Service assigned Plaintiff's request to the appropriate offices for processing. Each office assigned a different tracking number to the request, but the letter did not specify what tracking number the OIG had assigned to the FOIA request. A true and correct copy of the November 18, 2020, letter is attached hereto and incorporated by reference as Exhibit 10.

41. On December 8, 2020, Plaintiff received a letter via email from the VA's Office of the Inspector General ("OIG"). The letter stated the VA OIG had assigned tracking number 21-00078-FOIA to Plaintiff's FOIA request and a search of VA OIG records had yielded no responsive results. The letter also informed Plaintiff of her right to appeal the determination to the OIG's Office of Counselor. A true and correct copy of the VA OIG's letter is attached hereto and incorporated by reference as Exhibit 11.

42. On December 10, 2020, Plaintiff, through her counsel, appealed the OIG's determination. A true and correct copy of the Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 12.

43. On December 17, 2020, the VA OIG responded to Plaintiff's appeal finding "the VA OIG FOIA Office did not conduct an adequate search and" remanded "the FOIA file to that office to conduct a new search" and provide a final response. A true and correct copy of the letter remanding Plaintiff's request to the VA OIG FOIA Office is attached hereto and incorporated by reference as Exhibit 13.

44. On December 23, 2020, the VA OIG informed Plaintiff it had "conducted another search extending the search period from FY 2014 to" the present which had yielded 11 pages of records released with the letter. The released records were redacted

1 under Exemption 6. The letter also informed Plaintiff of her right to appeal the
2 determination to the OIG's Office of Counselor. A true and correct copy of the VA
3 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

4 45. On December 24, 2020, Plaintiff, through her counsel, appealed the OIG's
5 determination. A true and correct copy of Plaintiff's appeal is attached hereto and
6 incorporated by reference as Exhibit 15.

7 46. On December 28, 2020, the VA OIG denied the appeal finding the response
8 was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the
9 U.S. District Court. A true and correct copy of the OIG's appeal denial is attached
10 hereto and incorporated by reference as Exhibit 16.

11 **PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA**

12 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13 48. Plaintiff is entitled by law to access the records requested under the FOIA.

14 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to
15 fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests
16 for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests the Court:

19 A. Declare that Defendant VA has violated the FOIA by failing to satisfy
20 Plaintiff's November 9 and November 13, 2020, requests for records as specified in
21 paragraphs 25 and 39 above;

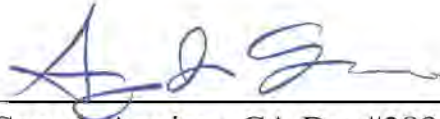
22 B. Order Defendant VA to immediately search for and release all records
23 responsive to Plaintiff's November 9 and November 13, 2020, requests for records as
24 specified in paragraphs 25 and 39 above;

25 C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in
26 this action; and

27 ///

1 D. Grant such other and further relief as the Court may deem just and proper.

2 DATED: January 15, 2021

3
4 

5 Gary J. Aguirre, CA Bar #38927
6 Aguirre Law, A.P.C.
7 501 W Broadway, Ste 800
8 San Diego, CA 92101
9 Telephone: 619-400-4960
10 Facsimile: 619-501-7072

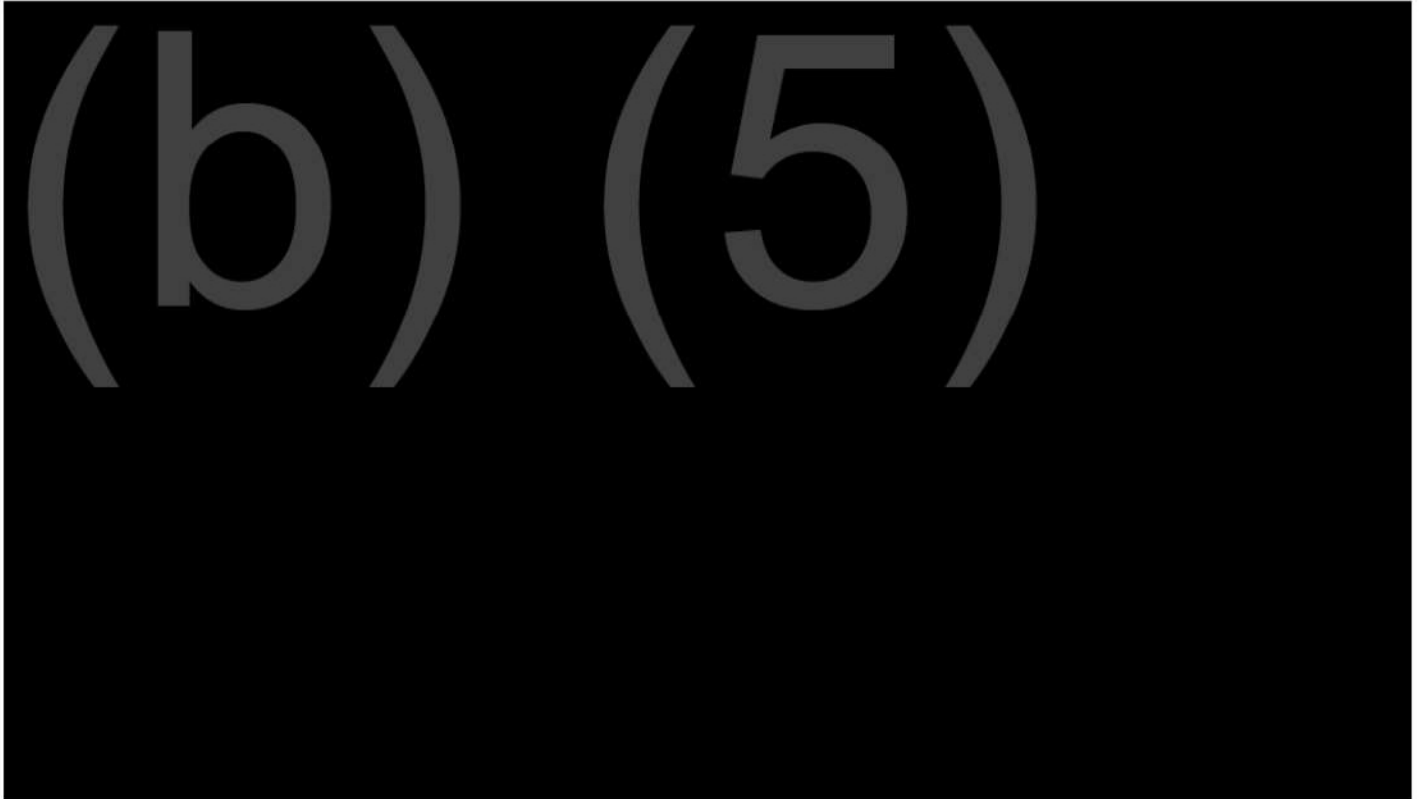
11 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF
To: (b) (6)
Cc: (b) (6) Mallia, Donna P.
Subject: RE: 3696 Actions University of Phoenix
Date: Wednesday, March 4, 2020 8:19:39 AM

Good Morning (b) (6)

While I understand the sensitivity of the matter, we need to ensure the folks who are to take action, based on this letter, are informed of the process. The letter notes the following:



Just want to ensure the RPOs are prepared to address the issue appropriately.

Thanks- (b) (6)

From: (b) (6) (b) (6).gov>
Sent: Tuesday, March 3, 2020 4:36 PM
To: (b) (6) VBABUFF (b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>
Subject: RE: 3696 Actions University of Phoenix

(b) (6)

The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

traded corporations, and because the actions will potentially impact thousands of GI Bill beneficiaries, we're keeping the information "close hold" in order to prevent misinformed leaks, general panic, and insider trading.

(b) (6)

Deputy Director, Program Management
Education Service

From: (b) (6) <(b) (6)@va.gov>
Sent: Tuesday, March 3, 2020 9:42 AM
To: (b) (6) VBAVACO <(b) (6)a.gov>
Cc: Bogue, Charmain, VBAVACO (b) (6)@va.gov; Mallia, Donna P. (b) (6)@va.gov
Subject: FW: 3696 Actions University of Phoenix
Importance: High

Good Morning (b) (6) I understand that you are planning on establishing recurring calls with the field on this issue. Any idea when they will begin? We want to make sure we are prepared for school responses.

Thanks!

(b) (6)

From: Mallia, Donna P. <(b) (6)@va.gov>
Sent: Monday, March 2, 2020 3:48 PM
To: (b) (6) VBABUFF (b) (6)@va.gov
Subject: 3696 Actions University of Phoenix
Importance: High

FYSA

From: (b) (6) VBAVACO (b) (6)a.gov>
Sent: Monday, February 24, 2020 3:27 PM
To: McClellan, Jason, VBAMUSK (b) (6)a.gov; Marsh, Mitzi A. VBASTL (b) (6)@va.gov; Mallia, Donna P. <(b) (6)@va.gov>
Cc: (b) (6) VBAVACO <(b) (6)a.gov>; (b) (6) VBAVACO (b) (6)va.gov>
Subject: 3696 action(s) University of Phoenix
Importance: High

Good Afternoon,

The purpose of this message is to provide attached details regarding University of Phoenix.

Education Service has received evidence in support of allegations of false and misleading advertising or enrollment practices by University of Phoenix, in violation of 38 U.S.C. § 3696. Based on current VA regulations (38 CFR § 21.4210(d)), the Director(s) of the Regional Processing Office(s) of jurisdiction provide formal notification of any decision(s) to suspend payments or disapprove all further enrollments or reenrollments of beneficiaries at schools believed to have employed such practices, and refer the case(s) to the committee(s) on educational allowances.

VR

(b) (6)

Team Chief, Integrity & Protection Branch
Oversight & Accountability

Sent: Fri, 28 May 2021 13:51:26 +0000
To: (b)(6)
Subject: RE: Tab 1 4890714 Grassley Transmittal Letter

Thanks (b)(6) (b)(5)
(b)(5)

From: (b)(6)@va.gov>
Sent: Friday, May 28, 2021 9:47 AM
To: (b)(6)@va.gov>
Subject: FW: Tab 1 4890714 Grassley Transmittal Letter

(b)(6) FYI only, I will let you know what additional guidance we receive.

From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 3:12 PM
To: (b)(6)@va.gov>
Subject: RE: Tab 1 4890714 Grassley Transmittal Letter Aa (004)

(b)(6)

(b)(5)

Please contact me with any questions about this matter.

Mike
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

From: (b)(6)@va.gov>
Sent: Thursday, May 27, 2021 1:23 PM
To: Hogan, Michael R. (OGC (b)(6)@va.gov>
Subject: Tab 1 4890714 Grassley Transmittal Letter Aa (004)

From: Cromwell, Sonya (OGC)
Sent: Fri, 2 Jul 2021 12:13:27 +0000
To: (b)(6) (OGC) (b)(6) (OGC) (b)(6) (OGC)
(OGC) (b)(6) (OGC)
Cc: (b)(6) (OGC) (b)(6) (OGC)
Subject: RE: 04890714 Letter from Senator Grassley to SECVA
Attachments: RE: VIEWS 4890714, RE: Pomares Litigation

Thanks (b)(6) for the history. Let me figure out where this is and why IALG is looking as if we have not completed our task.

Sonya Marie Cromwell
Chief Counsel
OGC Information and Administrative Law Group (IALG)

Department of Veterans Affairs
810 Vermont Avenue, NW, 1156A
Washington, DC 20020
Office Phone: (b)(6)
VA cell: (b)(6)
Fax: 202-273-6388



Suicide Prevention is Everyone's Business - #BeThere.
The Veterans Crisis Line is 1-800-273-8255 and Press 1

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VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

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From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Thursday, July 1, 2021 9:27 PM
To: Cromwell, Sonya (OGC) <(b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Cc: (b)(6) (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Subject: RE: 04890714 Letter from Senator Grassley to SECVA

Good evening,

(b)(5), (b)(6)

All of the above said, I would like to make sure that I don't have a little asterisk next to my name in views because someone somewhere thinks I'm holding it up. I don't know what more I can provide but if you want me to look into it further, I can do it on Tuesday upon my return to the office.

Thanks.

(b)(6) // Attorney // VA Office of General Counsel // Information & Administrative Law Group // (b)(6)

From: Cromwell, Sonya (OGC) (b)(6) @va.gov>
Sent: Thursday, July 1, 2021 5:55 PM
To: (b)(6) (OGC) (b)(6) @va.gov; (b)(6) (OGC) (b)(6) @va.gov; (b)(6) (OGC) (b)(6) @va.gov; (b)(6) (OGC) (b)(6) @va.gov
Subject: RE: 04890714 Letter from Senator Grassley to SECVA

Hello (b)(6) looks as if this is assigned to you. See the below question from Ms.

(b)(6)
Thanks!
Sonya

Sonya Marie Cromwell
Chief Counsel
OGC Information and Administrative Law Group (IALG)

Department of Veterans Affairs
810 Vermont Avenue, NW, 1156A
Washington, DC 20020
Office Phone: (b)(6)
VA cell: (b)(6)
Fax: 202-273-6388



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From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Thursday, July 1, 2021 5:04 PM
To: (b)(6) (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>; Cromwell, Sonya (OGC) (b)(6) @va.gov>; (b)(6) (OGC) (b)(6) @va.gov>
Cc: OGC Front Office Assistants (b)(6) @va.gov>
Subject: RE: 04890714 Letter from Senator Grassley to SECVA

(b)(6)

Any update yet?

Respectfully,

(b)(6)

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Thursday, July 1, 2021 3:51 PM
To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6) (OGC)
(b)(6) @va.gov>
Cc: OGC Front Office Assistant (b)(6) @va.gov>
Subject: RE: 04890714 Letter from Senator Grassley to SECVA

Checking on it.

From: (b)(6) (OGC) (b)(6) @va.gov>
Sent: Thursday, July 1, 2021 3:24 PM
To: (b)(6) (OGC) (b)(6) @va.gov> (b)(6) (OGC)
(b)(6) @va.gov>
Cc: OGC Front Office Assistant (b)(6) @va.gov>
Subject: 04890714 Letter from Senator Grassley to SECVA
Importance: High

Hello (b)(6)

I see that PLG and EST have completed their input for this task, can you provide an estimated complete date/time for IALG? Thank you in advance for your assistance.

(b)(7)(E)

Respectfully,

(b)(6)

From: (b)(6) (OGC)
Sent: Wed, 19 May 2021 19:23:02 +0000
To: (b)(6) (OGC); (b)(6) (OGC); Cromwell, Sonya (OGC); (b)(6) (OGC)
Cc: (b)(6)
Subject: RE: VIEWS 4890714
Attachments: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Mike Hogan is reviewing today – it was too big to fit in VIEWS. See attached.

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)
(b)(6) @VA.gov

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From: (b)(6) (OGC); (b)(6) @va.gov>
Sent: Wednesday, May 19, 2021 2:45 PM
To: (b)(6) (OGC); (b)(6) @va.gov>; (b)(6) (OGC); (b)(6) @va.gov>; Cromwell, Sonya (OGC); (b)(6) @va.gov>; (b)(6) (OGC); (b)(6) @va.gov>
Subject: FW: VIEWS 4890714

This is over due and the front office need status.

From: (b)(6) @va.gov>
Sent: Wednesday, May 19, 2021 2:41 PM
To: OGC Information Law Group Support (b)(6) @va.gov>; (b)(6) (OGC); (b)(6) @va.gov>; (b)(6) (OGC); (b)(6) @va.gov>
Subject: VIEWS 4890714

Hello IALG!

Can the Front Office get an update on this case?

Respectfully,

(b)(6)

(b)(6)

Legal Assistant to the General Counsel
Office of General Counsel Suite 1030
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20240
OGC Main: (b)(6)
Direct (b)(6)
Cell (b)(6)



"Serve the VA Mission and serve the Veterans in all that you do. Do the harder right thing, not the easier wrong thing."

~ Robert A. McDonald

8th United States Secretary of Veterans Affairs

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From: Hogan, Michael R. (OGC)
Sent: Wed, 19 May 2021 18:08:29 +0000
To: (b)(6) (OGC)
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Thank you very much for your guidance and assistance on this (b)(6)

From: (b)(6) (OGC) (b)(6)@va.gov>
Sent: Wednesday, May 19, 2021 10:38 AM
To: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Mike,

(b)(5), (b)(6)

Thanks,

(b)(6)

Deputy Chief Counsel – FOIA/PA Appeals/Litigation
Information and Administrative Law Group (024A)
Office of General Counsel
U.S. Dept. of Veterans Affairs
(Office) (b)(6)

(b)(6)@VA.gov

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From: Hogan, Michael R. (OGC) (b)(6)@va.gov>
Sent: Tuesday, May 18, 2021 2:39 PM
To: (b)(6) (OGC) (b)(6)@va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley
Importance: High

(b)(6)

(b)(5)

Thank you.

Mike

From: (b)(6) @va.gov>

Sent: Tuesday, May 18, 2021 2:15 PM

To: Hogan, Michael R. (OGC) (b)(6) @va.gov>; Cordeiro, Hansel (OAWP)

(b)(6) @va.gov> (b)(6) @va.gov>

Cc: (b)(6) (OGC) (b)(6) @va.gov>; McVicker, Carrie A. (b)(6) @va.gov>;

(b)(6) @va.gov>; Farrisee, Gina S. (b)(6) @va.gov> (b)(6)

W. (OAWP) (b)(6) @va.gov> (b)(6) (OAWP) (b)(6)

(b)(6) @va.gov> (b)(6) (OAWP) (b)(6) @va.gov>

Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Importance: High

Hello All:

This is a request for OGC, OCLA, and OAWP final approval of the proposed response package for VIEWS 4890714. **This task is due COB, May, 20, 2021.** Ordinarily this task would be made through VIEWS, but the size of one of the attachments make a VIEWS tasking unfeasible.

The attached elements of this final approval task are as follows:.

- Incoming letter
- Transmittal letter
- Enclosure (rough draft)
- 3 Xcel spread sheet attachments that respond to certain requests for documents.
- And the link below which will take you to the 578 pages of releasable records requested under questions 4 and 8 (You are receiving a link to these documents because the file is too large to send via email attachment)

(b)(7)(E)

For tracking and version control purposes, please send any last comments you may have to me only. If the comments are significant you will have an opportunity to review again.

Thank you in advance for completing the task by COB May 20, 2021. If you have any questions, please do not hesitate to reach out to me.

(b)(6)

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

(b)(6)

From: Parise, Ruthann
Sent: Thu, 1 Jul 2021 15:25:42 +0000
To: (b)(6) (OGC)
Subject: RE: Pomares Litigation

You're welcome (b)(6)

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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From: (b)(6) Catherine (OGC) <(b)(6)@va.gov>
Sent: Thursday, July 1, 2021 11:17 AM
To: Parise, Ruthann <Ruthann.Parise@va.gov>
Subject: RE: Pomares Litigation

Thanks for keeping track of this Ruthann. Much appreciated.

Cathy

Catherine Flatley Nachmann // Attorney // VA Office of General Counsel // Information & Administrative Law Group // (b)(6)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Wednesday, June 30, 2021 11:08 AM
To: (b)(6) (OGC) <(b)(6)@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: Re: Pomares Litigation

Thanks (b)(6)

Respectfully,
Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)

ruthann.parise@va.gov

Phone: (202) 461-4866

From: (b)(6) (OGC) <(b)(6)@va.gov>
Sent: Wednesday, June 30, 2021 10:55:09 AM
To: Parise, Ruthann <Ruthann.Parise@va.gov>; (b)(6) (OGC) <(b)(6)@va.gov>
Subject: RE: Pomares Litigation

Hi, Ruthann. Thanks for the update. I attached the email with the Grassley string.

(b)(6)

Attorney

Office of General Counsel, Information & Administrative Law Group

Washington, DC – outstationed in the Bay Area

(b)(6)

From: Parise, Ruthann <Ruthann.Parise@va.gov>
Sent: Wednesday, June 30, 2021 7:09 AM
To: (b)(6) (OGC) <(b)(6)@va.gov>
Cc: (b)(6) (OGC) <(b)(6)@va.gov>
Subject: Pomares Litigation

Hi (b)(6)

(b)(5)

Cheers!

Respectfully,

Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)
ruthann.parise@va.gov
Phone: (202) 461-4866
iPhone: (202) 306-3112

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