b)(6) From: Sent: Mon, 5 Apr 2021 16:28:49 +0000 To: McVicker, Carrie A. (b)(6) Cc: HOT - letter from Senator Grassley to SECVA Subject: Attachments: 04890714 - 2021-04-02 CEG to VA.pdf Per conversation with 1'm re-assigning to 100 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 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: @va.gov> @va.gov>; (b)(6) Cc:(b)(6) @va.gov> Subject: FW: HOT - letter from Senator Grassley to SECVA - 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 (1)(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 @va.gov

From: McVicker, Carrie A. Sent: Saturday, April 3, 2021 10:19 AM To: (b)(6) va.gov> Cc: @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! The Executive Secretary Office of the Secretary Department of Veterans Affairs @va.gov From: (b)(6) @va.gov> Sent: Friday, April 2, 2021 6:51 PM To:(b)(6) @va.gov (b)(6) @va.gov> Cc: McVicker, Carrie A. (0)(0) va.gov>; Johnson, Glenn (SES) @va.gov>;(b)(6) @va.gov>; @va.gov>;(b)(6) McClain, Kimberly A. @va.gov>; @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) 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) Djudiciary-rep.senate.gov>

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

Helld(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.

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Best Regards,

(b)(6)

Investigative Counsel

Ranking Member Charles E. Grassley

U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
BIELLON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)						
2	Aguirre Law, APC						
3	501 W. Broadway, Ste. 800 San Diego, CA 92101						
4	Tel: 619-400-4960						
	Fax: 619-501-7072						
5	Email: Gary@aguirrelawapc.com						
6	Attorney for Plaintiff Maria A. Pomares						
7							
8	UNITED STATES	S DISTRICT COURT					
9	SOUTHERN DISTRICT OF CALIFORNIA						
10							
11		Case No.: '21CV84 H MSB					
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY					
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF					
13	Plaintiff,						
14	v.						
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,						
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17	Defendant.						
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This action is brought under the Freedom of Information Act ("FOIA"). 5 1. C. § 552, as amended, for an order compelling Defendant United States Department eterans Affairs ("VA") to produce, provide access to, and make available certain ords specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San 3. 30.
- 4. Defendant is an agency of the United States Government and has possession control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

Plaintiff seeks records from the Department of Veterans Affairs ("VA") 5. ting to the VA's selective release of nonpublic information during the period from ary through March 2020 that adversely affected the stock price of Career Education Corporation ("CEC"), 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

https://www.washingtonpost.com/education/2020/07/02/va-backs-down-plan-suspenduniversity-phoenix-other-colleges-accessing-gi-bill-benefits/, last visited Jan. 13, 2021.

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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27 28 panic, their losses had already been realized, and for the professional traders, who may have received those tips, their profits had already been banked.

- Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.3 The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, making

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

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those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."4

- VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."5
- Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- The VES letter also pressed the VA to accept as its own all veterans' 12. purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ <i>Id</i> .	
⁵ <i>Id</i> .	
⁶ <i>Id</i> .	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ *Id*. ⁹ *Id*.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

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11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

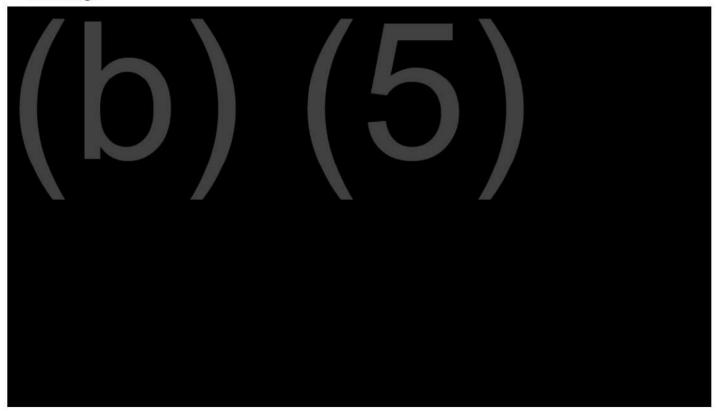
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

From: (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>

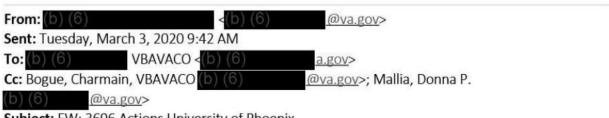
Subject: RE: 3696 Actions University of Phoenix



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.





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!



From: Mallia, Donna P. < 6 @va.gov>

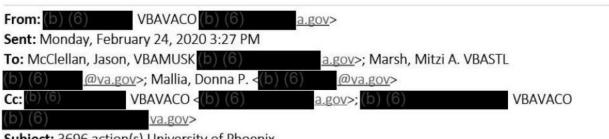
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

From:	(b)(6)				
Sent:					
To:	(b)(6)	(00	3C)(b)(6)	(OIG);(b)(6)	
(b)(6)			(OAWP) ^{(b)(6)}		
(OAWP (b)(6)	(OAWP ^{(b)(6})	(OIG);Hogan, Micha	ael R. (OGC);Barrans,	
David (OGC)					
Cc: (b)(6)	(b)(6)	(OGC);OGC P	ersonnel Law Group S	upervisors(b)(6)	
(b)(6)	(OGC) ^{(b)(6)}	(OGC);(b)(6)	OGC)(b)(6)		
(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

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)

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

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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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

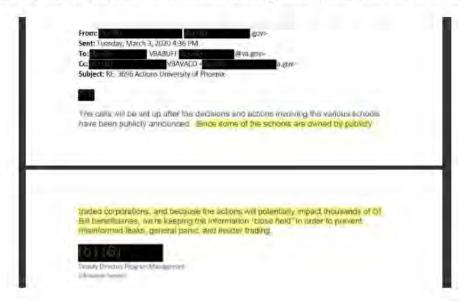
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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. 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..."

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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." 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).

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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
	Tel: 619-400-4960	
4	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	CICT OF CALIFORNIA
10		
100		Case No.: 21CV84 H MSB
11		
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY
13	Plaintiff,	AND INJUNCTIVE RELIEF
14	v.	
15	UNITED STATES DEPARTMENT OF	
16	VETERANS AFFAIRS,	
	Defendant.	
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

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6 *Id*.

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those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."4

- VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."5
- Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- The VES letter also pressed the VA to accept as its own all veterans' 12. purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ *Id*. 5 Id.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

intent to stop new #GIBill enrollments at the University



11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

 under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

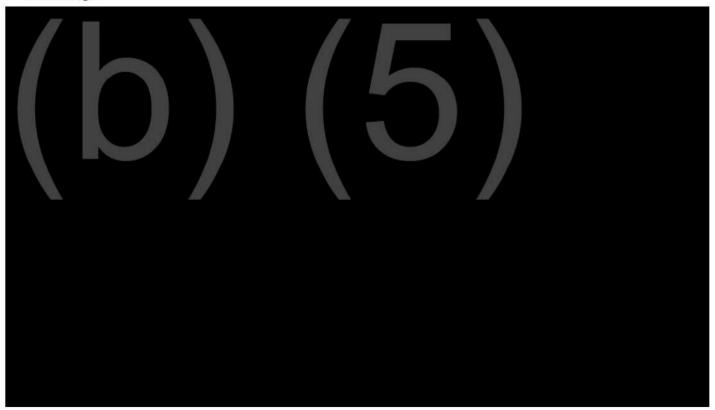
Cc: (b) (6) Mallia, Donna P.

Subject: RE: 3696 Actions University of Phoenix

Date: Wednesday, March 4, 2020 8:19:39 AM

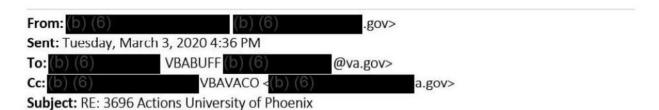
Good Morning (b) (6)

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)

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.



Education Service



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!



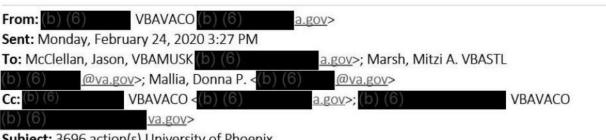
From: Mallia, Donna P. < 6 @va.gov> Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(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:

C:

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:

@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

hank youl	
'hank voul	
Thank you!	
mank you:	
For help with the VIEWS CCM, please contact your VIEWS Office Coordi	nator
(VOC). A list of VOC's is available on the VIEWS Resource Center (https://[b)(7)(E)	

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN FERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLORBIEN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

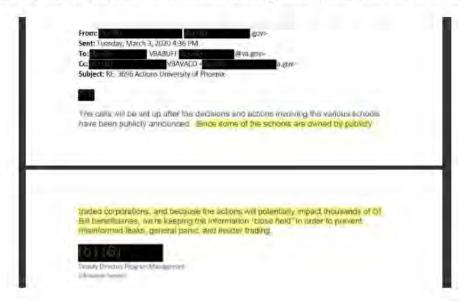
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)				
2	Aguirre Law, APC				
3	501 W. Broadway, Ste. 800 San Diego, CA 92101				
4	Tel: 619-400-4960				
	Fax: 619-501-7072				
5	Email: Gary@aguirrelawapc.com				
6	Attorney for Plaintiff Maria A. Pomares				
7					
8	UNITED STATES	S DISTRICT COURT			
9	SOUTHERN DISTR	CICT OF CALIFORNIA			
10					
11		Case No.: '21CV84 H MSB			
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY			
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF			
13	Plaintiff,				
14	v.				
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,				
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17	Defendant.				
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- 3. Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

The name of the company was changed from Career Education Corporation to Perdoceo

Education Corporation effective January 1, 2020. The company's former name is used in this complaint, because the records requests and released records primarily use that name. ² Danielle Douglas-Gabriel, *VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

6 Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

Id.	
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- On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."9
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law."10

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

⁸ Id. ⁹ Id.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

22 23

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

intent to stop new #GIBill enrollments at the University



11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

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

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

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

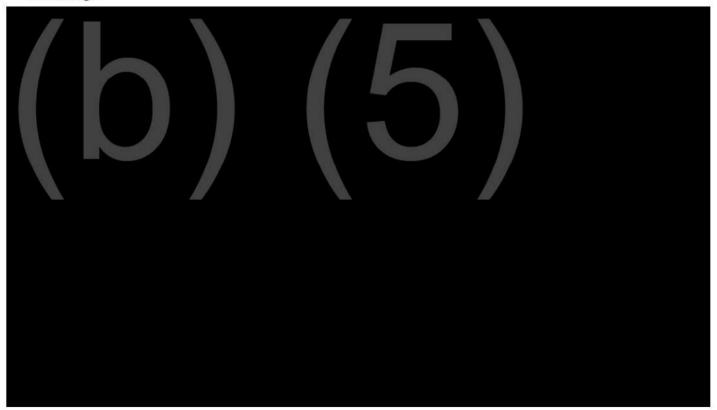
Cc: (b) (6)

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-

From: (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

Subject. NE. 3030 Actions offiversity of Prioef



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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. < 6 @va.gov>

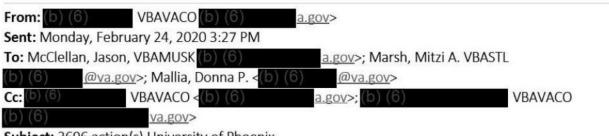
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

From: Mon, 5 Apr 2021 19:40:30 +0000 Sent: To: Cc: Subject: RE: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00 4890714 - Interim Response (1).docx Attachments: Concur w/edit From: (b)(6) @va.gov> Sent: Monday, April 5, 2021 3:21 PM @va.gov> @va.gov>; (b)(6) Subject: FW: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00 Forwarding for review Program Analyst Office of Congressional and Legislative Affairs 810 Vermont Ave, NW Washington, DC 20420 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

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: https://(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)

Task Name: LCT-280216

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

From: Sent: Mon, 5 Apr 2021 19:41:25 +0000 To: 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 From: (b)(6) @va.gov> Sent: Monday, April 5, 2021 3:21 PM To: (b)(6) @va.gov> Cc: @va.gov>; @va.gov> Subject: FW: Provide Concurrence - VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-05 17:00:00 b)(6) Forwarding for review Program Analyst Office of Congressional and Legislative Affairs 810 Vermont Ave, NW Washington DC 20420 From @va.gov> Sent: Monday, April 5, 2021 2:26 PM @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.

- N. M. (1988) 1981 1981 1981 1981 1981 1981 1981	
Signature Level: SECVA	
Task Created By: ©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 at	
To view case Task details and to provide response, please use the	link below:
https://(b)(7)(E)	
b)(7)(E)	
Γhank you!	
Thank you!	
Γhank you!	
	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center (https:// <mark>(b)(7)(E)</mark>	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center (https:// <mark>(b)(7)(E)</mark>	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center (https:// <mark>(b)(7)(E)</mark>	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center (https:// <mark>(b)(7)(E)</mark>	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center (https:// <mark>(b)(7)(E)</mark>	oordinator
For help with the VIEWS CCM, please contact your VIEWS Office C (VOC). A list of VOC's is available on the VIEWS Resource Center (https:// <mark>(b)(7)(E)</mark>	oordinator

Case Subject: Letter from Senator Grassley to SECVA

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICKUL LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
BHELDON WHITEHOUSE, RHODE INLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CORY A BOOKER, NEW JERSEY
ALEX ADDILLA, CALIFORNIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLORBIEN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

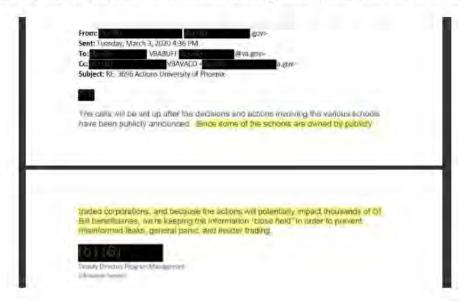
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)				
2	Aguirre Law, APC				
Ä	501 W. Broadway, Ste. 800				
3	San Diego, CA 92101 Tel: 619-400-4960				
4	Fax: 619-501-7072				
5	Email: Gary@aguirrelawapc.com				
6	Attorney for Plaintiff Maria A. Pomares				
7					
8	UNITED STATES	S DISTRICT COURT			
9	SOUTHERN DISTRICT OF CALIFORNIA				
10					
11		Case No.: 21CV84 H MSB			
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF			
13	Plaintiff,				
14	V.				
15	UNITED STATES DEPARTMENT OF				
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,				
	Defendant.				
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ Id. ⁵ Id.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

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11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

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

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

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

28

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

 under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

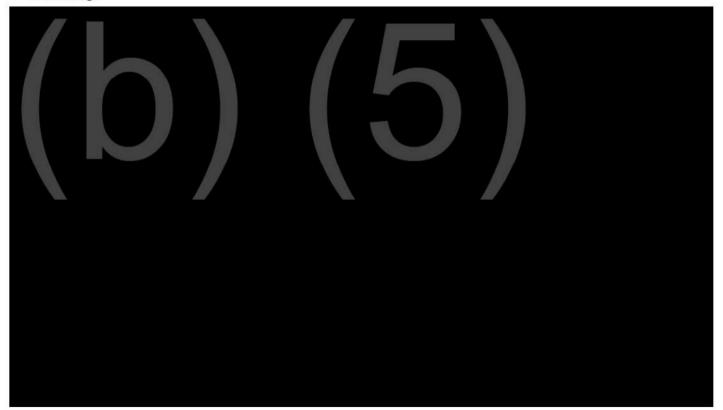
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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

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.





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!



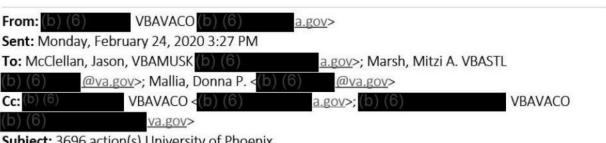
From: Mallia, Donna P. < 6 @va.gov> Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability From: Sent:

Mon, 5 Apr 2021 19:51:34 +0000

To:

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>
Forwarding for revie	2W	
(b)(6)		
Program Analyst		
	onal and Legislative Affairs	
810 Vermont Ave, N		
Washington, DC 204	20	
From (b)(6)	@va.gov>	
Sent: Monday, April		
To:(b)(6)	0va.gov>	
Cultinas, Dunida Car		- D-1- 2021 04 0F 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)	Ova gov
	@va.gov
Office: OSVA-001B Executi	ve Secretariat
Organization: OSVA	
Task Name: LCT-280216	
Due Date is on: 2021-04-05	5 17:00:00
Action Requested: Provide	Concurrence
	secure OCLA's final concurrence on the attached
	or Grassley The incoming letter also attached.
To view case Task details a	and to provide response, please use the link below:
https:/(b)(7)(E)	
b)(7)(E)	
Thank you!	
Thank you!	
Thank you!	
	CM, please contact your VIEWS Office Coordinator
For help with the VIEWS C	어디는 경기가 있을 때 얼마나 많은 가지가 다듬어지면 있다면서 그 전에 어느로 하지만 것이 모든 어느로 하는데 이 사람이 아니라를 가입했다.
For help with the VIEWS CO	CM, please contact your VIEWS Office Coordinator ailable on the VIEWS Resource Center
For help with the VIEWS C	어디는 경기가 있을 때 얼마나 많은 가지가 다듬어지면 있다면 얼마나 어느 아이들이 되었다면 얼마를 하는데 되었다.
For help with the VIEWS CO	어디는 경기가 있을 때 얼마나 많은 가지가 다듬어지면 있다면 얼마나 어느 아이들이 되었다면 얼마를 하는데 되었다.
For help with the VIEWS CO	어디는 경기가 있을 때 얼마나 많은 가지가 다듬어지면 있다면 얼마나 어느 아이들이 되었다면 얼마를 하는데 되었다.
For help with the VIEWS CO	어디는 경기가 있을 때 얼마나 많은 가지가 다듬어지면 있다면 얼마나 어느 아이들이 되었다면 얼마를 하는데 되었다.
For help with the VIEWS CO	어디는 경기가 있을 때 얼마나 많은 가지가 다듬어지면 있다면 얼마나 어느 아이들이 되었다면 얼마를 하는데 되었다.
For help with the VIEWS CO	어디는 경기가 있을 때 얼마나 많은 가지가 다듬어지면 있다면 얼마나 어느 아이들이 되었다면 얼마를 하는데 되었다.

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. Doris L. Gruntmeir Chief Counsel, Personnel Law Group Office of General Counsel Tel. (b)(6) ----Original Appointment----@va.gov> On Behalf Of (b)(6) From:(b)(6) OGC) (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 (OGC)(b)(6) To:(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

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 Co	Iganu
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)	

Origi	inal Appointment (6)	Dva.gov>		
	onday, April 5, 2021			
To (b)(6)		(OGC); ^{(b)(6)}	(OIG); (b)(6)	
(b)(6)		(OAWP) ^{(b)(6)}		DAWP)(b)(6)
(b)(6)	(OAWP); ^{(b)(6)}	(OIG)		77117

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

+1 872-701-0		United States, Chica	go	
hone Confer	ence ID ^{(b)(6)}			
ind a local nu	mber Reset	PIN		

RICHARD J. DURBIN, ILLINOIS, EHAIR

PATRICKUL LEAHY, VERMONT
DIANNE FENSTEIN, CALIFORNIA
BHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHIESTOPHER A. COONS, DELAWARE
RICHAFD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CONY A BOCKER, NEW JERSEY
ALEX ADDILLA, CALIFORNIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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..."

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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." 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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
16	Tel: 619-400-4960	
4	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	RICT OF CALIFORNIA
10		124 CV04 U MCD
11		Case No.: <u>'21CV84 H MSB</u>
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY
13	Plaintiff,	AND INJUNCTIVE RELIEF
14	v.	
15	UNITED STATES DEPARTMENT OF	
	VETERANS AFFAIRS,	
16	Defendant.	
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- 3. Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ Id. ⁵ Id.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

intent to stop new #GIBill enrollments at the University



11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F," A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

which once again acknowledged receipt of her FOIA request and assigned it tracking

number 21-00931-F. A true and correct copy of said letter is attached hereto and

of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.

On November 17, 2020, Plaintiff received a letter via email from the VBA,

- incorporated by reference as Exhibit 7.

 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

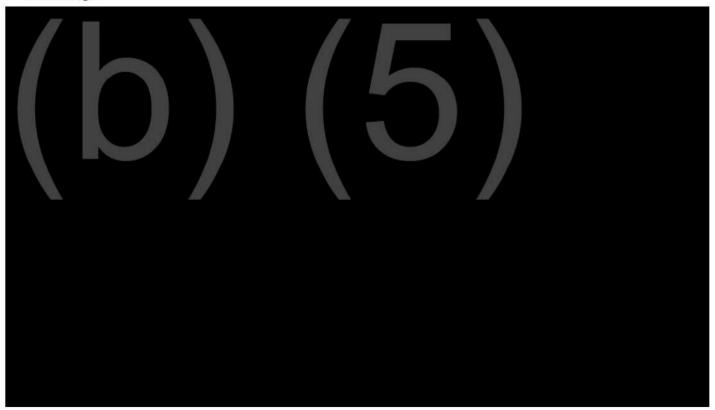
Cc: (b) (6) Mallia, Donna P.

Subject: RE: 3696 Actions University of Phoenix

Date: Wednesday, March 4, 2020 8:19:39 AM

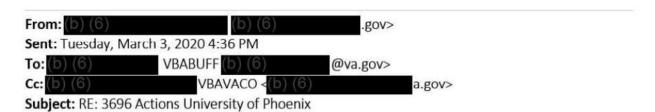
Good Morning (b) (6)

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)

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.



From: (b) (6) @va.gov> Sent: Tuesday, March 3, 2020 9:42 AM VBAVACO <(5) (6) a.gov> Cc: Bogue, Charmain, VBAVACO (b) (6) @va.gov>; Mallia, Donna P. @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!



From: Mallia, Donna P. < 6 @va.gov>

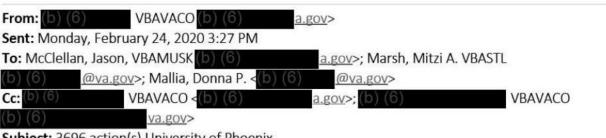
Sent: Monday, March 2, 2020 3:48 PM

To:(b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

From:	(b)(6)	221 12 26 56 10000			
Sent:	(b)(6)	021 12:36:56 +0000	GC (b)(6)	OIG)(b)(6)	
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David (OGC)	OAWII		(Old), Nogan, Wilche	ier n. (Oder, barrans,	
Cc:	(b)(6)	OGC):OGC P	ersonnel Law Group Si	upervisors (b)(6)	
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(OGC);(b)(6)		runtmeir, Doris (OG		(OGC)	
Subject:		URGENT CLOSE HOLD MATTER /VIEWS 4890714			
Attachments:		2021-04-02 CEG to VA.pdf			
Importance:	High	-2 2 3- 1 2 Ku			
Late notice, but	please join the call if	you can,.			
Mike					
Original App	ointment				
From:(b)(6)		va.gov>			
	pril 6, 2021 9:44 AM				
To:(b)(6)	(00	GC); (b)(6)	(OIG) ^{(b)(6)}		
0)(6)	No.	(OAWP) (b)(6)	(OAWP); (b)(6)	
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Cc:(b)(6)		ersonnel Law Group		a come production to a result.	
(OGC)(b)(6)	OGC)(b)(6)	OGC);(b)(6)	(OGC); (U)(O)	(OG	

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

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEAHY, VERMONT
DIANNE FENSTEIN, CALEGONIA
BIELLON WHITEHOUSE, HEIDE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, HAWAII
CORY A. BOCKER, HIRW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNY, TEXAS
MICHAEL S. LEE, LITAH
TED CITUZ, TEXAS
BER SASSE, NEBRASRA
JOSHUA S. HAWLEY, MISSOURI
TOM COTTON, ARICANDAQ
JOHN FERNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLEEBLEN, TENNOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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..."

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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." 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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)				
2	Aguirre Law, APC				
Ä	501 W. Broadway, Ste. 800				
3	San Diego, CA 92101 Tel: 619-400-4960				
4	Fax: 619-501-7072				
5	Email: Gary@aguirrelawapc.com				
6	Attorney for Plaintiff Maria A. Pomares				
7					
8	UNITED STATES DISTRICT COURT				
9	SOUTHERN DISTRICT OF CALIFORNIA				
10					
11		Case No.: 21CV84 H MSB			
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF			
13	Plaintiff,				
14	V.				
15	UNITED STATES DEPARTMENT OF				
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,				
	Defendant.				
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

⁴ *Id*. ⁵ *Id*.

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

Press Release; Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838...
Vetsedsuccess.org

11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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

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- 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;
- 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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

 under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

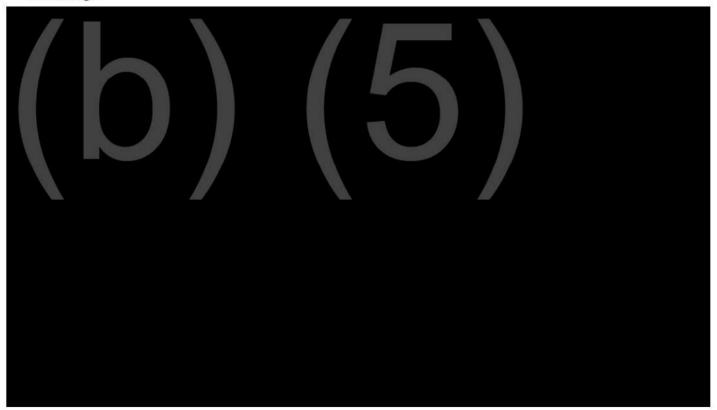
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

From: (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

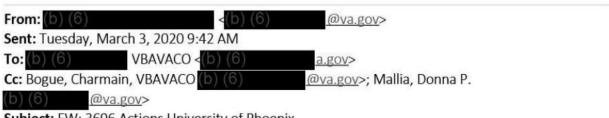


The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

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.



Education Service



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!



From: Mallia, Donna P. < (6) @va.gov>

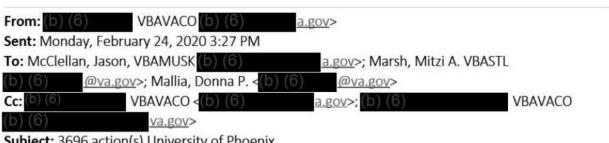
Sent: Monday, March 2, 2020 3:48 PM

To:(b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

Sent: Tue, 6 Apr 2021 12:37:33 +0000 To: b)(6) Cc: 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 @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) Dva.gov> Subject: FW: HOT - letter from Senator Grassley to SECVA Importance: High Resending with an updated Grassley letter. From (b)(6) Sent: Monday, April 5, 2021 4:09 PM To:(b)(6) @va.gov> @va.gov>; McVicker, Carrie A. <(b)(6) Cc: (b)(6) @va.gov> Subject: RE: HOT - letter from Senator Grassley to SECVA Importance: High b)(6)

McVicker, Carrie A.

From:

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	@va.gov>	
Sent: Monday, April 5, 2021 1:2		
To:(b)(6)	@va.gov>; (b)(6)	<u> </u>
Cc: (b)(6)	@va.gov>	
Subject: RE: HOT - letter from S	enator Grassley to SECVA	
Yes please.		
Carrie A. McVicker		
The Executive Secretary		
Office of the Secretary		
Department of Veterans Affairs		
@va.gov		
From:(b)(6)	@va.gov>	
M A	A DNA	
sent: Monday, April 5, 2021 1:0		
To:(b)(6)		@va.gov>
Sent: Monday, April 5, 2021 1:0 Fo:(^{(b)(6)} Cc: ^{(b)(6)}	@va.gov>; McVicker, Carrie A. (b)(6)	@va.gov>
To:(b)(6)	@va.gov>; McVicker, Carrie A. (b)(6) @va.gov>	@va.gov>
Го:(b)(б) Сс:(^{b)(б)}	@va.gov>; McVicker, Carrie A. (b)(6) @va.gov>	@va.gov>
Го:(b)(б) Сс:(^{b)(б)}	@va.gov>; McVicker, Carrie A. (b)(6) @va.gov>	<mark>@va.gov</mark> >
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Fo: (b)(6) Cc: (b)(6) Subject: RE: HOT - letter from S Should I prepare an interim? From: (b)(6) Sent: Monday, April 5, 2021 12: Fo: (b)(6) Cc: (b)(6)	@va.gov>; McVicker, Carrie A. (b)(6) @va.gov> enator Grassley to SECVA @va.gov> 56 PM	
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Thanks 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) ova.gov> Sent: Monday, April 5, 2021 12:43 PM @va.gov>; McVicker, Carrie A. (b)(6) va.gov> Cc: (b)(6) @va.gov> Subject: RE: HOT - letter from Senator Grassley to SECVA 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. (1)(6) @va.gov> Sent: Monday, April 5, 2021 12:29 PM To:(b)(6) @va.gov> Cc: @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 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 @va.gov



From: McClain, Kimberly A. (b)(6)	⊉va.gov>	
Sent: Saturday, April 3, 2021 7:35 Af	M.	
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 G	Grassley to SECVA	
Chief, Dick, Tahmika		
Placing RM Grassley's letter, Senate April.	Judiciary, at the top of your inbox. This ha	s a short suspense; 16
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		- Control (2000)
Cc: McVicker, Carrie A. (b)(6)	Johnson, Glenn (SES); (b)(6)	McClain, Kimberly A.;
b)(6)		
Subject: HOT - letter from Senator G	Grassley to SECVA	
Please see attached letter from Sena Judiciary – he is requesting a respon	ator Grassley in his role as Ranking Membe se by APRIL 16	er of the Committee on the
Respectfully,		
)(6)		
Congressional Relations Officer De	partment of Veterans Affairs	
2026 Rayburn House Ofc. Bldg., Was		
Desk ^{(b)(6)} Mobile: ^{(D)(6)}		
https://(b)(6)		
From (b)(6) (Judiciary-Rep	@judiciary-rep.senate.g	ov>
Sent: Friday, April 2, 2021 5:02 PM	,	
To((b)(6)	®va.gov>	
Cc:(b)(6) (Judiciary-Rep)(@judiciary-rep.senate.g	ov>; CEG (Judiciary-Rep)
(b)(6) @judiciary-rep.senate.gov> Subject: [EXTERNAL] 2021-04-02 CEO	G 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,



Investigative Counsel

Ranking Member Charles E. Grassley

U.S. Senate Committee on the Judiciary

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNY, TEXAS
MICHAEL S. LEE, LITAH
TED CITUZ, TEXAS
BER SASSE, NEBRASRA
JOSHUA S. HAWLEY, MISSOURI
TOM COTTON, ARICANDAQ
JOHN FERNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLEEBLEN, TENNOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

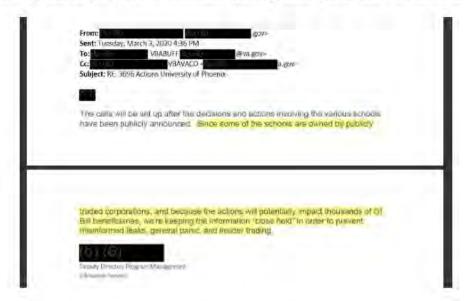
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)				
2	Aguirre Law, APC				
Ä	501 W. Broadway, Ste. 800				
3	San Diego, CA 92101 Tel: 619-400-4960				
4	Fax: 619-501-7072				
5	Email: Gary@aguirrelawapc.com				
6	Attorney for Plaintiff Maria A. Pomares				
7					
8	UNITED STATES DISTRICT COURT				
9	SOUTHERN DISTRICT OF CALIFORNIA				
10					
11		Case No.: 21CV84 H MSB			
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY			
13	Plaintiff,	AND INJUNCTIVE RELIEF			
14	V.				
15	UNITED STATES DEPARTMENT OF				
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,				
	Defendant.				
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

The name of the company was changed from Career Education Corporation to Perdoceo

Education Corporation effective January 1, 2020. The company's former name is used in this complaint, because the records requests and released records primarily use that name.
² Danielle Douglas-Gabriel, *VA Backs down from Plan to Suspend University of Phoenix 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.

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ Id. ⁵ Id.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

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11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

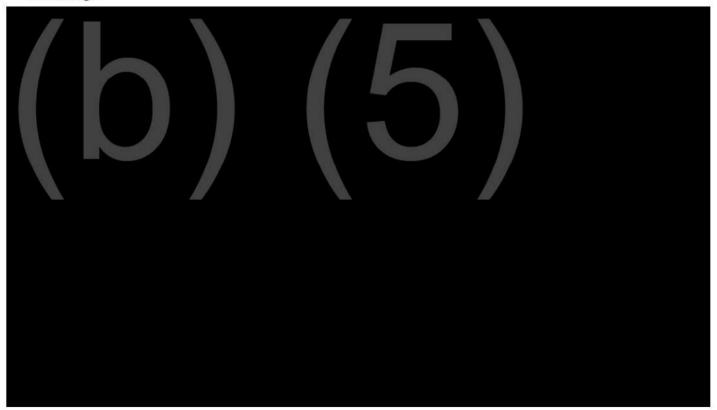
Cc: (b) (6)

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-

From: (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

...,

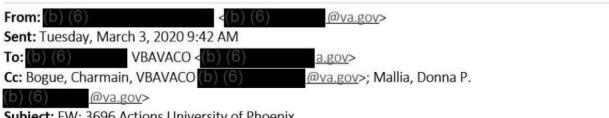


The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

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.



Education Service



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!



From: Mallia, Donna P. < 6 @va.gov>

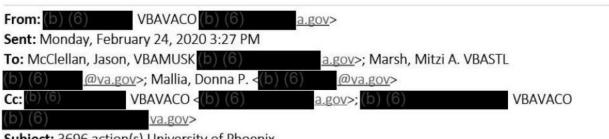
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

VA U.S. Department of Veterans Affairs			SUMMARY AND APPROVAL SHEET		
NAME OF ORIGINATOR			VIEWS NO. 4890714	04/05/20	DATE DUE
NAME OF EXECUTIVE SE	CRETARY STAFF	SUBJECT Interim Res	sponse to Senator Ch	arles Grassely	,
(b)(6)		1 1			
ROUTING EXEC SEC	INITIALS	DATE		COMMENT	rs
DEPCOSVA					
DEPCOSVA/WHL					
COSVA					
DEPSEGVA					
SECVA					
CONCURRENCE (OCLA)	4/5/2021				
			EXECUTIVE SUMMARY se - Discussion - Recom		Executive Summary Instruction
2021. The purp	oose of the i	nterim to ac			a response by April 16, letter and to advise that VA
Recommenda		ipiciiciisive	ilitai response.		
Recommenda	tion:				

Importance: High b)(5) ----Original Appointment---From: (b)(6) @va.gov> Sent: Tuesday, April 6, 2021 8:52 AM (OGC)(b)(6) To:(b)(6) OIG) (b)(6) (OAWP(b)(6) OAWP); (b)(6) (b)(6) (OAWP) (b)(6) (OIG) Cc (b)(6) (OGC); OGC Personnel Law Group Supervisors (OGC) (b)(6) (OGC);(b)(6) OGC); (b)(6) DGC) 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 (OGC (b)(6) To:(b)(6) OGC) (b)(6) (OGC); (b)(6) (OIG)(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 ----Original Appointment----From (b)(6) @va.gov> Sent: Monday, April 5, 2021 4:06 PM OIG) (b)(6) To:(b)(6) (OGC) (b)(6) (OAWP); (b)(6) OAWP) (b)(6) (OAWP)(b)(6) b)(6) (OIG) (OGC); OGC Personnel Law Group Supervisors

Tue, 6 Apr 2021 13:48:14 +0000

2021-04-02 CEG to VA.pdf

(OGC)

FW: URGENT CLOSE HOLD MATTER /VIEWS 4890714

From:

Sent: To:

Subject:

Attachments:

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) OIG); (OAWP):(b)(6) (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 afternoor 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, 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) Dva.gov> Sent: Monday, April 5, 2021 1:05 PM To:(b)(6) (OGC); (b)(6) OIG (b)(6) (OAWP) (b)(6) OAWP); (b)(6)

(OAWP) ^{(D)(G)} (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 organization to attend an urgent collaboration call to discuss and develop the Department's response to the attache 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

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E GRABSLEY, KOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNY, TEXAS
MICHAEL S. LEE, LYAH
TED CITUZ, TEXAS
BER SASSE, NEBRASKA
JOSHUA S. HAWLEY, MISSOURI
TOM COTTON, ARIKANSAG
JOHN BERNIEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACEBURN, TERNOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

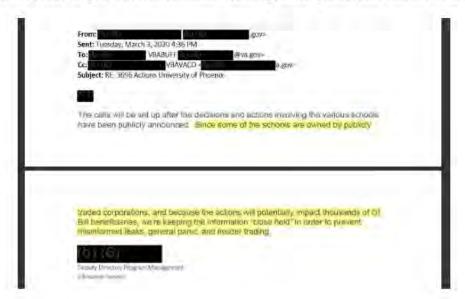
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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).

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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

Gary J. Aguirre (SBN 38927)			
Aguirre Law, APC			
501 W. Broadway, Ste. 800			
San Diego, CA 92101			
Tel: 619-400-4960			
Fax: 619-501-7072			
Email: Gary@aguirrelawapc.com			
Attorney for Plaintiff Maria A. Pomares			
UNITED STATES	S DISTRICT COURT		
	RICT OF CALIFORNIA		
	INACYNA II MCD		
	Case No.: 21CV84 H MSB		
MARIA A. POMARES,	COMPLAINT FOR DECLARATOR		
Plaintiff,	AND INJUNCTIVE RELIEF		
v.			
UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,			
Defendant.			
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

⁴ *Id*. ⁵ *Id*.

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ Id. ⁹ Id.

¹⁰ *Id*.

trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

Sale

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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:

^{25 ///}

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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

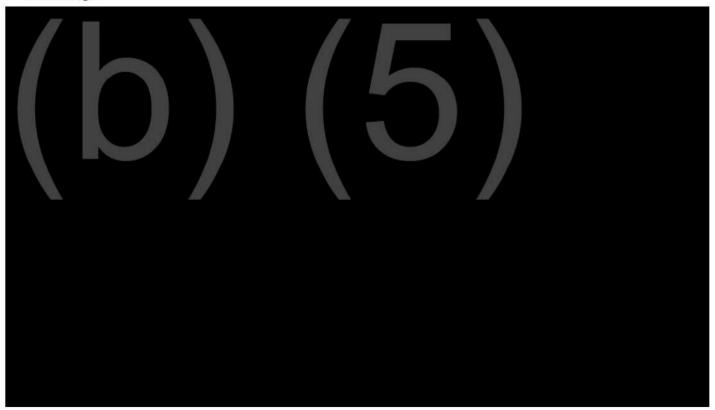
Cc: (b) (6)

Subject: RE: 3696 Actions University of Phoenix

Date: Wednesday, March 4, 2020 8:19:39 AM

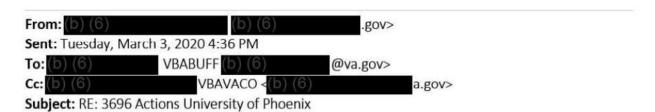
Good Morning (b) (6)

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)

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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



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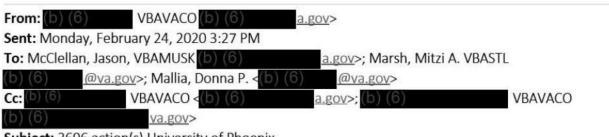
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

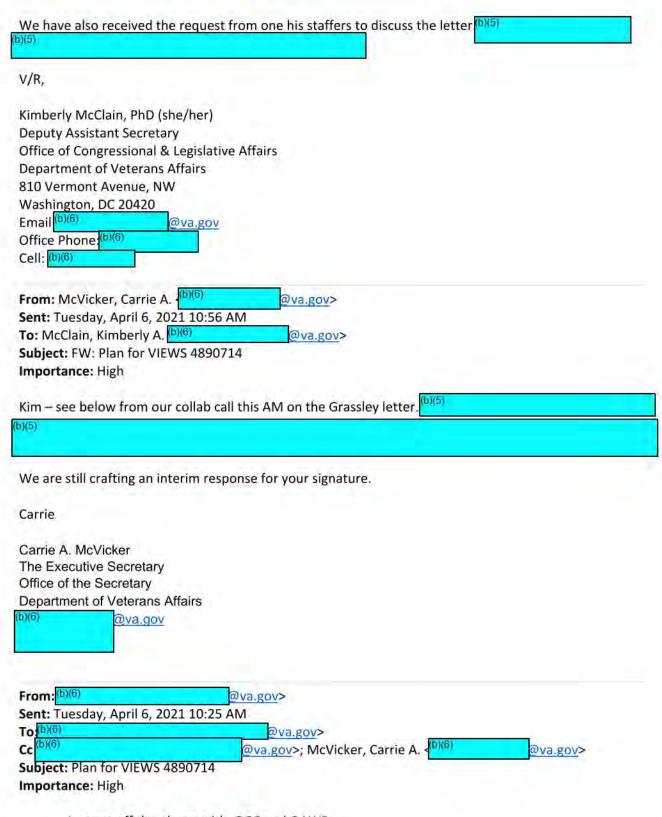
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Team Chief, Integrity & Protection Branch Oversight & Accountability

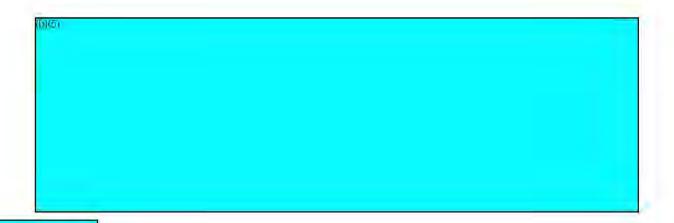
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McClain, Kimberly A. From: Sent: Tue, 6 Apr 2021 15:59:57 +0000 McVicker, Carrie A. To: Johnson, Glenn (SES) (b)(6) Cc: Subject: RE: Plan for VIEWS 4890714 You are welcome. Now I could type "whether" that would be great ① V/R, Kimberly McClain, PhD (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 @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> @va.gov>(b)(6) Cc: Johnson, Glenn (SES) (6)(6) @va.gov> Subject: RE: Plan for VIEWS 4890714 + Glenn FYSA Thank you for the update.



Just got off the phone with OGC and OAWP.



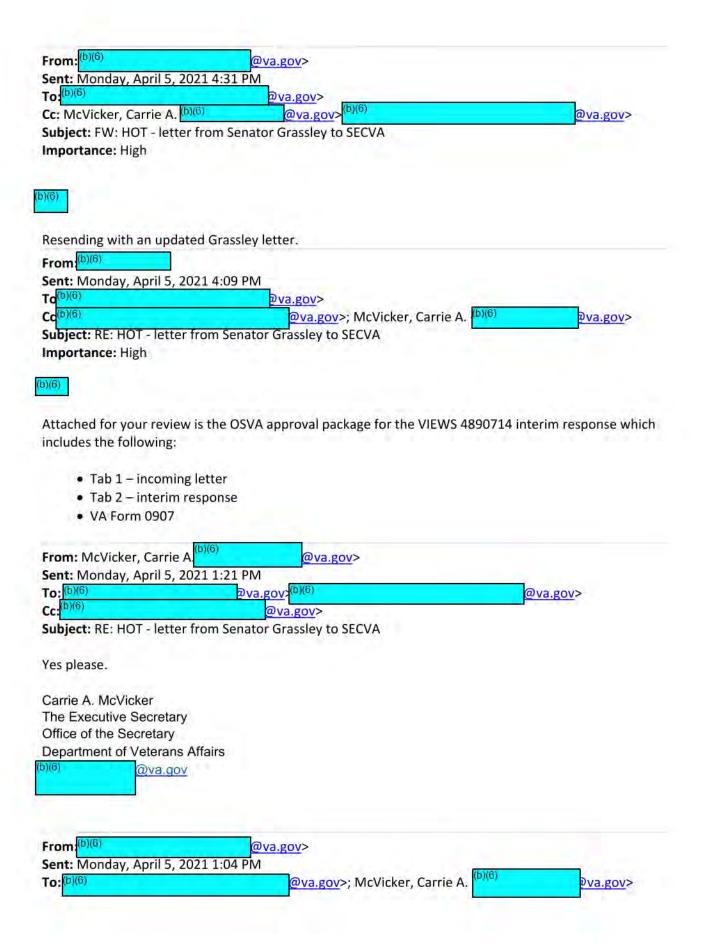
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Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

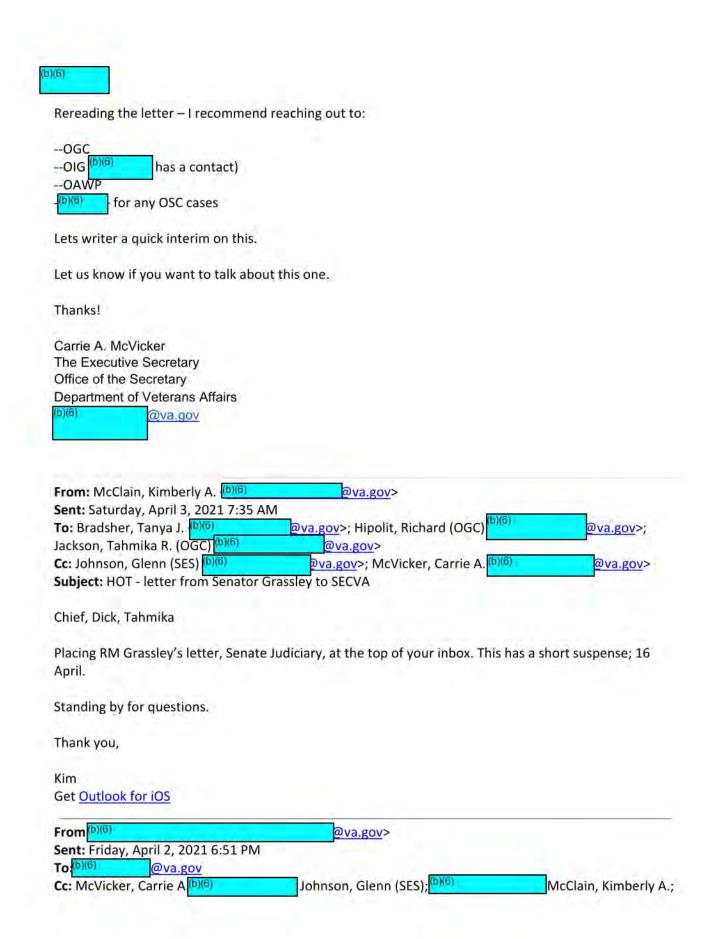
From: McVicker, Carrie A. Sent: Tue, 6 Apr 2021 17:20:38 +0000 To: McClain, Kimberly A. FW: HOT INTERIM- letter from Senator Grassley to SECVA Subject: Attachments: Tab1 4890714 Incoming Letter.pdf, Tab 2 4890714 - Grassley Interim response -Updated.docx, 4890714 VA Form 0907 (Interim).pdf Importance: 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(b)(6) @va.gov> Cc @va.gov>;(<mark>ه)(ه)</mark> @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

Importance: High

For review.



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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,

Ranking Member Charles E. Grassley U.S. Senate Committee on the Judiciary

5)(6)	A. S. L. S. L. S. L.	
Congressional F	Relations Officer Department o	f Veterans Affairs
	House Ofc. Bldg., Washington, DO	<u>C</u> 20515
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https://(b)(6)		
From: (b)(6)	Judiciary-Rep) (b)(6)	Djudiciary-rep.senate.gov>
Sent: Friday, Ap	oril 2, 2021 5:02 PM	
To: ^{(b)(6)}	@va	a.gov>
Cc: (b)(6)	Judiciary-Rep) (b)(6)	@judiciary-rep.senate.gov>; CEG (Judiciary-Rep)
o)(6) ම judiciar	y-rep.senate.gov>	
Subject: [EXTER	RNAL] 2021-04-02 CEG to VA	
Hello ^{(b)(6)}		
Please find the	attached letter from Senator Gra	assley to the U.S. Department of Veterans Affairs.
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Please confirm	receipt of this letter. Thank you	
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Best Regards,		
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Investigative Co	unsel	
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RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICKUL LEAHY, VERMONT
DIANNE FENSTEIN, CALIFORNIA
BHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHIESTOPHER A. COONS, DELAWARE
RICHAFD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CONY A BOCKER, NEW JERSEY
ALEX ADDILLA, CALIFORNIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN FERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNEDSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

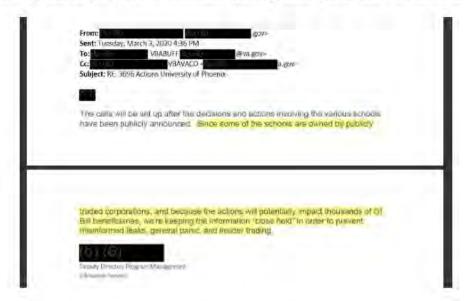
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
4	Tel: 619-400-4960	
	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	CICT OF CALIFORNIA
10		
11		Case No.: '21CV84 H MSB
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF
13	Plaintiff,	
14	v.	
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
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17	Defendant.	
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This action is brought under the Freedom of Information Act ("FOIA"). 5 1. U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San 3. Diego.
- Defendant is an agency of the United States Government and has possession 4. and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

Plaintiff seeks records from the Department of Veterans Affairs ("VA") 5. 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 Career Education Corporation ("CEC"), 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

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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-suspenduniversity-phoenix-other-colleges-accessing-gi-bill-benefits/, last visited Jan. 13, 2021.

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

- Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.3 The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, making

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

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior." 5
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ <i>Id</i> .		
⁵ <i>Id</i> .		
⁶ <i>Id</i> .		

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

Veterans Education Success

11:26 AM - Mar 9, 2020 - Twitter Web App.

@GIBIIIRights



- 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:

^{25 ///}

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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

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¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

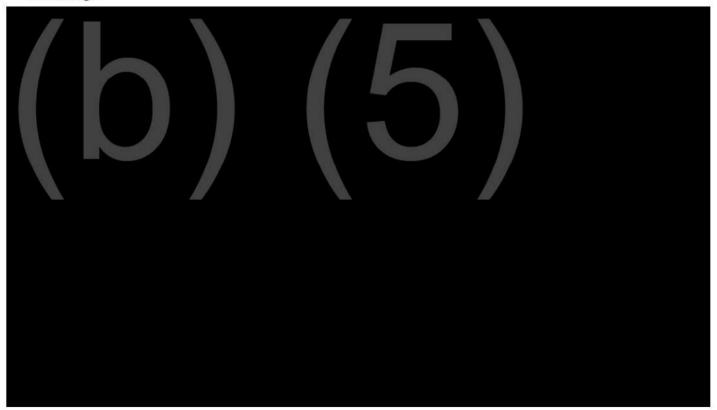
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

From: (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



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.



Education Service



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!



From: Mallia, Donna P. < 6 @va.gov>

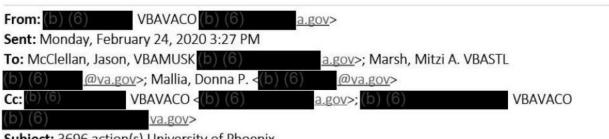
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

VA (E.S. Department of Veterans Affairs			SUMMARY AND APPROVAL SHEET		
NAME OF ORIGINATOR			VIEWS NO. DAT 4890714	04/05/2021	DATE DUE
NAME OF EXECUTIVE SEC	RETARY STAFF	SUBJECT Interim Res	sponse to Senator Charles	Grassely	
(b)(6)					
ROUTING	INITIALS	DATE		COMMENTS	
EXEC SEC					
DEPCOSVA					
DEPCOSVA/WHL					
COSVA					
DEPSEGVA					
SECVA					
CONCURRENCE	4/5/2021				
Durnosa: To ob	tain OSVA		se - Discussion - Recommenda an interim response to an		from Senator
senior officials a	t the Vetera ose of the i	ans Benefits nterim to ac	Senator Grassley concern Administration. He has re knowledge receipt of the in final response.	quested a resp	onse by April 16,
Recommendati					
riccommendati					

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,

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

(a)(6)
(a)(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

From ^{(b)(6)}	@va.gov>	
Sent: Monday, April 5, 2021 6:18 P		
To: McVicker, Carrie A. (b)(6)	@va.gov>	
Subject: FW: HOT - letter from Sen	nator Grassley to SECVA	
Importance: High		
For review.		
From: ^{(b)(6)}	@va.gov>	
Sent: Monday, April 5, 2021 4:31 F	PM	
Го:(b)(6)	@va.gov>	
Cc: McVicker, Carrie A. (b)(6)	@va.gov>; (b)(6)	@va.gov>
0(6)		
Resending with an updated Grasslo	ey letter.	
From:(b)(6)		
Sent: Monday, April 5, 2021 4:09 P	PM	
Го: ^{(b)(6)}	@va.gov>	
Cc:(b)(6)	@va.gov>; McVicker, Carrie A. < (b)(6)	@va.gov>
Subject: RE: HOT - letter from Sena		
Importance: High	O. M. M. M. M. M. M. M.	

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		
Yes please.		
Carrie A. McVicker		
The Executive Secretary		
Office of the Secretary		
Department of Veterans Affair		
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@va.gov		
(b)(6)	0.00	
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Cc: (b)(6)	@va.gov>	
Subject: RE: HOT - letter from	Senator Grassley to SECVA	
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ent: Monday, April 5, 2021 1		
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Cc:(b)(6)	@va.gov>	di.Hov-
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rom ^{(b)(6)}	@va.gov>	
ent: Monday, April 5, 2021 1	2:43 PM	
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Cc:(b)(6)	@va.gov>	
Subject: RE: HOT - letter from		
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is OIG		

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ent: Monday, April 5	The state of the s	
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Cc (b)(6)	@va.gov>; ^{(b)(6)}	@va.gov>
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Let us know if you wa	nt to talk about this one.	
Thanks!		
Carrie A. McVicker		
The Executive Secreta	ary	
Office of the Secretary	/	
Department of Vetera	ns Affairs	
(6) @va.d		
and the second second	Di vers	
rom: McClain, Kimbe		
Sent: Saturday, April 3		
Fo: Bradsher, Tanya J.		OGC) (b)(6) @va.gov>;
Jackson, Tahmika R. (G		
Cc: Johnson, Glenn (S	ES) (b)(6) @va.gov>; McVicker, Car	rie A. (b)(6) @va.gov>

Placing RM Gras April.	sley's letter, Senate Jud	diciary, at the	top of your inbox. T	his has a short suspense; 16
Standing by for o	questions.			
Thank you,				
Kim Get <u>Outlook for</u>	iOS			
From: (b)(6)		@va.g	<u>ov</u> >	
	ril 2, 2021 6:51 PM			
To ^{(b)(6)} Cc: McVicker, Ca	@va.gov	ohnson, Gl	onn (SES) (b)(6)	McClain, Kimberly A.;
(b)(6)	in e A. paron	offison, Gi	elili (SES)	iviccialli, Killiberty A.,
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	requesting a response l	The said of the Part of the said		
Respectfully,				
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b)(6)				
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	ouse Ofc. Bldg., Washin	ngton, DC 2051	15	
Desk:(b)(6)	Mobile:(b)(6)			
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From: (b)(6)	(Judiciary-Rep)	b)(6)	@judiciary-rep.se	nate.gov>
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To:(b)(6)	KEN/O	@va.gov>		The State of the S
Cc:(b)(6)	(Judiciary-Rep ^{(b)(6)}	,	@judiciary-rep.ser	nate.gov>; CEG (Judiciary-Rep)
	-rep.senate.gov>	100		
Subject: [EXTER	NAL] 2021-04-02 CEG to	o VA		
Helld ^{(b)(6)}				
Please find the a	nttached letter from Ser	nator Grassley	to the U.S. Departi	ment of Veterans Affairs.
Please confirm r	eceipt of this letter. Th	nank you.		
Best Regards,				
Dest Regards,				
b)(6)				
Investigative Cour	nsel			

Ranking Member Charles E. Grassley U.S. Senate Committee on the Judiciary

From:

Tue, 6 Apr 2021 18:52:06 +0000 Sent:

To:

McVicker, Carrie A.(b)(6) Cc:

DISPATCHED TO 009 VIEWS # 4890714 - Letter from Senator Grassley to Subject:

SECVA.msg

Attachments: 4890714 - Grassely.pdf

Good Afternoon:

DAS OCLA signed Interim response dated on 4-6-2021, please dispatch to the hill.

Department of Veterans Affairs Office of the Executive Secretary



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 yo	ou 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,

Sincerely,

Kimberly McClain, Ph.D.

Deputy Assistant Secretary for Congressional

and Legislative Affairs

b)(6) From: Wed, 7 Apr 2021 13:41:40 +0000 Sent: Hogan, Michael R. (OGC) To: Hipolit, Richard (OGC); McVicker, Carrie A. (10)(6) Cc: FW: Follow-up for VIEWS 4890714/Grassley Subject: 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 @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

(Direct)

(b)(6)

<u>Whistleblower Protections</u>: 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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(5)	(b)(b)		
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	1(4)		

McVicker, Carrie A.

From:

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(Direct)

<u>Whistleblower Protections</u>: 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.

McVicker, Carrie A. From: Wed, 7 Apr 2021 15:01:29 +0000 Sent: Bradsher, Tanya J. To: McClain, Kimberly A. Cc: FW: Follow-up for VIEWS 4890714/Grassley Subject: Tab1 4890714 Incoming Letter.pdf Attachments: High Importance: 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 @va.gov From: Hogan, Michael R. (OGC) @va.gov> Sent: Tuesday, April 6, 2021 10:13 PM @va.gov> Cc: Hipolit, Richard (OGC) (6)(6) <vog.sv@ Subject: Follow-up

Re: Sen Grassley letter



MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(Direct)

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RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BEN SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BENNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

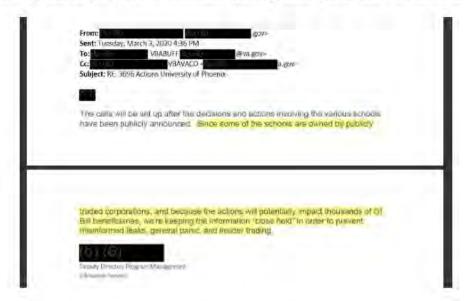
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
4	Tel: 619-400-4960	
	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTRICT OF CALIFORNIA	
10		
11		Case No.: '21CV84 H MSB
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF
13	Plaintiff,	
14	v.	
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
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17	Defendant.	
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

⁴ *Id*. ⁵ *Id*.

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ Id. ⁹ Id.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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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.

Veterans Education Success

@GIBIIIRights



- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

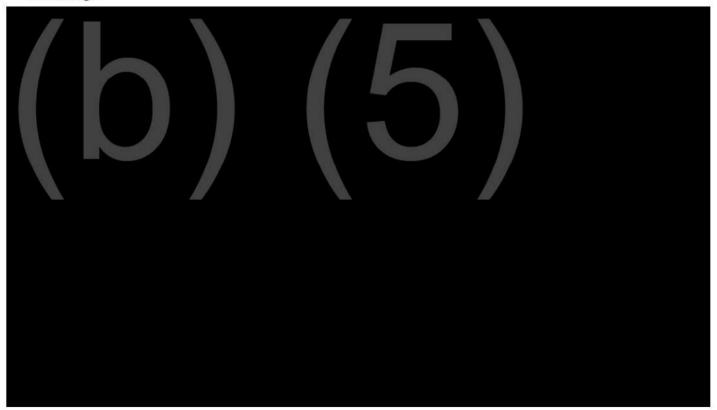
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

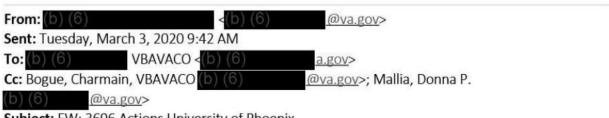
.gov> From: (b) (6) Sent: Tuesday, March 3, 2020 4:36 PM To: (b) (6) VBABUFF (b) (6) @va.gov> Cc: (b) (6) VBAVACO < (b) (6 a.gov> Subject: RE: 3696 Actions University of Phoenix



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.





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!



From: Mallia, Donna P. < 6 @va.gov>

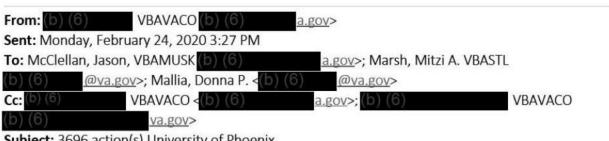
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

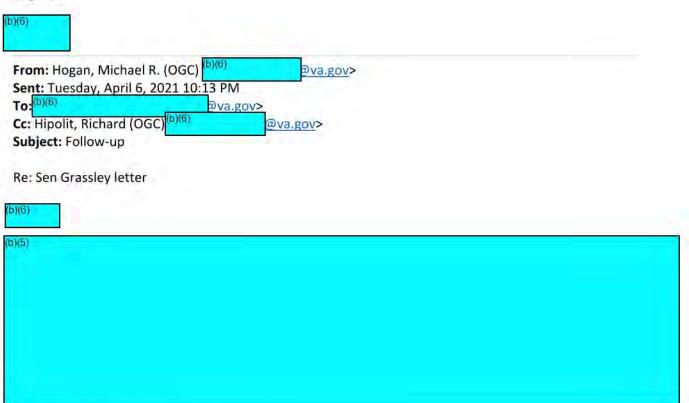
Sent: Wed, 7 Apr 2021 15:04:01 +0000 Johnson, Glenn (SES) To: RE: Follow-up for VIEWS 4890714/Grassley Subject: Received. Thank you V/R, Kimberly McClain, PhD **Deputy Assistant Secretary** Office of Congressional & Legislative Affairs Department of Veterans Affairs 810 Vermont Avenue, NW Washington, DC 20420 Email: (b)(6 @va.gov Office Phone: (b)(6) Cell (b)(6) From: @va.gov> Sent: Wednesday, April 7, 2021 9:44 AM To: McClain, Kimberly A. (b)(6) @va.gov>; Johnson, Glenn (SES) @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 From: @va.gov> Sent: Wednesday, April 7, 2021 9:42 AM To: Hogan, Michael R. (OGC) (b)(6) @va.gov> Cc: Hipolit, Richard (OGC) Dva.gov>; McVicker, Carrie A. @va.gov>; @va.gov>; (b)(6) @va.gov> Subject: FW: Follow-up for VIEWS 4890714/Grassley Importance: High Good morning Mike:

McClain, Kimberly A.

From:

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,



MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(Direct)

<u>Whistleblower Protections</u>: 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.

Hipolit, Richard (OGC) To: FW: Follow-up for VIEWS 4890714/Grassley Subject: Attachments: Tab1 4890714 Incoming Letter.pdf Importance: High Dick, Please let me know your thoughts. Thank you so much, Tanya Tanya Bradsher Chief of Staff Department of Veterans Affairs @va.gov Cell; (b)(6) From: McVicker, Carrie A. Dva.gov> Sent: Wednesday, April 7, 2021 11:01 AM To: Bradsher, Tanya J. (D)(6) @va.gov> Cc: McClain, Kimberly A. (1)(6) @va.gov> Subject: FW: Follow-up for VIEWS 4890714/Grassley Importance: High Tanya. I also stand by with my writer (b)(6) to help put together the response.

Bradsher, Tanya J.

Wed, 7 Apr 2021 15:09:11 +0000

From: Sent:

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) (ava.gov)

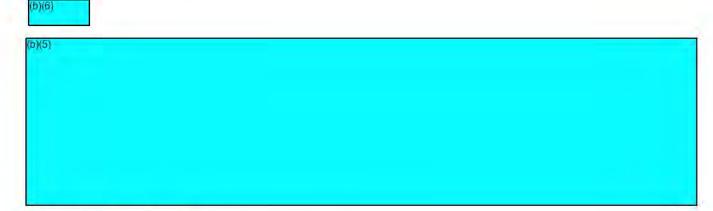
Sent: Tuesday, April 6, 2021 10:13 PM

To (b)(6) (ava.gov)

Cc: Hipolit, Richard (OGC) (b)(6) (ava.gov)

Subject: Follow-up

Re: Sen Grassley letter



MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLEN, TESNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

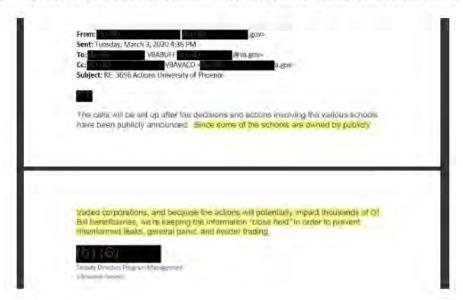
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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. 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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)					
2	Aguirre Law, APC					
Ä	501 W. Broadway, Ste. 800					
3	San Diego, CA 92101 Tel: 619-400-4960					
4	Fax: 619-501-7072					
5	Email: Gary@aguirrelawapc.com					
6	Attorney for Plaintiff Maria A. Pomares					
7						
8	UNITED STATES	S DISTRICT COURT				
9	SOUTHERN DISTRICT OF CALIFORNIA					
10						
11		Case No.: 21CV84 H MSB				
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY				
13	Plaintiff,	AND INJUNCTIVE RELIEF				
14	V.					
15	UNITED STATES DEPARTMENT OF					
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,					
	Defendant.					
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

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6 Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."4

- VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."5
- Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- The VES letter also pressed the VA to accept as its own all veterans' 12. purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

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4 <i>Id</i>		
5 Id		
Id.		

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University



11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - d) Temple University,
 - e) Colorado Technical,

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- 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.
- 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.
- 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.
- 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

under Exemption 6. The letter also informed Plaintiff of her right to appeal the

OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

determination to the OIG's Office of Counselor. A true and correct copy of the VA

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
 46. On December 28, 2020, the VA OIG denied the appeal finding the response
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

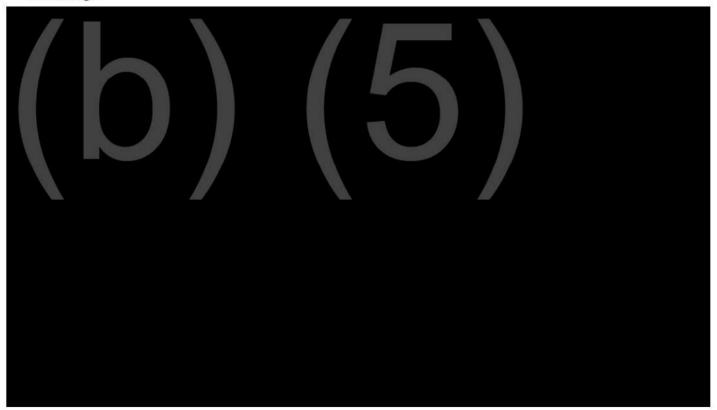
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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



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.



@va.gov>

Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. (6) @va.gov>

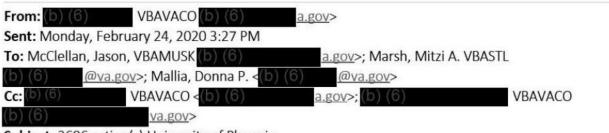
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

Attachments: Tab1 4890714 Incoming Letter.pdf Importance: High From: Bradsher, Tanya J. (b)(6) @va.gov> Sent: Wednesday, April 7, 2021 11:09 AM To: Hipolit, Richard (OGC) (D)(6) @va.gov> Subject: FW: Follow-up for VIEWS 4890714/Grassley Importance: High Dick, Please let me know your thoughts. Thank you so much, Tanya Tanya Bradsher Chief of Staff Department of Veterans Affairs @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)

From:

Sent:

Subject:

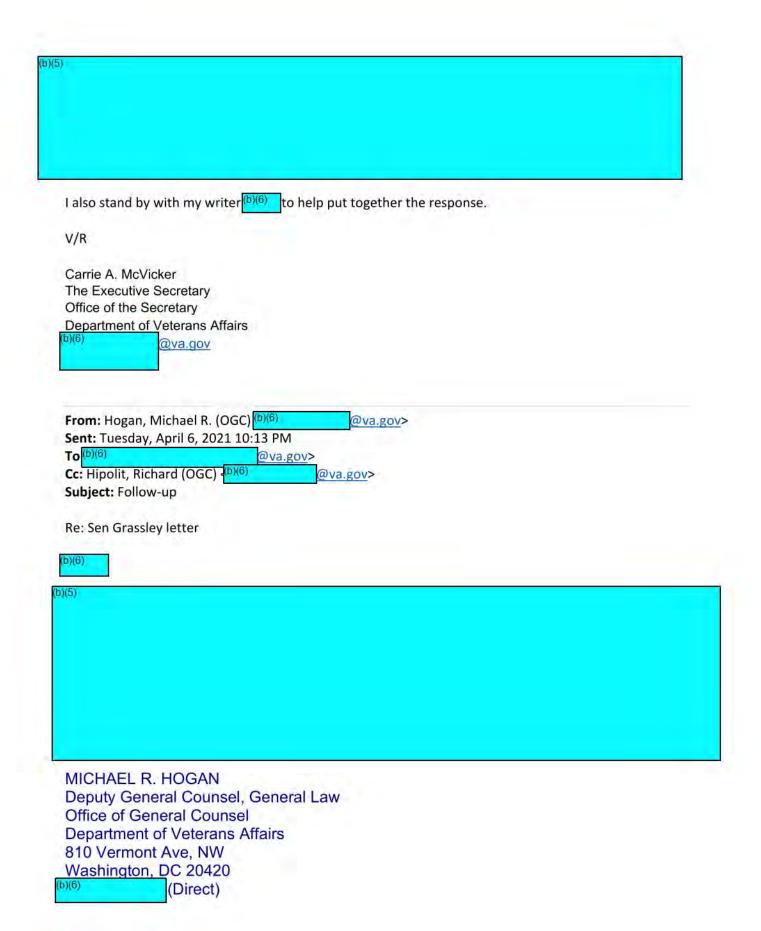
To:

Hipolit, Richard (OGC)

Hogan, Michael R. (OGC)

Wed, 7 Apr 2021 15:29:58 +0000

FW: Follow-up for VIEWS 4890714/Grassley



<u>Whistleblower Protections</u>: 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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HINDE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHIRSTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)					
2	Aguirre Law, APC					
Ä	501 W. Broadway, Ste. 800					
3	San Diego, CA 92101 Tel: 619-400-4960					
4	Fax: 619-501-7072					
5	Email: Gary@aguirrelawapc.com					
6	Attorney for Plaintiff Maria A. Pomares					
7						
8	UNITED STATES	S DISTRICT COURT				
9	SOUTHERN DISTRICT OF CALIFORNIA					
10						
11		Case No.: 21CV84 H MSB				
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY				
13	Plaintiff,	AND INJUNCTIVE RELIEF				
14	V.					
15	UNITED STATES DEPARTMENT OF					
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,					
	Defendant.					
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ <i>Id</i> .	
⁵ <i>Id</i> .	
⁶ <i>Id</i> .	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

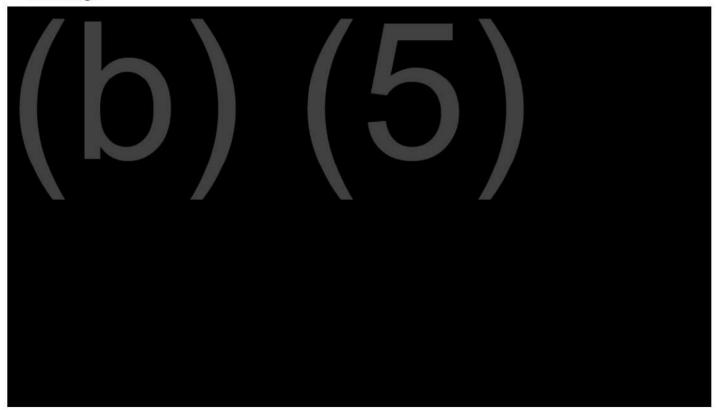
Cc: (b) (6)

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)

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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. < 6 @va.gov>

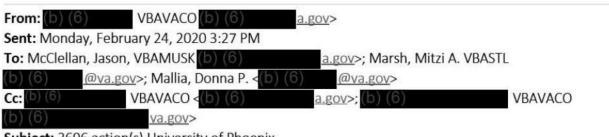
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability 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) @va.gov> Subject: FW: Follow-up for VIEWS 4890714/Grassley Importance: High Dick, Please let me know your thoughts. Thank you so much, Tanya Tanya Bradsher Chief of Staff Department of Veterans Affairs Dva.gov Cell: (b)(6) From: McVicker, Carrie A. @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.

Wed, 7 Apr 2021 15:32:47 +0000

Bradsher, Tanya J.

Sent: To:

5)	
also stand by with my writer (b)(G) to help put together the resp	ponse.
//R	
Carrie A. McVicker The Executive Secretary	
Office of the Secretary	
Department of Veterans Affairs @va.gov	
From: Hogan, Michael R. (OGC) (D)(G) @va.gov>	
ient: Tuesday, April 6, 2021 10:13 PM	
Cc: Hipolit, Richard (OGC) (b)(6) @va.gov>	
Cc: Hipolit, Richard (OGC) (april 2002) Subject: Follow-up	
Re: Sen Grassley letter	
6)	
0)(5)	
MICHAEL R. HOGAN	
Deputy General Counsel, General Law Office of General Counsel	
Department of Veterans Affairs	
310 Vermont Ave, NW	
Washington, DC 20420	
(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 Hogan, Michael R. (OGC) To: RE: Follow-up for VIEWS 4890714/Grassley Subject: 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) (D)(6) @va.gov>

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Dick,

Please

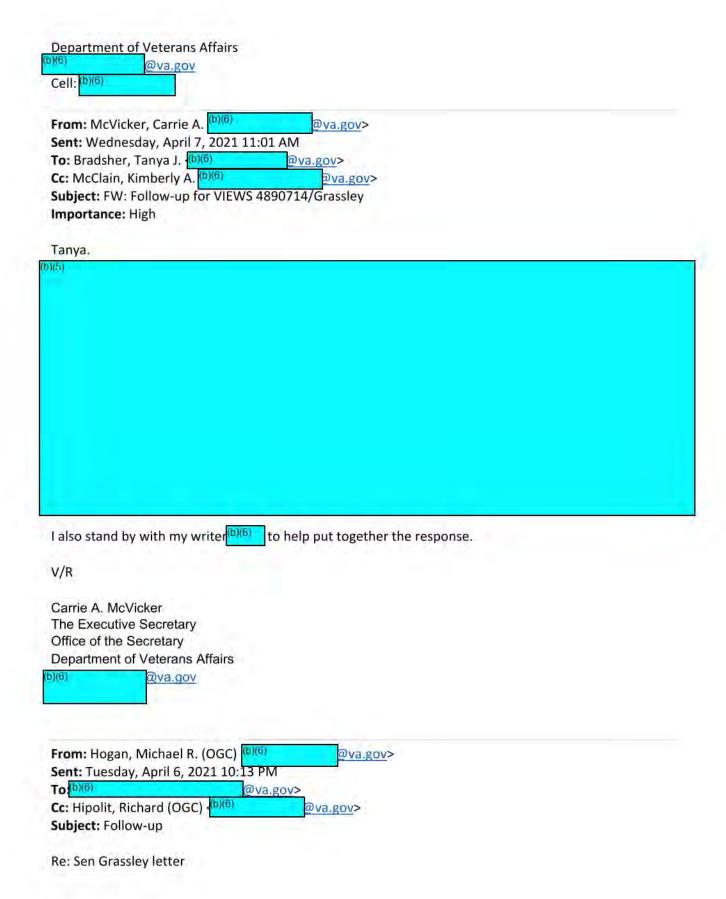
let me know your thoughts.

Thank you so much,

Tanya

Tanya Bradsher

Chief of Staff





MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(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.

Bradsher, Tanya J. From: 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 @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, Please let me know your thoughts. Thank you so much, Tanya Tanya Bradsher Chief of Staff Department of Veterans Affairs @va.gov Cell: (b)(5) From: McVicker, Carrie A. @va.gov> Sent: Wednesday, April 7, 2021 11:01 AM To: Bradsher, Tanya J. (b)(6) @va.gov>

anya.		
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also stand by with my writer (b)(6) to	o help put together the response.	
also stand by with my writer	Theip put together the response.	
/R		
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arrie A. McVicker		
he Executive Secretary		
ffice of the Secretary		
epartment of Veterans Affairs		
@va.gov		
No.	4.5 7.0	
	@va.gov>	
ent: Tuesday April 6, 2021 10:13 PM		
ent: Tuesday, April 6, 2021 10:13 PM	gov>	
ent: Tuesday, April 6, 2021 10:13 PM o ^{(b)(6)} @va.s c: Hipolit, Richard (OGC) ^{(b)(6)}		
ent: Tuesday, April 6, 2021 10:13 PM o ^{(b)(6)} @va.s c: Hipolit, Richard (OGC) ^{(b)(6)}	gov>	
c: Hipolit, Richard (OGC) (b)(6) ubject: Follow-up	gov>	
ent: Tuesday, April 6, 2021 10:13 PM o ^{(b)(6)} @va.s c: Hipolit, Richard (OGC) ^{(b)(6)}	gov>	
ent: Tuesday, April 6, 2021 10:13 PM o ^{(b)(6)} @va.s c: Hipolit, Richard (OGC) (b)(6) ubject: Follow-up	gov>	

(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
(Direct)

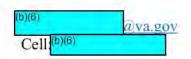
<u>Whistleblower Protections</u>: The VA is committed to protecting whistleblowers and creating working environments where employees can voice complaints without fear of reprisal. All VA employees have the right to make protected disclosures to Congress, OAWP, OIG, OSC, and other entities and offices, 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. RE: Follow-up for VIEWS 4890714/Grassley Subject: 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 @va.gov From: Bradsher, Tanya J. @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



From: McVicker, Carrie A. (b)(6) @va.gov> Sent: Wednesday, April 7, 2021 12:58:54 PM To: Bradsher, Tanya J. (b)(6) Cc: McClain, Kimberly A. (1)(6) Dva.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 to set up a call?

V/R

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

From: Bradsher, Tanya J. @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

@va.gov Cell: (b)(6)

From: McVicker, Carrie A. (b)(6) @va.gov>

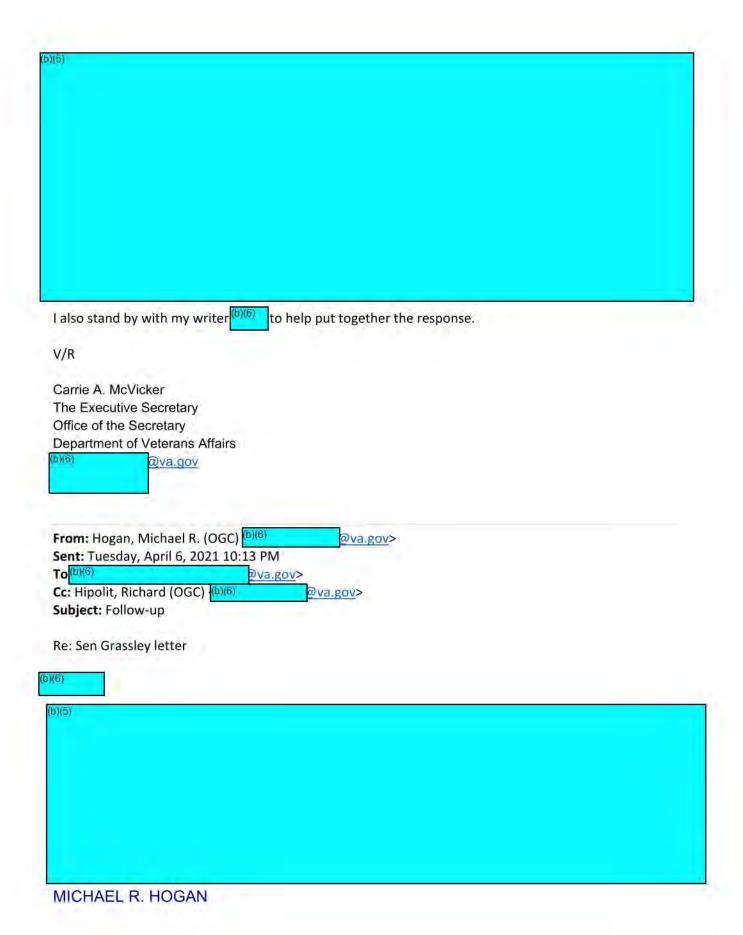
Sent: Wednesday, April 7, 2021 11:01 AM

To: Bradsher, Tanya J. (b)(6) @va.gov> Cc: McClain, Kimberly A. (b)(6)

Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Tanya.



Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(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.

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 From: Bradsher, Tanya J. @va.gov> Sent: Wednesday, April 7, 2021 12:48 PM To: Hipolit, Richard (OGC) (b)(6) Subject: RE: Follow-up for VIEWS 4890714/Grassley Great, thank you so much. Tanya Bradsher Chief of Staff Department of Veterans Affairs @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) Subject: RE: Follow-up for VIEWS 4890714/Grassley 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 Dva.gov

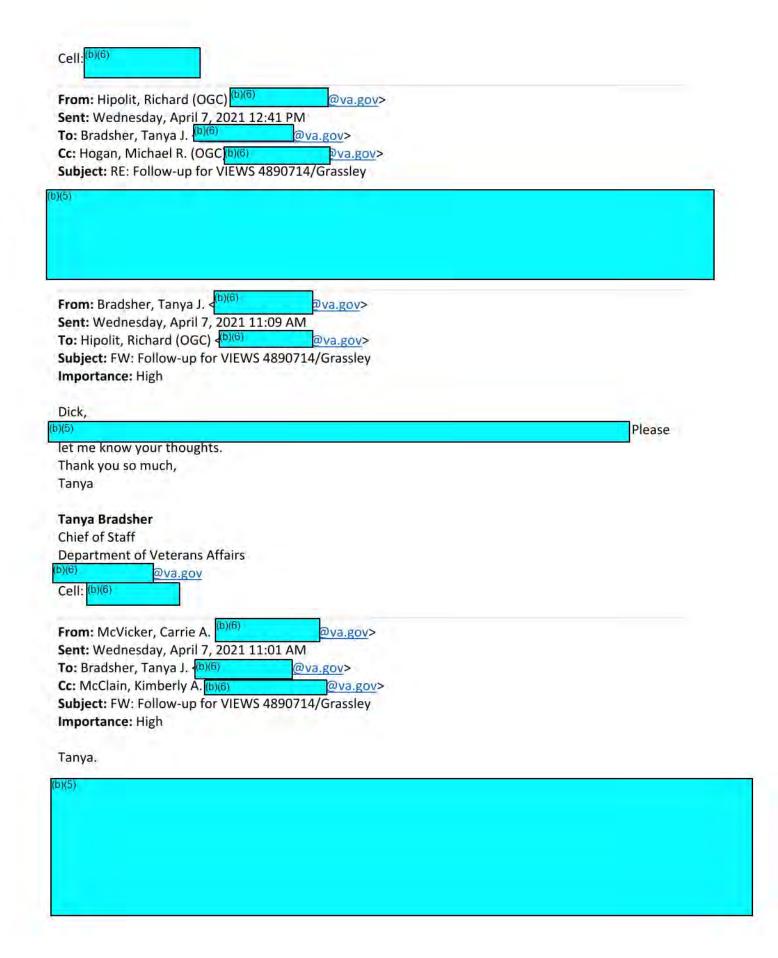
Hipolit, Richard (OGC)

Bradsher, Tanya J.

Wed, 7 Apr 2021 18:54:33 +0000

From: Sent:

To:



(b)(5)	
(0/0)	
I also stand by with my writer to help put together the response.	
raiso stand by with my writer with the response.	
V/R	
Carrie A. McVicker	
The Executive Secretary	
Office of the Secretary	
Department of Veterans Affairs	
(b)(6) @va.gov	
COVAL GOV	
Francis II and Michael B. (OCC)	
From: Hogan, Michael R. (OGC) (6)(6) @va.gov>	
Sent: Tuesday. April 6. 2021 10:13 PM	
To (b)(6) @va.gov>	
Cc: Hipolit, Richard (OGC) (b)(6)	
Subject: Follow-up	
Re: Sen Grassley letter	
(b)(6)	
Z 63	
(b)(5)	
MICHAEL D. LICCAN	
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)	
(Direct)	

<u>Whistleblower Protections</u>: 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.

Case: 156227: Boque, Charmain Note

BI LATE	1 1	41	
Notif	ied \	VIC	OF

From: (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.

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/Horne.aspx | Ethics contact information https://www.va.gov/OGC/docs/Ethics/VA Ethics Contacts.pdf>

From: (b)(6)
Sent: Monday, July 20, 2020 5:57 AM
To: Bogue, Charmain, VBAVACC(b)(6)
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)

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) @va.gov <mailto(b)(6) @va.gov >> Subject: RE: INITIAL REVIEW: Public Financial Disclosure Report

Hello,

IRA- sold

Current Date: Apr 6, 2021 Date of Note: 07/29/2020 (21-08490-F) - 001093

Case: 156227: Bogue, Charmain Note

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 Boque **Executive Director Education Service** Veterans Benefits Administration @va.gov <mailto(b)(6 ⊡va.gov> From: (b)(6) @va.gov <mailto (OGC) (b)(6) va.gov> > Sent: Tuesday, June 30, 2020 7: @va.gov <mailto(b)(6) To: Bogue, Charmain, VBAVACO va.gov> > Subject: INITIAL REVIEW: Public Financial Disclosure Report Importance: High

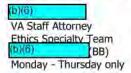
Good afternoon. I have been assigned review of your Annual Public Financial Disclosure report (278) and that review is now complete. I've completed my initial review; however, before I can certify the report I need to confirm inform or seek amendments. Please provide this information by July 10. I will 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.



OGC Ethics Website OGC Ethics Website OGC Ethics Website OGC Ethics Website OGC Ethics Contact information https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf

Date of Note: 07/29/2020 Current Date: Apr 6, 2021

Case: 131618: Bogue, Charmain Note

From: (b)(6) OGC)

Sent: Monday, September 09, 2019 8:04 AM

To: Bogue, Charmain (b)(6) @va.gov>

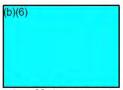
Subject: RE: PFD 2019

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.



Staff Attorney and Deputy Ethics Official Office of General Counsel Ethics Specialty Team

(b)(6)

Please visit our <u>Government Ethics website</u> 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) [2) va.gov < mailto:(0)(0)(0) (2) va.gov >>

Subject: RE: PFD 2019

Hi^{(b)(6)}

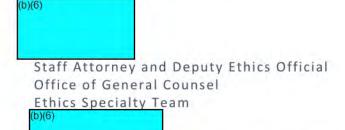
Sorry for the delay I was out last week. I amended the document.

Charmaii	n Bogue		
Executive	Director		
Education	Service		
Veterans E	Benefits Administration		
(b)(6)	@va.gov <mailto<sup>(b)(6)</mailto<sup>	@va.gov>	
From: (b)(6) Sent: Frida To: Bogue	(OGC) ay, August 30, 2019 10:20 Al , Charmain (^{b)(6)}	M @va.gov <mailto(<sup>b)(6)</mailto(<sup>	@va.gov>>
Subject: Pl			

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.



Please visit our <u>Government Ethics website</u> https://vaww.ogc.vaco.portal.va.gov/law/ethics/SitePages/Home.aspx for more information on ethics topics

Ethics advice timeline

From: (b)(6)

(b)(6)

December 2017

VBA contacted (D)(6)	Senior Ethics Attorney
17	017 1:20 PM BAVACO
Subject: Vet Tech / Student Vet	erans of America
The new GI Bill law has direct million ((\$15 million per year	ted an IT pilot called Vet Tech. This pilot allocates \$75 for 5 years).
	nto contracts with vendors to provide training and support am will assist by issuing a GI Bill living stipend.
Long story short, we are gettin early Jan 2018.	g ready to engage in design and stand up of the pilot in
	ed to oversee the entire implementation of the Comery Act ot. I'm assigned as the pilot lead.
Student Veterans is America at may decide to compete for the determine if a disclosure/recus	e of caution mentioned to me that her spouse works for and that this organization has a partnership with VA and Vet Tech pilot. I suggested she connect with you to all is needed. I want to make sure we kick off the pilot by create a negative perception.
(b)(6)	
agrees Ms. Bogue s	hould recuse from the Vet Tech procurement

Good catch. You have disclosed, and recusing from any involvement in source selection for the Vet Tech pilot is Ithe way forward. If Student Veterans of America (SVA) is one of the contractors then the recusal would continue. Specifically, the Standards of Ethical

VBAVACO

(OGC)

VBAVACO; (b)(6)

Subject: RE: Vet Tech / Student Veterans of America

Sent: Thursday, December 07, 2017 6:05 PM

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.



Have you been involved in the preparation of the contract documents?

Thanks for the follow up.



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) (OGC) Subject: Vet Tech / Student Veterans of America

Importance: High



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 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.

	responds
From:	(OGC)
Sent: W	ednesday, February 28, 2018 3:11 PM
To ^{(b)(6)}	VBAVACO
Cc	(OGC)
Subject	: RE: Vet Tech / Student Veterans of America
(b)(6)	
market procure	been working with SVA, amongst others, as part of the research, or is it contemplated that SVA will be involved in the research, Given that the market research assists us in shaping the ement, if it is anticipated that SVA will be a bidder then 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

provides additional guidance			
From:		(OGC)	
Sent:	Vednesdav, Febr	uary 28, 2018 3:20 PM	
To:(b)(6)		(OGC);(b)(6)	, VBAVACO
Subjec	t: RE: Vet Tech	Student Veterans of Am	nerica

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: (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		(OGC)	2.70
Sent:	Wednesday, Mai	rch 07, 20 <u>18 12:50</u>	PM
To: (b)(6	6) V	rch 07, 2018 12:50 BAVACO; (b)(6)	(OGC)
Subje	ct: RE: Vet Tech	/ Student Veterans	of America

Thanks for the follow up.



Bradsher, Tanya J. From: 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 @va.gov Cell: (b)(6) From: Hipolit, Richard (OGC) (b)(6) Pva.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. @va.gov> Sent: Wednesday, April 7, 2021 3:20 PM To: Hipolit, Richard (OGC) (b)(6) Dva.gov> Subject: RE: Follow-up for VIEWS 4890714/Grassley Is Teams okay? Tanya Bradsher Chief of Staff Department of Veterans Affairs @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>

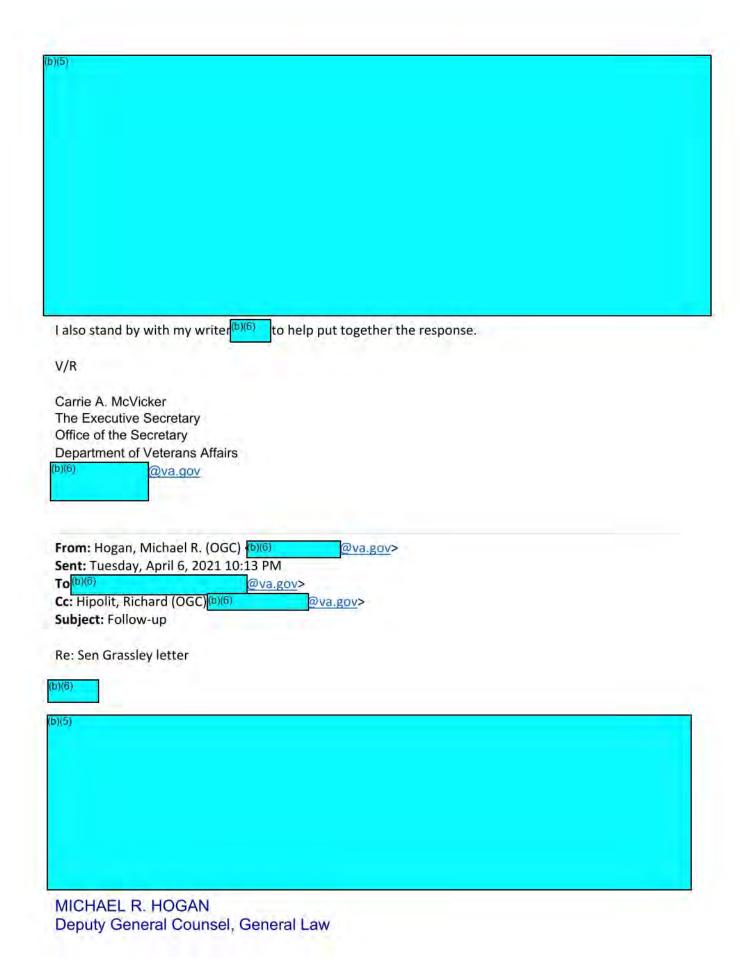
Subject: RE: Follow-up for VIEWS 4890714/Grassley

Great, can we please chat at 4 pm? Tanya Bradsher Chief of Staff Department of Veterans Affairs @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. (10)(6) @va.gov> Subject: RE: Follow-up for VIEWS 4890714/Grassley 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 @va.gov Cell: (b)(6) From: Hipolit, Richard (OGC) (D)(6) @va.gov> Sent: Wednesday, April 7, 2021 12:45 PM To: Bradsher, Tanya J. (b)(6) 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 @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 4890/14/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, 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) @va.gov> From: McVicker, Carrie A. (b)(6) Sent: Wednesday, April 7, 2021 11:01 AM To: Bradsher, Tanya J. (b)(6) Dva.gov> Cc: McClain, Kimberly A. (b)(6) @va.gov> Subject: FW: Follow-up for VIEWS 4890714/Grassley Importance: High

Tanya.



Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(b)(6) (Direct)

<u>Whistleblower Protections</u>: 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

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

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

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

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

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting

Or call in (audio only)

<u>+1 872-701-0185</u>, (b)(6) United States, Chicago

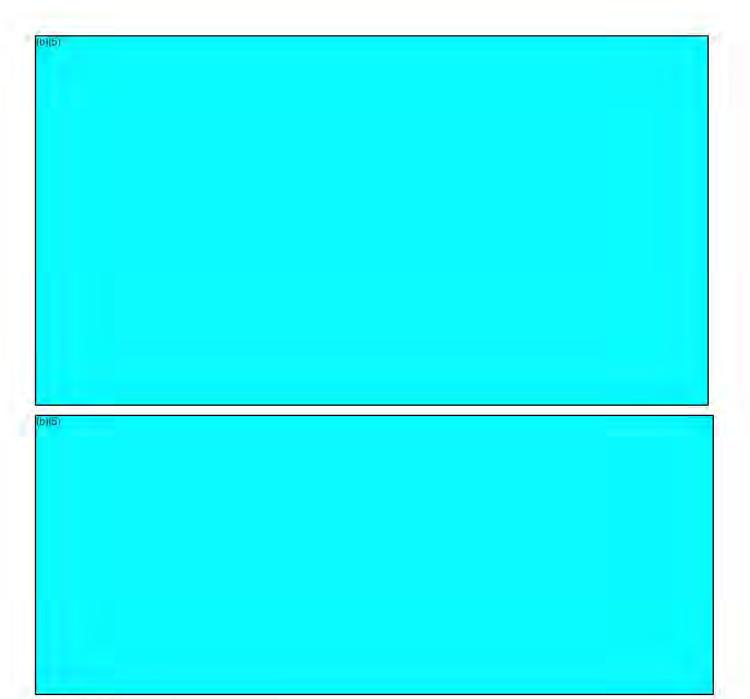
Phone Conference ID: (b)(6)

Find a local number | Reset PIN



Learn More | Meeting options

Sent:	McVicker, Carrie A.		
	Fri, 9 Apr 2021 19:30:15 +0	0000	
To:	Farrisee, Gina S.		
Subject:	FW: Follow-up for VIEWS 4	4890714/Grassley	
Attachments:	Tab1 4890714 Incoming Le		
Importance:	High		
	,,,,,		
Gina – just for SA –	this was Ruthann's read on the	questions.	
But see what Brand	dye says before you consider bel	low.	
V/R			
Carrie A. McVicker The Executive Sec			
Office of the Secret	The same of the sa		
Department of Vete			
The second secon	a.gov		
Sent: Friday, April 9 To: (b)(6) Cc: McVicker, Carri Subject: FW: Folloy	@va.gov>		@v <mark>a</mark> .gov>
Importance: High			
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Importance: High Hi (b)(6) I have reviewed the records:	e asks that begin on page 4 and	find the following regardin	g ownership of potential



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 (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

@va.gov

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

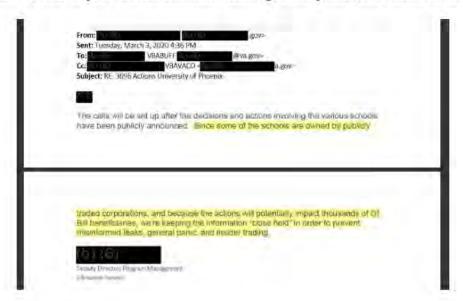
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
Ä	501 W. Broadway, Ste. 800	
3	San Diego, CA 92101 Tel: 619-400-4960	
4	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	RICT OF CALIFORNIA
10		
11		Case No.: 21CV84 H MSB
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY
13	Plaintiff,	AND INJUNCTIVE RELIEF
14	V.	
15	UNITED STATES DEPARTMENT OF	
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
	Defendant.	
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- 3. Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, making

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior." 5
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

4 Id	
4011	
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- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ Id. ⁹ Id.

trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-bythe-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-theuniversity-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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - d) Temple University,
 - e) Colorado Technical,

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g) Career Education.

f) American InterContinental, and

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.
- 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.
- 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.
- 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

 OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

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

under Exemption 6. 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

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

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

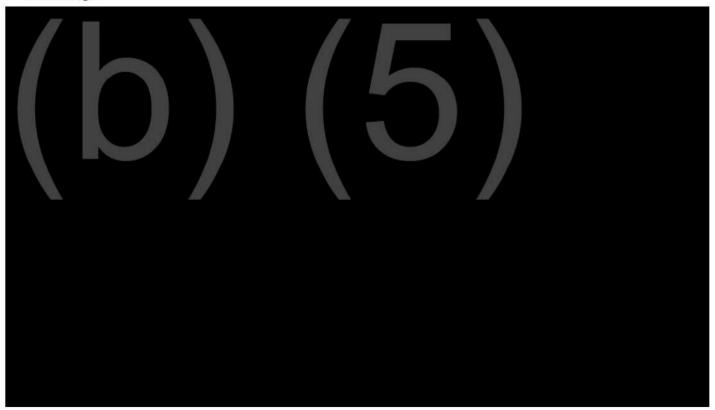
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

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

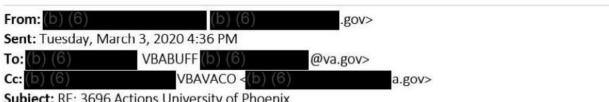
Good Morning (b) (6)

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-



Subject: RE: 3696 Actions University of Phoenix



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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. <(b) (6) @va.gov>

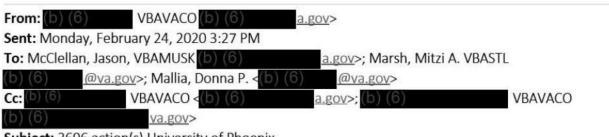
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

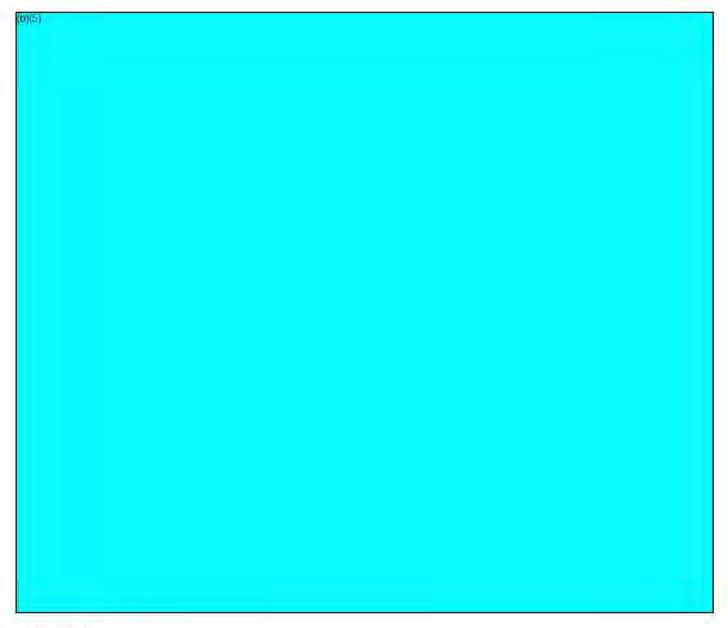
Parise, Ruthann From: Fri, 9 Apr 2021 20:05:12 +0000 Sent: To: Cc: McVicker, Carrie A. (b)(6) RE: Follow-up for VIEWS 4890714/Grassley Subject: You're welcome (b)(6) I just did a search by requests in FOIAXpress and found the following:

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, 2		
	Ruthann.Parise@va.gov>	
Cc: McVicker, Carrie A		@va.gov>
	p for VIEWS 4890714/Grassley	
Importance: High		
Thanks Ruthann. (b)(5)		
b)(5)		
and the second second		
	n <ruthann.parise@va.gov></ruthann.parise@va.gov>	
Sent: Friday, April 9, 2 To: (b)(6)		
Cc: McVicker, Carrie A	@va.gov> A. (b)(6) @va.gov>;(b)(6)	@va.gov>
CC: IVILVILKEL Callie 1	A MANA PINA	wvd.guv
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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. (0)(6)

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

@va.gov

From: (b)(6)

 Sent:
 Fri, 9 Apr 2021 20:18:56 +0000

 To:
 Hogan, Michael R. (OGC)

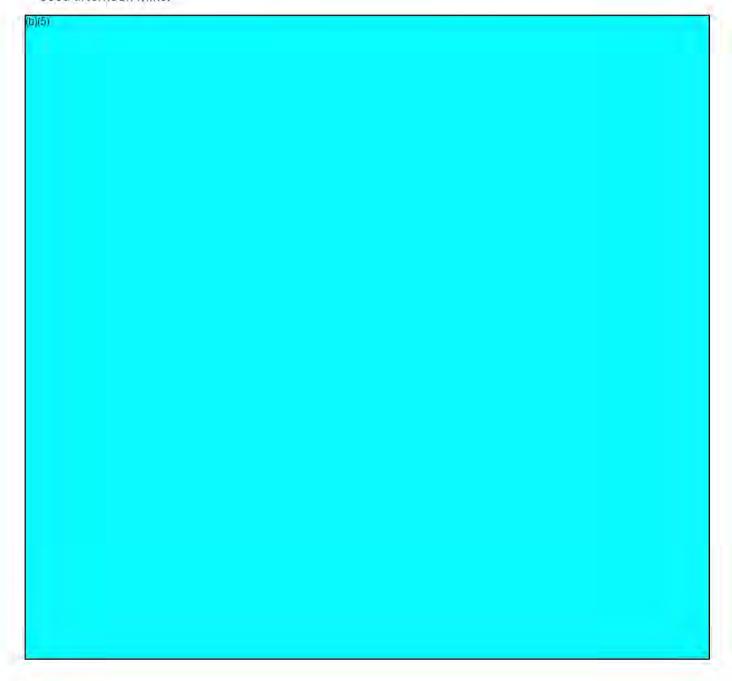
Cc: McVicker, Carrie A.

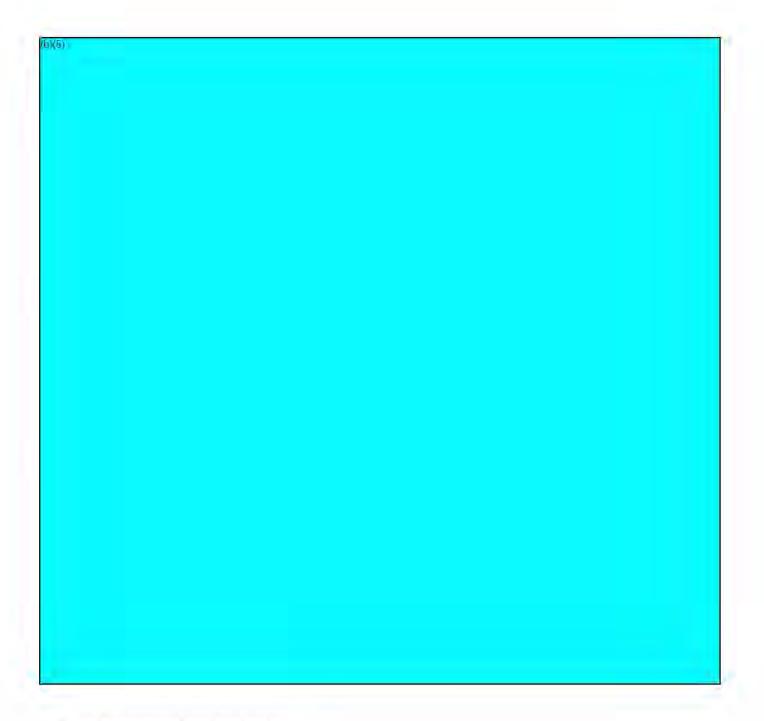
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)

Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf

Importance: High

Good afternoon Mike:





Please let me know if you have any questions.



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

(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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLEN, TESNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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..."

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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." 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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)			
2	Aguirre Law, APC			
Ä	501 W. Broadway, Ste. 800			
3	San Diego, CA 92101 Tel: 619-400-4960			
4	Fax: 619-501-7072			
5	Email: Gary@aguirrelawapc.com			
6	Attorney for Plaintiff Maria A. Pomares			
7				
8	UNITED STATES DISTRICT COURT			
9	SOUTHERN DISTRICT OF CALIFORNIA			
10				
11		Case No.: 21CV84 H MSB		
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY		
13	Plaintiff,	AND INJUNCTIVE RELIEF		
14	V.			
15	UNITED STATES DEPARTMENT OF			
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,			
	Defendant.			
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

6 Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

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4 Id.	
10.	
5 Id	
Ia.	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ Id. ⁹ Id.

trading day at 2:26 p.m. E.T., VES tweeted its own press before the official VA announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

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- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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

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- 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;
- 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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

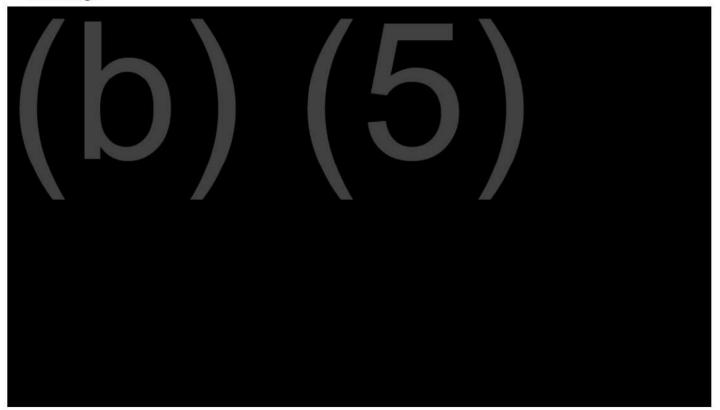
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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

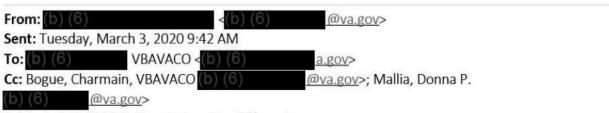


The calls will be set up after the decisions and actions involving the various schools have been publicly announced. Since some of the schools are owned by publicly

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.



Education Service



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!



From: Mallia, Donna P. < 1 @va.gov>

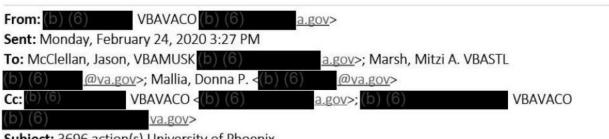
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

To: Subject:	McVicker, Ca RE: Follow-up	arrie A. up for VIEWS 4890714/Grassley	<i>(</i>
Thank you!			
From: McVicker, Car Sent: Friday, April 9, To: Farrisee, Gina S. Subject: FW: Follow	, 2021 4:10 PM	@va.gov> 0va.gov> 890714/Grassley	
Carrie A. McVicker The Executive Secre Office of the Secreta Department of Veter	etary ary	ery good.	
From: Parise, Rutha Sent: Friday, April 9, To:(0)(6) Cc: McVicker, Carrie Subject: RE: Follow- You're welcome(b)(6)	, 2021 4:05 PM 2 va. (b)(6) -up for VIEWS 489	@va.gov> .gov> @va.gov>;(b)(6) 90714/Grassley	@va.gov>
I just did a search by	y requests in FOIA	AXpress and found the followin	ng:
ā)(5)			

Farrisee, Gina S.

Fri, 9 Apr 2021 21:30:44 +0000

From:

Sent:

Respectfully,	
uthann Parise	
OSVA FOIA/Privacy Officer	
Office of the Executive Secretary	
Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)	
uthann.parise@va.gov	
Phone: (202) 461-4866	
Phone: (202) 306-3112	
his 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. § 5	
ttachments, if any, in error, you must inform the FOIA Officer and o	
ent: Friday, April 9, 2021 3:44 PM	
ent: Friday, April 9, 2021 3:44 PM o: Parise, Ruthann < Ruthann.Parise@va.gov>	
ent: Friday, April 9, 2021 3:44 PM	@va.gov>

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

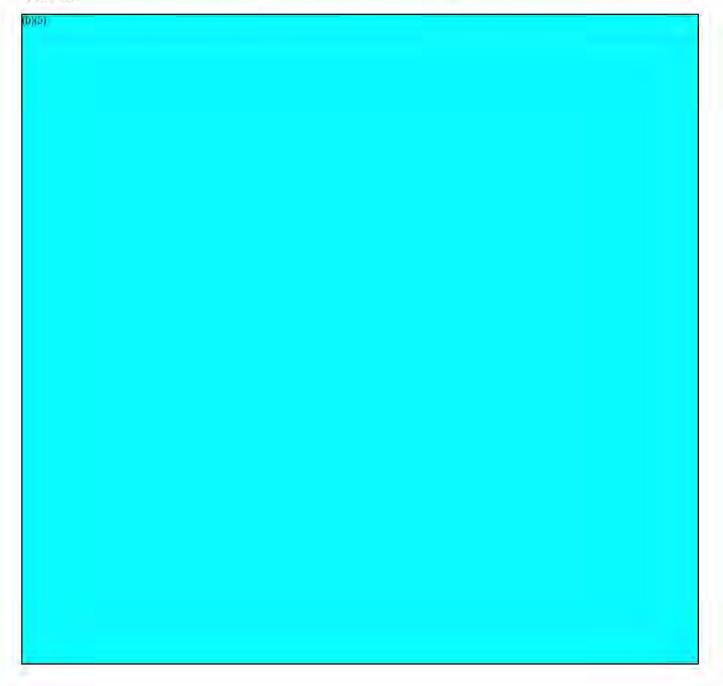
To(b)(6) @va.gov > Cc: McVicker, Carrie A. (b)(6) @va.gov > ; (b)(6) @va.gov > ; (b)(6) @va.gov > ; (c) (d) @va.gov > ; (d)(6) @va.gov > ; (d)

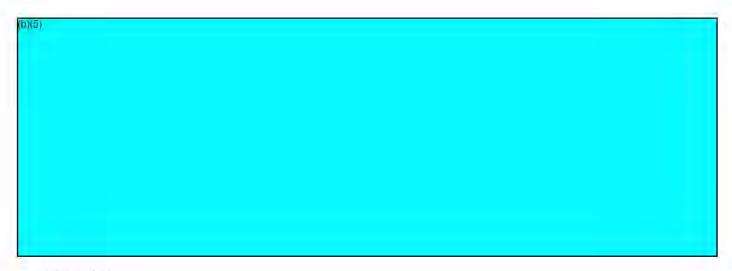
Subject: FW: Follow-up for VIEWS 4890714/Grassley

Importance: High

Hi(p)(g)

I have reviewed the asks that begin on page 4 and find the following regarding ownership of potential 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

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: 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

Get Outlook for iOS

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

Get Outlook for iOS

From: Farrisee, Gina S. (0)(0) @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)

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

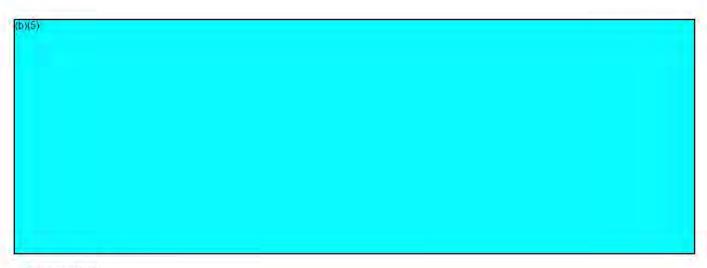
Gina - just for SA - this was Ruthann's read on the questions.

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
(0)(6)
(0)va.gov

Sent: Friday, April 9, 2021 3:25 P		
	@va.gov>	
Cc: McVicker, Carrie A. (b)(6)	@va.gov>(b)(6)	@va.gov>
Subject: FW: Follow-up for VIEW	S 4890714/Grassley	
Importance: High		
Hi ^{(b)(G)}		
I have reviewed the asks that beg records:	gin on page 4 and find the following r	regarding ownership of potential
)(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

Hogan, Michael R. (OGC) From: Sent: Mon, 12 Apr 2021 14:24:52 +0000 To: Cc: 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: @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. @va.gov (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. Get Outlook for iOS From: Sent: Friday, April 9, 2021 4:18:56 PM

@va.gov>

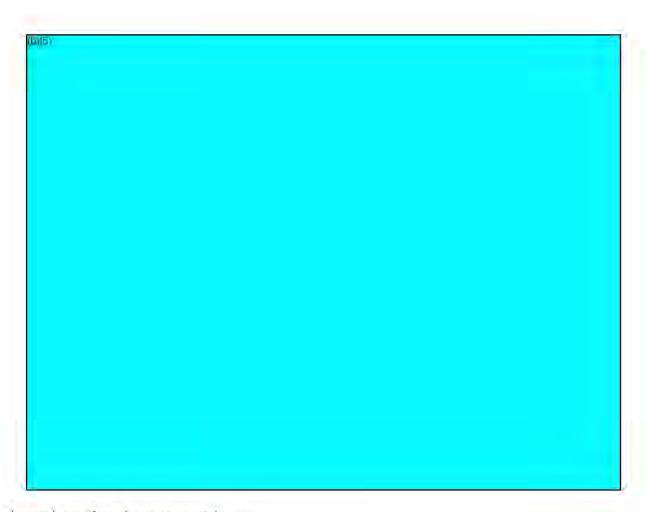
@va.gov>; McVicker, Carrie A.

To: Hogan, Michael R. (OGC) (D)(6)

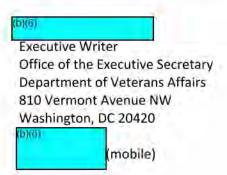
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)

Cc (b)(6)

Dva.gov>



Please let me know if you have any questions.



(b)(6) OGC) From: Sent: Tue, 13 Apr 2021 10:39:33 +0000 OGC Information Law Group Supervisors To: Cc: OGC) (D)(D) OGC) RE: VIEWS CCM - Case #: 04890714 - Due Date: 2021-04-16 17:00:00 - Action Subject: 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) ava.gov> Sent: Monday, April 12, 2021 4:18 PM To: Cromwell, Sonya (OGC) (b)(6) @va.gov> (b)(6) OGC) @va.gov>: OGC Information Law Group Supervisors ava.gov> Ce: (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) < ava.gov> Sent: Monday, April 12, 2021 4:16 PM To (b)(6) OGC) (b)(6) @va.gov>; (b)(6) OGC) ava.gov>: OGC Information Law Group Supervisors (b)(6) ava.gov> (OGC) <(b)(6) ava.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) (a)va.gov>
Sent: Monday, April 12, 2021 4:12 PM
To: Cromwell, Sonva (OGC) (b)(6) @va.gov>:(b)(6) OGC)
(b)(6) @va.gov>; OGC Information Law Group Supervisors
(b)(6) a)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
mornator
should have this assignment.
should have this assignment.
IACO FACO And be districted from a collection of the form of the first second s
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) (ava.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
V-V-V-V-V-V-V-V-V-V-V-V-V-V-V-V-V-V-V-
as questions 5, 6 and 12 pertain to release of information/FOIA, please advise (1)(6)
on the assignment (b)(6) please also create a task for the Ethics Law Group.
Thanks,
Sonya
Sonya
Sonya Marie Cromwell
Chief Counsel
OGC Information and Administrative Law Group (IALG)
OGC Information and Administrative Law Group (IALG)
Description and a C. V. Annual A. C. Co.
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

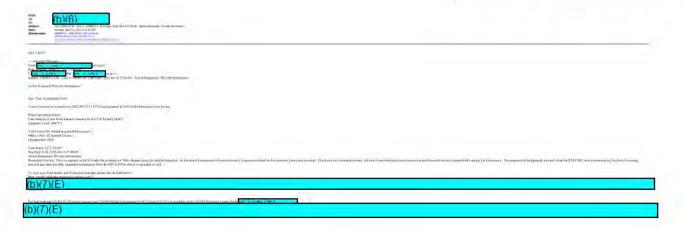
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Original Message	
From (b)(6) (OGC)(b)(6)	@va.gov>
Sent: Monday, April 12, 2021 2:23 PM	
To: OGC Information Law Group Supervisors (b)(6)	
Cc: (b)(6) (OGC) (b)(6) @va.gov	
	Due Date: 2021-04-16 17:00:00 - Action Requested - Provide
Information	
GCL 154271	
Original Message	
	ra.gov>
Sent: Monday, April 12, 2021 2:08 PM	70-7
To: (b)(6) (OGC) (b)(6)	@va.gov>
	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 SEC	VA Primary MOC
Signature Level: SECVA	VA Fillinary MOC.
Signature Level. SEC VA	
Task Created By:(b)(6) @va.gov	
Office: OGC-02 General Counsel	
Organization: OGC	
Organization. OGC	
Task Name: LCT-281627	
Due Date is on: 2021-04-16 17:00:00	
Action Requested: Provide Information	
	ler the guidance of Mike Hogan, using the attached template, to
	ons, found in the incoming letter (also attached). The places in the
	tances where Senator Grassley is specifically asking for a
	from the EXECSEC writer summarizing the plan for moving
forward and other possibly important information f	
4	
To view case Task details and to provide response,	please use the link below:
https://b)(7)(E)	
(b)(7)(E)	
Thank you!	

on the VIEWS Resou	EWS CCM, please contact your VIEWS Office Coordinator (Views Center	OC). A list of VOC's is available
(https://(b)(7)(E)		
(b)(7)(E)		

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RICHARD J. DURBIN, ILLINOIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
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AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
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MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
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JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

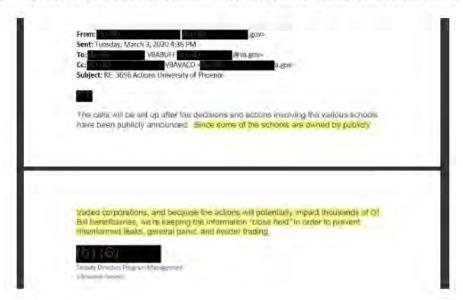
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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).

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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)		
2	Aguirre Law, APC 501 W. Broadway, Ste. 800		
Ä			
3	San Diego, CA 92101 Tel: 619-400-4960		
4	Fax: 619-501-7072		
5	Email: Gary@aguirrelawapc.com		
6	Attorney for Plaintiff Maria A. Pomares		
7			
8	UNITED STATES DISTRICT COURT		
9	SOUTHERN DISTRICT OF CALIFORNIA		
10			
11		Case No.: 21CV84 H MSB	
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY	
13	Plaintiff,	AND INJUNCTIVE RELIEF	
14	V.		
15	UNITED STATES DEPARTMENT OF		
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,		
	Defendant.		
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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27 28 panic, their losses had already been realized, and for the professional traders, who may have received those tips, their profits had already been banked.

- Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.3 The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, making

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

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ *Id*. ⁵ *Id*.

⁶ *Id*.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ *Id*. ⁹ *Id*.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

intent to stop new #GIBill enrollments at the University



11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

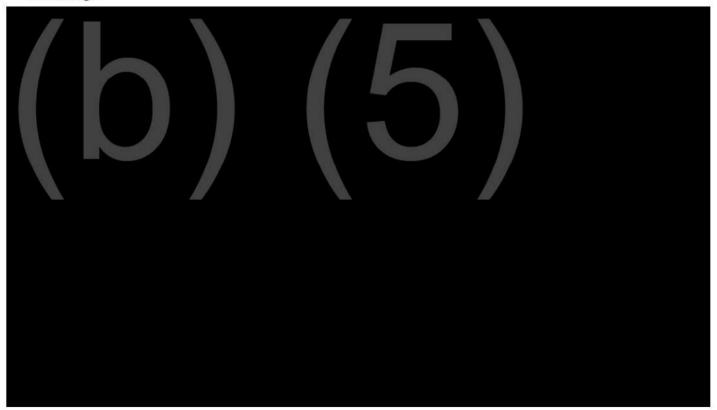
From: (b) (6) VBABUFF

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-

From: (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

Subject. RE. 3090 Actions Offiversity of Priceri



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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. (6) @va.gov>

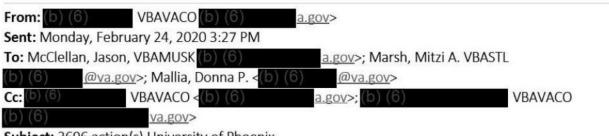
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(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 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 From: (b)(6)

Sent: Fri, 9 Apr 2021 20:18:56 +0000 **To:** Hogan, Michael R. (OGC)

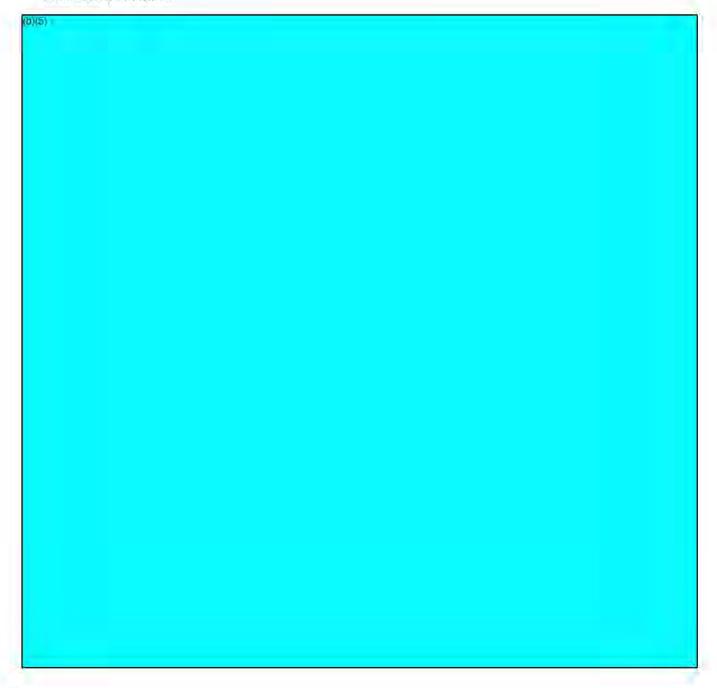
Cc: McVicker, Carrie A.

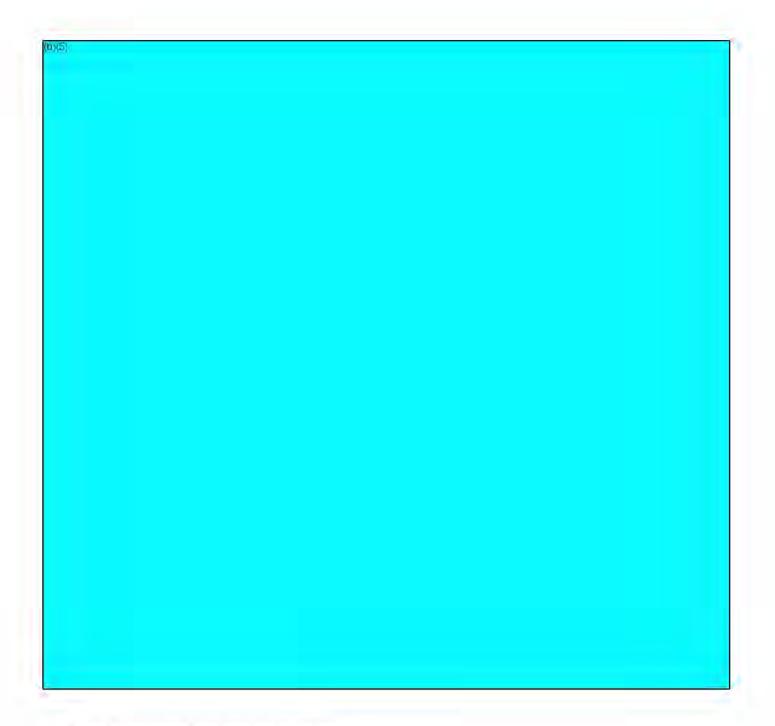
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)

Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf

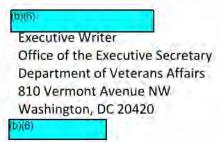
Importance: High

Good afternoon Mike:





Please let me know if you have any questions.





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, ILLINDIS, EHAIR

PATRICK J. LEAHY, VERMONT
DIANNE FENSTEIN, CALIFORNIA
SHELDON WHITH COURSE, HINDE ISLAMI
AMY KLOBUCHAR, MINNESDOTA
CHIESTOPHER A. COOMS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CONY A. BOCKER, NEW JERSEY
ALEX ADDILLA, CALIFORNIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

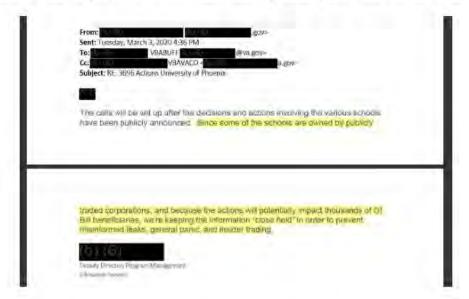
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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).

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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
4	Tel: 619-400-4960	
	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	CICT OF CALIFORNIA
10		
11		Case No.: '21CV84 H MSB
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF
13	Plaintiff,	
14	v.	
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
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17	Defendant.	
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ *Id*. ⁵ *Id*.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ Id. ⁹ Id.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

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- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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

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- 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;
- 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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

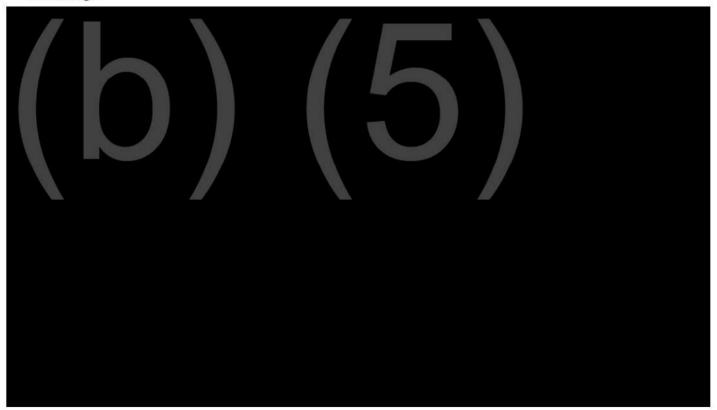
Cc: (b) (6)

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)

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.





Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



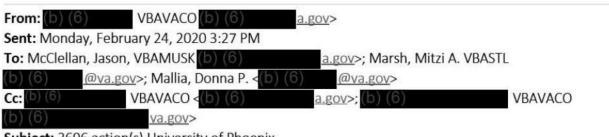
From: Mallia, Donna P. < (6) (6) @va.gov>
Sent: Monday, March 2, 2020 3:48 PM

To:(b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICKUL LEAHY, VERMONT
DIANNE FENSTEIN, CALIFORNIA
BHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHIESTOPHER A. COONS, DELAWARE
RICHAFD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CONY A BOCKER, NEW JERSEY
ALEX ADDILLA, CALIFORNIA
JON OSSOFF, GEORGIA

CHARLES E GRABSLEY, KOWA
LINDBEY O, GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S LEE, LITAH
TED CITUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA S, HAWLEY, MISSOURI
TOM COTTON, ARIKANSAG
JOHN FERNIODY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACEBURN TERNISSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

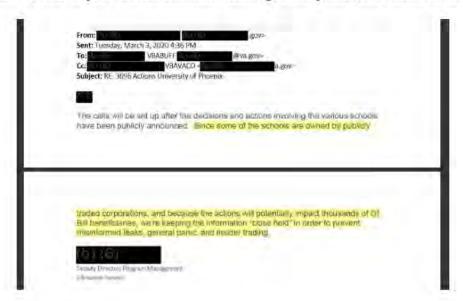
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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?

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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?

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^{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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)		
2	Aguirre Law, APC		
Ä	501 W. Broadway, Ste. 800		
3	San Diego, CA 92101 Tel: 619-400-4960		
4	Fax: 619-501-7072		
5	Email: Gary@aguirrelawapc.com		
6	Attorney for Plaintiff Maria A. Pomares		
7			
8	UNITED STATES	S DISTRICT COURT	
9	SOUTHERN DISTR	RICT OF CALIFORNIA	
10			
11		Case No.: 21CV84 H MSB	
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY	
13	Plaintiff,	AND INJUNCTIVE RELIEF	
14	V.		
15	UNITED STATES DEPARTMENT OF		
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,		
	Defendant.		
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

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those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."4

- VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."5
- Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- The VES letter also pressed the VA to accept as its own all veterans' 12. purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ <i>Id</i> .	
⁵ <i>Id</i> .	
⁶ <i>Id</i> .	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

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11:26 AM - Mar 9, 2020 - Twitter Web App.

- The VA's selective release of nonpublic information during the trading day 17. 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
- The chart below shows the fall of CEC stock from January 21 to March 18, 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:

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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-totheir-old-tricks/, last visited Jan. 15, 2021.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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

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- 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;
- 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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

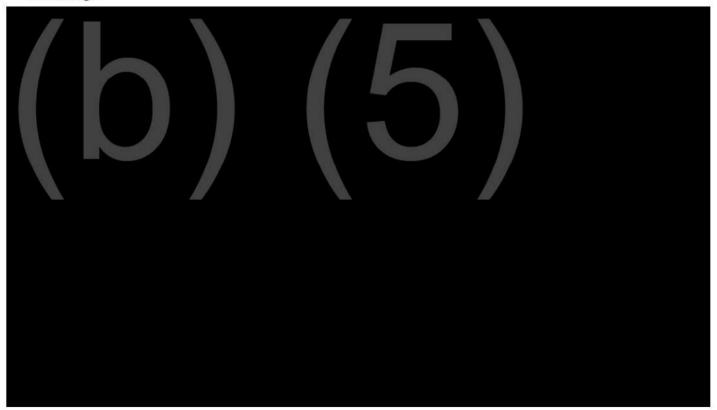
Cc: (b) (6) Mallia, Donna P.

Subject: RE: 3696 Actions University of Phoenix

Date: Wednesday, March 4, 2020 8:19:39 AM

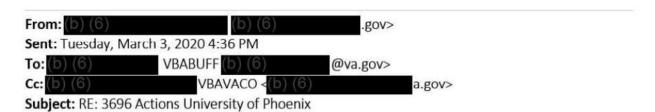
Good Morning (b) (6)

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)

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.





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!



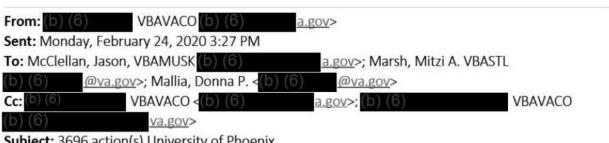
From: Mallia, Donna P. < 6 @va.gov> Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(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 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 From: (b)(6)

Sent: Fri, 9 Apr 2021 20:18:56 +0000
To: Hogan, Michael R. (OGC)

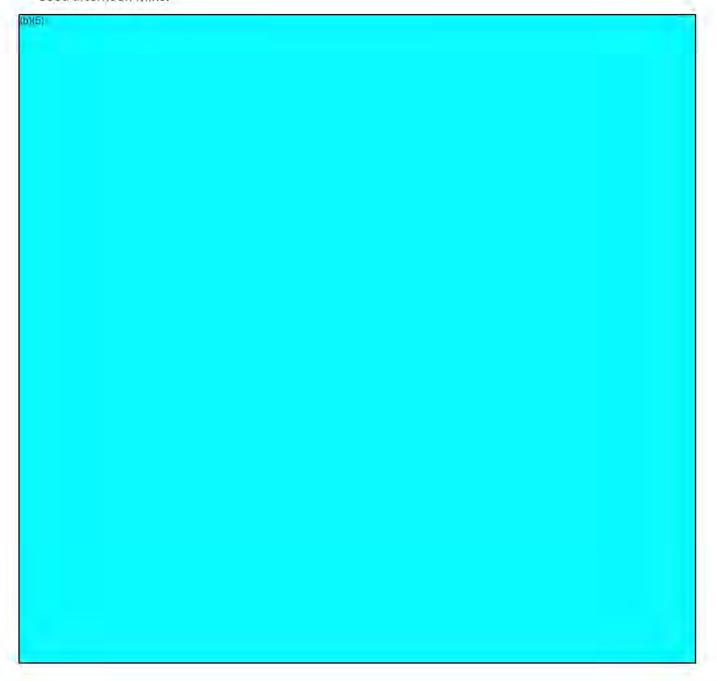
Cc: McVicker, Carrie A.

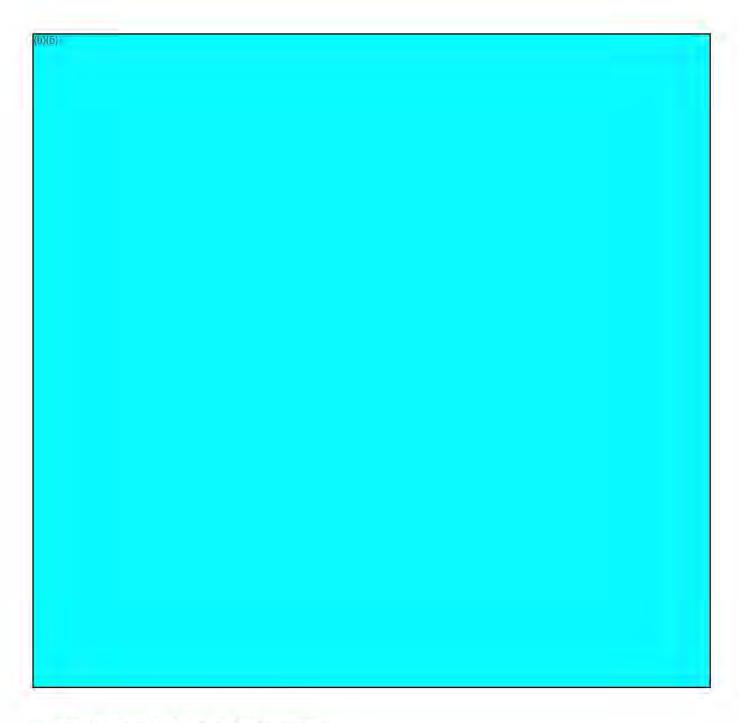
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)

Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf

Importance: High

Good afternoon Mike:





Please let me know if you have any questions.



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

(p)(p)



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?

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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?

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VA Response:

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

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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.

VA Response:

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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?

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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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
BIELLON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BEN SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BENNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLORBIEN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

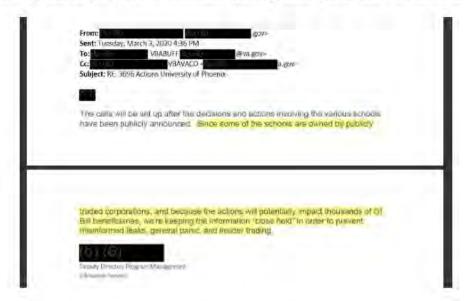
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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. 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..."

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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." 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).

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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)		
2	Aguirre Law, APC		
3	501 W. Broadway, Ste. 800 San Diego, CA 92101		
4	Tel: 619-400-4960		
	Fax: 619-501-7072		
5	Email: Gary@aguirrelawapc.com		
6	Attorney for Plaintiff Maria A. Pomares		
7			
8	UNITED STATES DISTRICT COURT		
9	SOUTHERN DISTRICT OF CALIFORNIA		
10			
11		Case No.: <u>'21CV84 H MSB</u>	
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY	
13	Plaintiff,	AND INJUNCTIVE RELIEF	
14	v.		
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,		
16	Defendant.		
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

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those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."4

- VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."5
- Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- The VES letter also pressed the VA to accept as its own all veterans' 12. purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ <i>Id</i> .	
⁵ Id.	
⁶ <i>Id</i> .	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

sale.

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

intent to stop new #GIBill enrollments at the University



11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

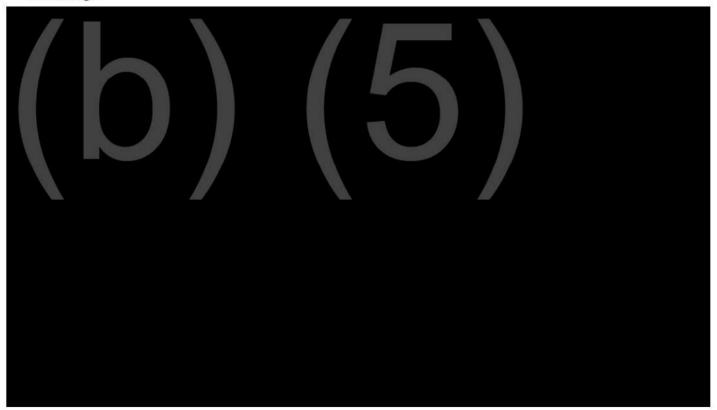
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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



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.



Education Service



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!



From: Mallia, Donna P. < 6 @va.gov>

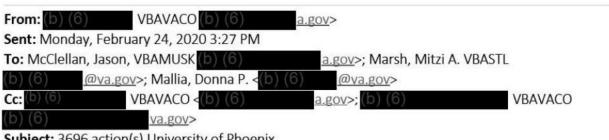
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(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. (10)(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,



Get Outlook for iOS

From: Fri, 16 Apr 2021 16:20:44 +0000 Sent: To: Subject: CLOSE HOLD LETTER/VIEWS 4890714 04890714 - 2021-04-02 CEG to VA.pdf Attachments: 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. [1](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) Let me know if you have any questions. (b)(6)

(b)(6)

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICKUL LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
BHELDON WHITEHOUSE, RHODE INLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CORY A BOOKER, NEW JERSEY
ALEX ADDILLA, CALIFORNIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E GRABSLEY, KOWA
LINDBEY O, GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S LEE, LITAH
TED CITUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA S, HAWLEY, MISSOURI
TOM COTTON, ARIKANSAG
JOHN FERNIODY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACEBURN TERNISSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

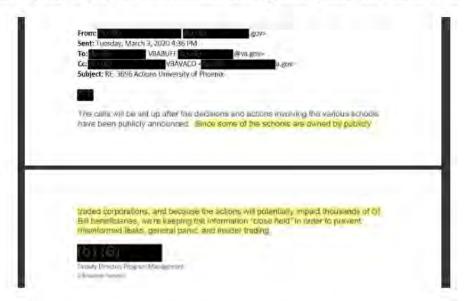
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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. 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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
	Tel: 619-400-4960	
4	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	CICT OF CALIFORNIA
10		
100		Case No.: 21CV84 H MSB
11		
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY
13	Plaintiff,	AND INJUNCTIVE RELIEF
14	v.	
15	UNITED STATES DEPARTMENT OF	
16	VETERANS AFFAIRS,	
	Defendant.	
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, making

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ *Id*. ⁵ *Id*.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ Id. ⁹ Id.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

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11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

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

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

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. The letter also informed Plaintiff of her right to appeal the

OIG's letter is attached hereto and incorporated by reference as Exhibit 14.

determination to the OIG's Office of Counselor. A true and correct copy of the VA

determination. A true and correct copy of Plaintiff's appeal is attached hereto and

was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests

PRAYER FOR RELIEF

for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

WHEREFORE, Plaintiff respectfully requests the Court:

U.S. District Court. A true and correct copy of the OIG's appeal denial is attached

On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's

On December 28, 2020, the VA OIG denied the appeal finding the response

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

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

Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to

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45.

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paragraphs 25 and 39 above;

incorporated by reference as Exhibit 15.

hereto and incorporated by reference as Exhibit 16.

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

A. Declare that Defendant VA has violated the FOIA by failing to satisfy

Plaintiff's November 9 and November 13, 2020, requests for records as specified in

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

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D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

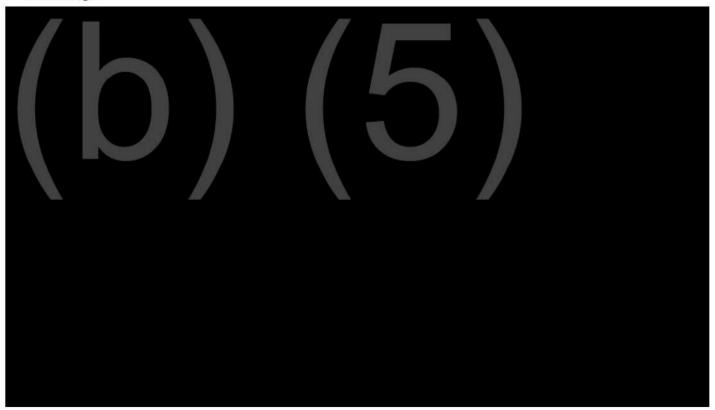
Cc: (b) (6) Mallia, Donna P.

Subject: RE: 3696 Actions University of Phoenix

Date: Wednesday, March 4, 2020 8:19:39 AM

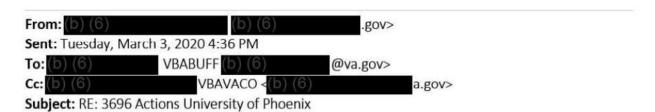
Good Morning (b) (6)

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-

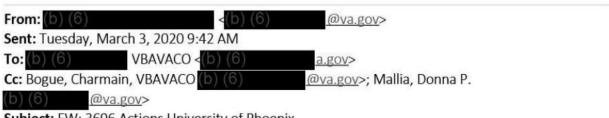


(b) (6)

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.





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!



From: Mallia, Donna P. < 6 @va.gov>

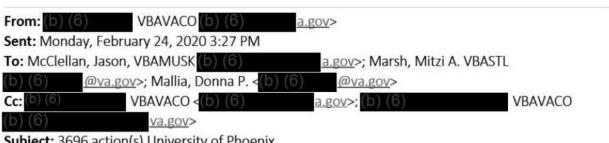
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(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.

 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: (202) 495-5601 | Email: (106) (106) (107) (

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.

This e-mail (including any attachments) may contain information that is private, confidential, or protected by law. If you received this e-mail in error, you are notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy the e-mail and any attachments.



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?

@va.gov>	
a.gov> (b)(6)	@va.gov>;

Subject: RE: Regarding 4890714/Grassley



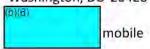
0)(5)	l dial-in. ⁽⁶⁾⁽⁵⁾ (b)(6)	
Гhank you,		
Hansel		
	ting Assistant Secretary for Accountal tment of Veterans Affairs	oility and Whistleblower
Tel: (b)(6) Fa	ax: (202) 495-5601 Email: ^{(b)(6)}	@va.gov Address:
810 Vermont Avenue, N	W, Mail Stop 70, Washington, DC 20	420
	complete the optional form found at	
	countability Contact us toll-free at: (855) 429-6669 Contact us
by email at <u>OAWP@va.</u> ;	gov.	
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(including any reliance)	thereon) is strictly prohibited. If you l	nave received this a mail in
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Thanks in advance for your help.

Best regards,



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



Sent: Fri, 16 Apr 2021 18:40:57 +0000 To: RE: CLOSE HOLD LETTER/VIEWS 4890714 Subject: We From: (b)(6) ₽va.gov> Sent: Friday, April 16, 2021 1:15 PM @va.gov> Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714 'm consulting now. give me an hour to get a response $\Box\Box$ (b)(6) VA/OALC (003) Office of Acquisition, Logistics, and Construction "We will ACT!" Accountability • Customer Service • Transformation VIEWS Information (b)(7)(E) VIEWS HELPDESK Requests: Choose V From:(b)(6) @va.gov> Sent: Friday, April 16, 2021 12:21 PM @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)

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)

Let me know if you have any questions.

Office of the Executive Secretary (VACO) - Calendar From: Fri, 16 Apr 2021 19:24:54 +0000 Sent: To: Office of the Executive Secretary (VACO) - Calendar; Hogan, Michael R. (OGC); (OGC);Cordeiro, Hansel (OAWP);Parise, Ruthann (b)(6) Terrell, Brandye, VBAVACO; Johnson-Clark, Carrie; (b)(6) Christy, Phillip (SES) Cc: McVicker, Carrie A. (OGC)(b)(6) (OGC)(b)(6) arrisee, Gina S. Subject: Collab Call #2 for VIEWS 4890714/GRASSELY (CLOSE HOLD) Attachments: 04890714 - 2021-04-02 CEG to VA.pdf Just in case you were not included on this invite. ----Original Appointment----From: Office of the Executive Secretary (VACO) - Calendar @va.gov> Sent: Friday, April 16, 2021 3:25 PM To: Office of the Executive Secretary (VACO) - Calendar; Hogan, Michael R. (OGC) 1006 (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.

Than 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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
BIELLON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

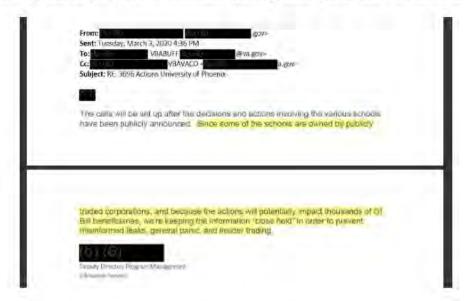
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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. 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..."

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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." 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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)						
2	Aguirre Law, APC						
Ä	501 W. Broadway, Ste. 800						
3	San Diego, CA 92101 Tel: 619-400-4960						
4	Fax: 619-501-7072 Email: Gary@aguirrelawapc.com Attorney for Plaintiff Maria A. Pomares						
5							
6							
7							
8	UNITED STATES	S DISTRICT COURT					
9	SOUTHERN DISTR	RICT OF CALIFORNIA					
10							
11		Case No.: 21CV84 H MSB					
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF					
13	Plaintiff,						
14	V.						
15	UNITED STATES DEPARTMENT OF						
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,						
	Defendant.						
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

³ Letter from Aniela Szymanski, VES Sr. Dir. for Legal Affairs & Military Policy to VA Exec. Dir. Charmain Bogue, Veterans Benefits Administration (Jan 21, 2020),

https://vetsedsuccess.org/letter-to-va-regarding-gi-bill-feedback-tool-and-38-usc-3696-compliance/, last visited Jan. 15, 2021.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior." 5
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ <i>Id</i> .	
⁵ <i>Id</i> .	
⁶ <i>Id</i> .	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ *Id*. ⁹ *Id*.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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> ¹¹ The Securities and Exchange Commission provides this concise description of a short sale:

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

intent to stop new #GIBill enrollments at the University



11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

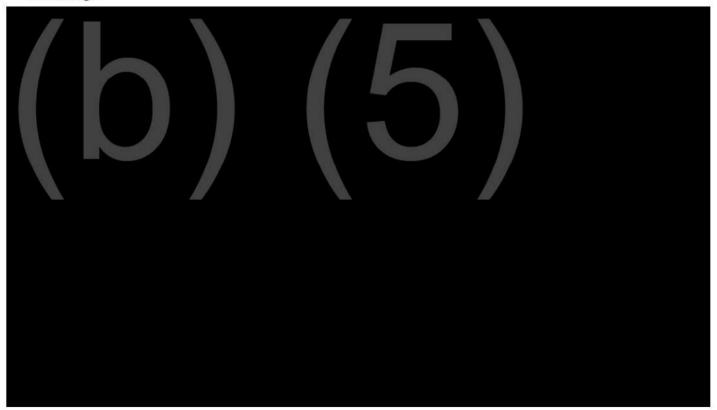
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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



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.



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.

@va.gov>

Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. < (6) (6) @va.gov>

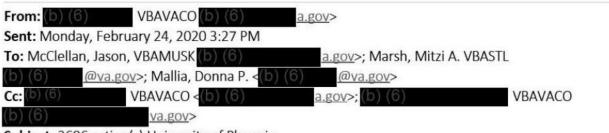
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability From: (b)(6)

Sent: Fri, 16 Apr 2021 19:29:51 +0000

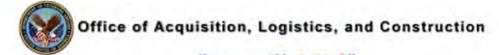
To: (b)(6

Cc: Christy, Phillip (SES)

Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

But i'm happy to facilitate any follow-on actions, if needed. v/r a.

(b)(6) VA/OALC (003) (b)(6)





VIEWS Information: (b)(7)(E)
VIEWS HELPDESK Requests (b)(7)(E)



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)

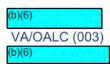
Do you want to be on the call too?

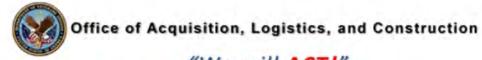
From (b)(6) @va.gov>
Sent: Friday, April 16, 2021 3:15 PM
To (b)(6) @va.gov>
Cc: Christy, Phillip (SES) (b)(6) @va.gov>
Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

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.







VIEWS Information: (b)(7)(E)
VIEWS HELPDESK Requests (b)(7)(E)



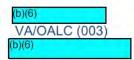
From: (b)(6)

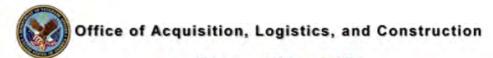
Sent: Friday, April 16, 2021 1:15 PM

To: (b)(6) @va.gov>

Subject: RE: CLOSE HOLD LETTER/VIEWS 4890714

(b)(6)
'm consulting now. give me an hour to get a response 🥥







VIEWS Information: (b)(7)(E)



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
(Direct)

<u>Whistleblower Protections</u>: 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; Ho	ogan, Michael R. (OGC)(b)(6)	
(OGC); (D)(G) (OGC); Cordeiro, Hansel (OAWP); P	arise, Ruthann; (b)(6)	Terrell,
Brandye, VBAVACO; Johnson-Clark, Carrie; (b)(6)	Christy, Phillip (SI	ES)
Cc: McVicker, Carrie A.; (b)(6)		
Subject: Collab Call #2 for VIEWS 4890714/GRASSELY (CLO	SE 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.

Than 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, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
BIELLON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLEN, TESNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

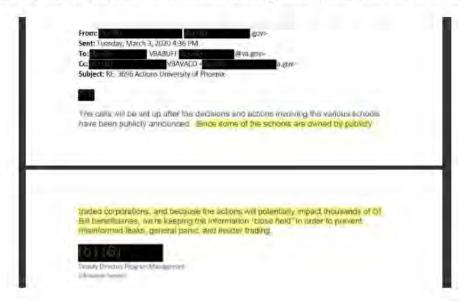
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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).

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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)		
2	Aguirre Law, APC		
3	501 W. Broadway, Ste. 800 San Diego, CA 92101		
4	Tel: 619-400-4960		
	Fax: 619-501-7072		
5	Email: Gary@aguirrelawapc.com		
6	Attorney for Plaintiff Maria A. Pomares		
7			
8	UNITED STATES	S DISTRICT COURT	
9	SOUTHERN DISTR	CICT OF CALIFORNIA	
10			
11		Case No.: '21CV84 H MSB	
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY	
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF	
13	Plaintiff,		
14	v.		
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,		
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17	Defendant.		
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

⁴ *Id*. ⁵ *Id*.

28 6 Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior." 5
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

10 Id.

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

⁸ *Id*. ⁹ *Id*.

announcement. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12 111 111

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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https://vetsedsuccess.org/press-release-veterans-education-success-praises-decision-bythe-department-of-veterans-affairs-to-suspend-new-gi-bill-students-from-enrolling-at-theuniversity-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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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

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- 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:

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

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

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

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

- On November 13, 2020, Plaintiff's counsel was contacted by a different 28. FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

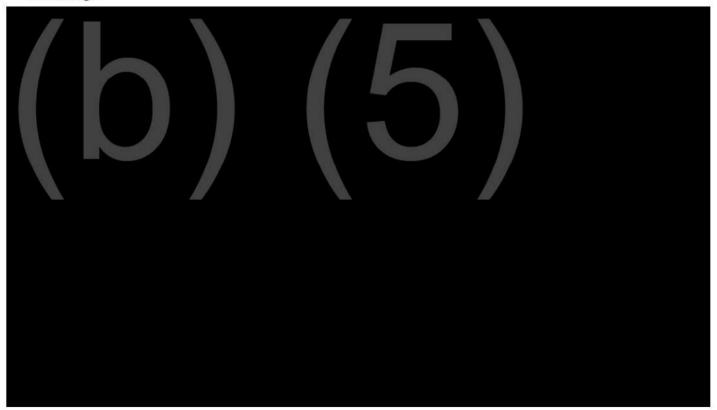
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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



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.



Education Service



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!



From: Mallia, Donna P. < 6 @va.gov>

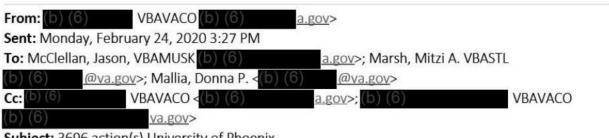
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

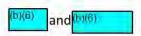
(b) (6)

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



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.



Director, Congressional Liaison Service and Outreach Team Office of Congressional and Legislative Affairs

(b)(6)

Original Appo		ion .	
From: Office of th	e Executive Secretary (VACO) - Calendar (D)	@va.gov>	
Sent: Friday, April	16, 2021 3:25 PM		
To: Office of the E	xecutive Secretary (VACO) - Calendar; Hog	an, Michael R. (OGC) (10)(6)	
(OGC) (b)(6)	(OGC); Cordeiro, Hansel (OAWP); Pari	ise, Ruthann;(b)(6)	Terrell,
Brandye, VBAVAC	O; Johnson-Clark, Carrie; (b)(6)	Christy, Phillip (SES)
Cc: McVicker, Car	rie 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.

Than 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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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..."

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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." 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).

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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)		
2	Aguirre Law, APC		
3	501 W. Broadway, Ste. 800 San Diego, CA 92101		
4	Tel: 619-400-4960		
	Fax: 619-501-7072		
5	Email: Gary@aguirrelawapc.com		
6	Attorney for Plaintiff Maria A. Pomares		
7			
8	UNITED STATES	S DISTRICT COURT	
9	SOUTHERN DISTR	CICT OF CALIFORNIA	
10			
11		Case No.: '21CV84 H MSB	
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY	
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF	
13	Plaintiff,		
14	v.		
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,		
16			
17	Defendant.		
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

Id. 5 *Id*.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ Id. ⁹ Id.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

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11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

 under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

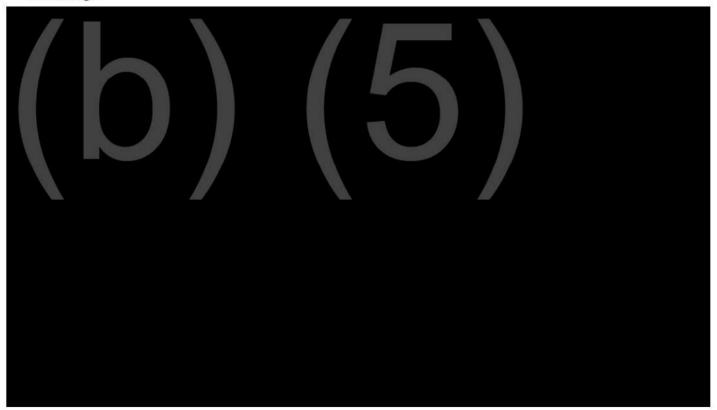
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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



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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. < (6) (6) @va.gov>

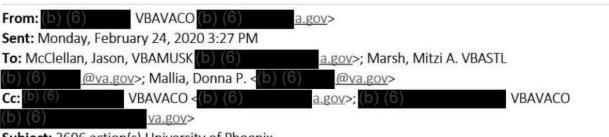
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

Thu, 22 Apr 2021 20:46:11 +0000 Sent: Hogan, Michael R. (OGC); Christy, Phillip (SES) To: Cc: RE: VIEWS 04890714 - Grassley question Subject: 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 From: Hogan, Michael R. (OGC)(0)(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: Mike MICHAEL R. HOGAN

Billups, Angela

From:

Deputy General Counsel, General Law Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
Direct)

<u>Whistleblower Protections</u>: 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) (b)(6) (b)(a.gov)

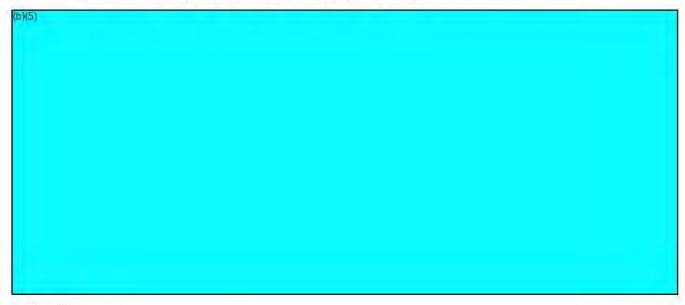
Sent: Thursday, April 22, 2021 3:49 PM

To: Christy, Phillip (SES) (b)(6) (b)(6) (d) (d) (d) (d) (d) (d)

Subject: RE: VIEWS 04890714 - Grassley question

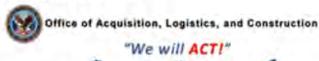
Hello, while I would like to assist, I am not an SME in this area. I also need to get a good summary of the ask related to OGC interpretation of the question from Senator Grassley.

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?



Regards,
Angela Billups, Ph.D.
Executive Director
Office of Acquisition and Logistics

Veterans Affairs 810 Vermont Avenue, NW Washington, DC 20420



hility . Customer Service . Trans

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

Subject: FW: VIEWS 04890714 - Grassley question

Importance: High

Hi Sir,

Please see the below question 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 to OAL, or back to OGC?

Thanks for any insight you can provide.

V/r, (b)(6)	
Senior Correspondenc	o Analyst
	Acquisition and Logistics
Front Office Operations	
Department of Veteran	
810 Vermont Avenue, N	
Room 727R	
Washington, DC 20420	<u>) </u>
Office: (b)(6)	
Mobile	
Email:(b)(6)	va.gov
A 01	
Choose Ch	VA
VA Core Values: Integrity Comm	itment Advocacy Respect Excellence
VA Core Characteristics: Trustwo	orthy Accessible Quality Innovative Agile Integrated
only for the use of the address intended recipient of this email attachments thereto, is strictly	rking Draft, Pre-Decisional, Deliberative Document: This email and any attachments are intended ee(s) named herein and may contain privileged and/or confidential information. If you are not the l, you are hereby notified that any dissemination, distribution or copying of this email, and any prohibited. If you have received this email in error, please notify me via return email or telephone at ntly delete the original and any copy of any email and any printout thereof.
From:(b)(6)	@va.gov>
Sent: Thursday, April 22,	
To (b)(6)	②va.gov>
Subject: VIEWS 0489071	
THE RESERVE OF THE PROPERTY OF THE PARTY OF	.4 - Grassley question
Importance: High	
Hi ^{(b)(6)}	
in the same and	
	to the bottom of the email and advise if OPAL would be the one to provide the
answer. Per((D)(D) in EXE	CSEC, she just needs an OALC SME to answer the question, and (b)(5)
14-7	Also, per (b)(6) this is a confidential matter and please limit access to the
information about the it	em 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 qu	estion

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. @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, ova.gov> Sent: Thursday, April 22, 2021 1:14 PM To:(b)(6) @va.gov> Subject: FW: Grassley question Importance: High Hi 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. If you can get it t me today, that would be outstanding. 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

Executive Writer Office of the Executive Secretary Department of Veterans Affairs

810 Vermont Avenue NW

From:	(b)(6)	
Sent:	Thu, 22 Apr 2021 21:20:04 +0000	
To:	Hogan, Michael R. (OGC)	
Cc:	McVicker, Carrie A. (a)(6)	
Subject:	RE: comments from COS on draft Grassley	
Attachments:	4890714 ROUGH DRAFT of Enclosure_ v.2.0	04222021.docx
Importance:	High	
	recent version of he rough draft is attached – it is	
outstanding.	ase note that because of the updated response to	o questions, question sa is still
From: Hogan, Mich		
	ril 22, 2021 4:30 PM	
To:(b)(6)	@va.gov>	A COLUMN TO THE PARTY OF THE PA
Cc: McVicker, Carri	C A.	@va.gov>
Subject: RE: comm	ents from COS on draft Grassley	
Pls send the rough From: (b)(6) Sent: Thursday, Ap	@va.gov>	
To: Hogan, Michae		
Cc: McVicker, Carri	No. of the contract of the con	@va.gov>
	nents from COS on draft Grassley	
HI Mike,		
9.77		
Below please find I	pelow questions from COSVA after reviewing the	rough draft of the VA responses to
	ns. You will see that all of these questions pertain	
OGC. They are as	follows:	
b)(5)		
Please respond by	Noon tomorrow.	

(b)(6)

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
(Direct)

<u>Whistleblower Protections</u>: 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) @va.gov>

Sent: Friday, April 23, 2021 5:02 AM

To: Hogan, Michael R. (OGC)(b)(6) Pva.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

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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 @va.gov> To: Fleck, Robert R. (OGC) (b)(6) 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) ova.gov> Cc: Hogan, Michael R. (OGC) (b)(6) Subject: FW: VIEWS 04890714 - Grassley question Importance: High Angela—this has boomeranged back to us (see below)... 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 @va.gov From: @va.gov> Sent: Thursday, April 22, 2021 2:00 PM To: Christy, Phillip (SES) (b)(6) Cc: (b)(6) Dva.gov> Subject: FW: VIEWS 04890714 - Grassley question

Importance: High

Hi Sir,

Please see the below question 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 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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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

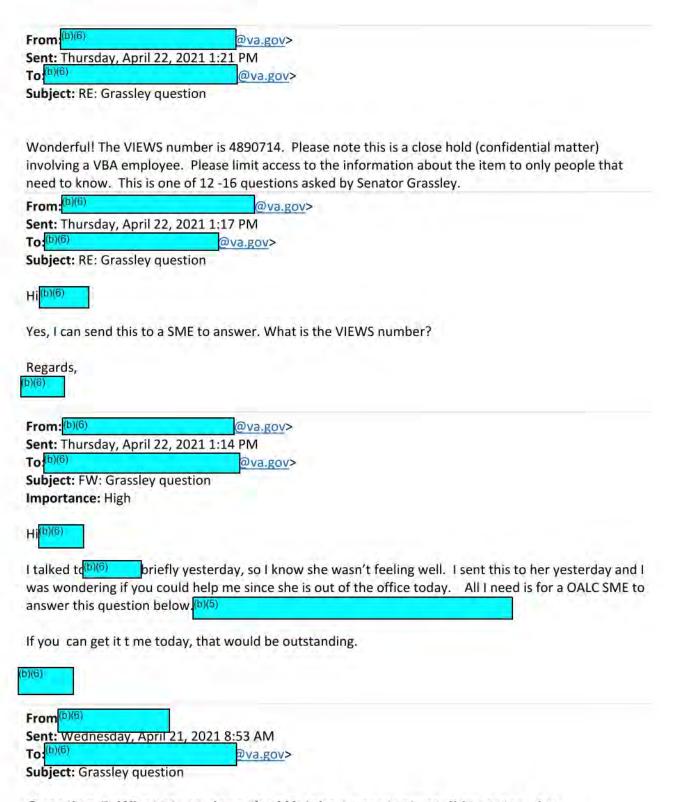
Importance: High

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)

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)



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)(B)

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) @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)

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 referce 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



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 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 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)

Qva.gov



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VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

Yes, I can send this to a SME to answer. What is the VIEWS number?

Regards,

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rom: ^{(b)(6)}	@va.gov>
ent: Thursday, April	22, 2021 1:33 PM
o:(b)(6)	@va,gov>
ubject: VIEWS 04890	0714 - Grassley question
mportance: High	
4j (b)(6)	
	oll to the bottom of the email and advise if OPAL would be the one to provide the
nswer. Per (b)(6) in E	EXECSEC, she just needs an OALC SME to answer the question, and (b)(5)
)(5)	Also, per ^{(b)(6)} this is a confidential matter and please limit access to th
nformation about the	e item to only people that need to know. Thanks as always!
rom:(b)(6)	@va.gov>
ent: Thursday, April : o: (b)(6)	VALUE CONTRACTOR CONTR
	@va.gov>
ubject: RE: Grassley	question
Vonderful! The VIEW	/S number is 4890714. Please note this is a close hold (confidential matter)
nvolving a VBA emplo	oyee. Please limit access to the information about the item to only people that sone of 12 -16 questions asked by Senator Grassley.
rom: (b)(6)	⊕va.gov>
ent: Thursday, April	22, 2021 1:17 PM
o: ^{(b)(6)}	@va.gov>
The same of the sa	

From:(b)(6)	@va.gov>
Sent: Thursday, April	, 2021 1:14 PM
To: ^{(b)(6)}	@va.gov>
Subject: FW: Grassley	Jestion
Importance: High	
Hi (b)(6)	
I talked to (b)(6) br	ly yesterday, so I know she wasn't feeling well. I sent this to her yesterday and
was wondering if you	uld help me since she is out of the office today. All I need is for a OALC SME t
answer this question	low. (b)(5)
If you can get it t me	day, that would be outstanding.
n you con get it time	ady, that would be odistanding.
b)(6)	
From: (b)(8)	
Sent: Wednesday, Ap	21, 2021 8:53 AM
To: (b)(6)	@va.gov>
Subject: Grassley que	on

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



Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

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

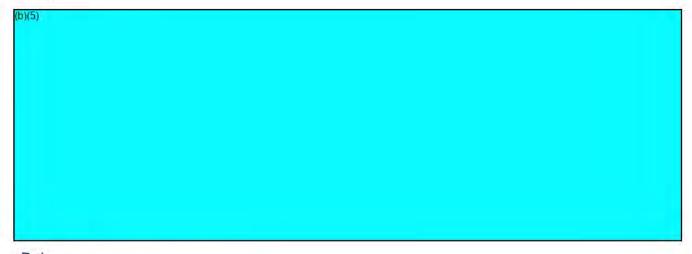
From: Fleck, Robert R. (OGC) @va.gov>

Sent: Friday, April 16, 2021 5:55 AM

To: Hogan, Michael R. (OGC); Hughes, Michael D. (OGC)

Subject: RE: Question

Mike,



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) @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
(Direct)

<u>Whistleblower Protections</u>: 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: Farrisee, Gina S.

Subject: FW: comments from COS on draft Grassley

Attachments: 4890714 ROUGH DRAFT of Enclosure_v.2.0 04222021 (002) - OGC edits.docx

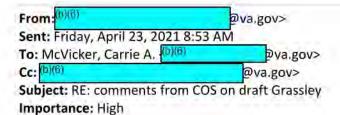
Importance: High

Gina - as discussed.

V/R

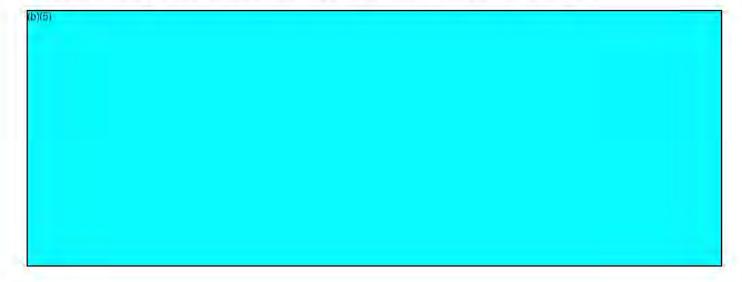
Carrie A. McVicker
The Executive Secretary
Office of the Secretary
Department of Veterans Affairs

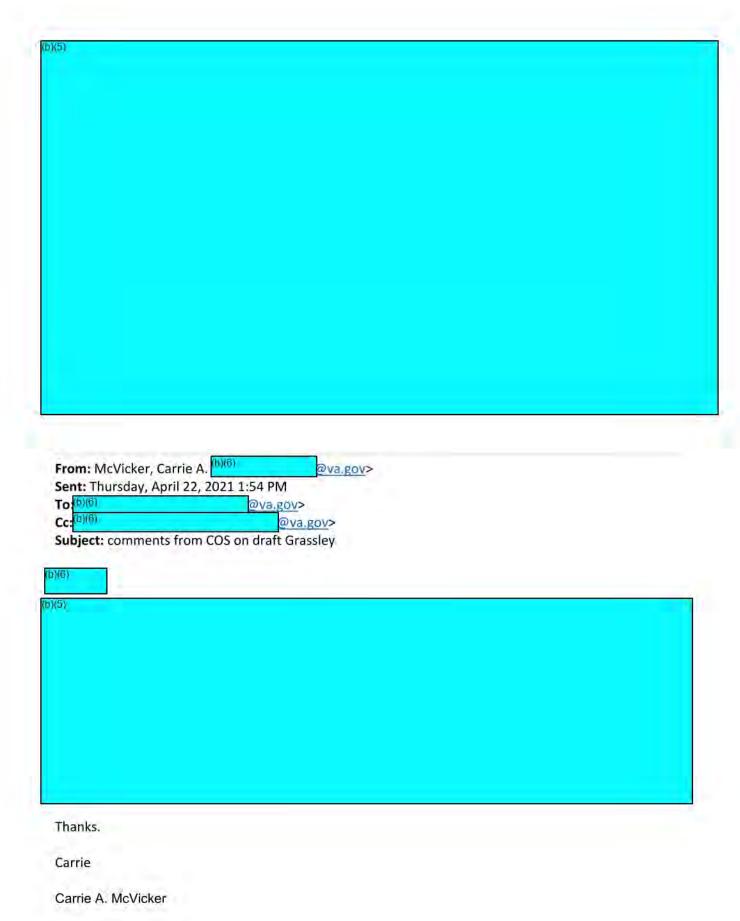
(a)(6)
(b)(6)
(c)(7)



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.





The Executive Secretary Office of the Secretary Department of Veterans Affairs

(Þ)(6) @va.gov

Office of the Executive Secretary (VACO) - Calendar From: Sent: Tue, 27 Apr 2021 14:40:32 +0000 To: Farrisee, Gina S. Cc: McVicker, Carrie A.; Parise, Ruthann FW: comments from COS on draft Grassley Subject: 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> ②va.gov> Subject: RE: comments from COS on draft Grassley (b)(6)I addressed the questions in the attached file. investigation. (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 (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: Thursday, April 22, 2021 4:21 PM To: Hogan, Michael R. (OGC) (b)(6) @va.gov>

@va.gov>

Cc: McVicker, Carrie A. (b)(6)

Subject: FW: comments from COS on draft Grassley

@va.gov>

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 Itr

Ruthanne (b)(6)

The draft response incorporates	the full range of respo	nsive 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
Direct)

<u>Whistleblower Protections</u>: 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.

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. 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 (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: @va.gov> Sent: Thursday, April 22, 2021 4:21 PM To: Hogan, Michael R. (OGC) (b)(6) @va.gov> @va.gov>; (b)(6) Cc: McVicker, Carrie A. (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:

Hogan, Michael R. (OGC)

McVicker, Carrie A. (b)(6)

Thu, 22 Apr 2021 22:18:13 +0000

From: Sent:

To: Cc:

b)/5i	

Please respond by Noon tomorrow.

Parise, Ruthann (b)(6) To: 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 (OGC) (b)(6) @va.gov>; Hogan, Michael R. (OGC) (b)(6) @va.gov> @va.gov>; Cromwell, Sonya (OGC) (b)(6) Cc: Tyler, Cynthia (OGC) @va.gov>; (OGC) (b)(6) @va.gov> Subject: RE: Response to request from US Senator From: (b)(6) (OGC) (b)(6) @va.gov> Sent: Thursday, April 22, 2021 6:37 PM @va.gov> (b)(6) To: Hogan, Michael R. (OGC) (b)(6) (OGC) (b)(6 @va.gov> Cc: Tyler, Cynthia (OGC) < @va.gov>; Cromwell, Sonya (OGC) (b)(6) @va.gov>; (OGC) (b)(6) @va.gov> Subject: RE: Response to request from US Senator (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) (OGC)(b)(6) @va.gov>; (b)(6) @va.gov> Cc: Tyler, Cynthia (OGC) (1)(6) va.gov>; Cromwell, Sonya (OGC) @va.gov>; 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.

Hogan, Michael R. (OGC)

Fri, 23 Apr 2021 16:31:32 +0000

From:

Sent:

From: ^{(b)(6)}	(OGC) ^{(b)(6)}	Dva.gov>		
	ay, April 22, 2021 5:57		1	
	lichael R. (OGC) (b)(6)	@va.gov>(b)(6		@va.gov>
	nthia (OGC) (b)(6)	@va.gov>; Cromwell	, Sonya (OGC)	@va.gov>;
(b)(6)	OGC)	@va.gov>		
Subject: RE:	Response to request f	rom US Senator		
Mike-				
WIKE				
(5)				
b)(6)				
200.000				
	i, Michael R. (OGC) <mark>(b)(</mark> ay, April 22, 2021 4:52			
To (b)(6)	(OGC)(b)(6)	@va.gov>,(b)(6)	(OGC ^{(b)(6)}	@va gova
	nthia (OGC) (b)(6)	@va.gov>; Cromwell	Sonya (OGC) (b)(6)	@va.gov>
	ponse to request from	US Sonator	, sonya (OGC)	@va.gov>
Importance:		O3 Seliator		
importance.	ingii			
VA received	a request from Sen Gr	asslev seeking information	on about three senior VB	A officials and
another SES.	a raquest il sili sell sell	assic) seemig intermed	on anout three senior va	TO MOISIGN STICE
One question	n seeks copies of PFD r	eports.		
(b)(5)				
7/17/				
Thank you.				
mank you.				
MICHAEL	R. HOGAN			
	neral Counsel, Ge	neral Law		
	eneral Counsel	nerai Law		
	nt of Veterans Affai	ro		
the second secon		10		
	ont Ave, NW n, DC 20420			
)(6)	(Direct)			

<u>Whistleblower Protections</u>: 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)

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

@VA.gov

(Office) (b)(6)

b)(6)

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From:

McVicker, Carrie A.

Sent:

Thu, 29 Apr 2021 19:52:56 +0000

To: Subject: Farrisee, Gina S. 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 and my discussion earlier today. (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 inf	ormation tomorrow i	n our follow up meeting.
Respectfully,			
Ruthann Parise			
OSVA FOIA/Privacy Officer			
Office of the Executive Secretary			
Office of the Secretary, U.S. Dept. of V	eterans Affairs	(OSVA)	
ruthann.parise@va.gov			
Phone: (202) 461-4866			
iPhone: (202) 306-3112			
This message and attachments, if any, parties, and may be exempt from disclattachments, if any, in error, you must	osure pursuant	to 5 U.S.C. § 552. If y	ou received this message and
From (b)(6)	a.gov>		
Sent: Wednesday, April 28, 2021 4:13	The second secon		
To: Parise, Ruthann < Ruthann. Parise@			
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. Paris	e@va.gov>		
Sent: Wednesday, April 28, 2021 3:48			
To (b)(6) @va.g			
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 an	d (b)(6)	(OGC ILG) re the Gras	sslev letter (b)(5)
(b)(5)		(000,100) 10 1110 0110	eley letter.
(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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	ck call?
nanks,	
)(6)	
Deputy Chief Counse	el – FOIA/PA Appeals/Litigation
	ninistrative Law Group (024A)
Office of General Co.	(1) 상대 (1) 이 시간 (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)
J.S. Dept. of Veterar	ns Affairs
Office) (b)(6)	
@VA.go	OV ENTIALITY NOTICE - FOR OFFICIAL USE ONLY.
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From: ^{(b)(6)}	@va.gov>
Sent: Thursday, April 2	9, 2021 4:38 PM
	C) (b) (b) (c) (c) (d) (d) (d) (d) (d) (d) (d) (d) (d) (d
subject: FW: VIEWS 04	1890714 - Grassley question
H (b)(6)	
am reaching out to you count to you	ou about the comment (pasted below) that you inserted for the VA's response to
uestion 5;	
)(5)	
107	
(10)	
, (a)	
,,,,,	
<i>(10)</i>	

OGC)

FW: VIEWS 04890714 - Grassley question

Thu, 29 Apr 2021 22:00:03 +0000 (D)(6)

From: Sent:

To: Subject:

: Hogan, Michael R	(OGC) (b)(6) @va.gov>	
: Thursday, April 22		
Billups, Angela (b)(6)	@va.gov>; Christy, Phillip (SES) (10)(6) @va.gov>	
0(6)	@va.gov>	
ect: RE: VIEWS 0489	0714 - Grassley question	
ela/Phil,		
Fleck provided the f	ollowing:	

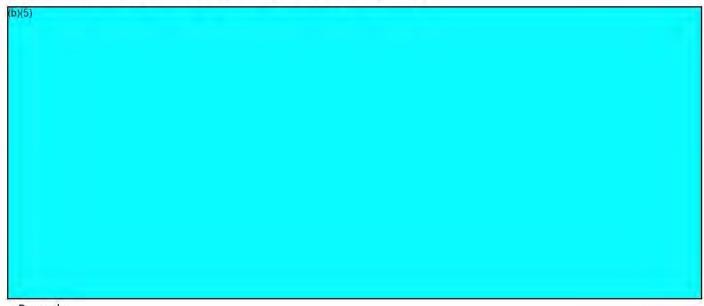
MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(Direct)

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?



Regards,
Angela Billups, Ph.D.
Executive Director
Office of Acquisition and Logistics
Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420



From: Christy, Phillip (SES) < 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)

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



Subject: FW: VIEWS 04890714 - Grassley question

Importance: High

Hi Sir,

Please see the below question 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 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



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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 - Gra	assley question
Importance: High	The state of the s
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	
To:((b)(6)	@va.gov>
Subject: RE: Grassley question	C 10.501
Subject NE. Grassie, question	
Wonderful! The VIEWS number	r is 4890714. Please note this is a close hold (confidential matter)
involving a VBA employee. Ple	ase limit access to the information about the item to only people that
그 그러는 집에서 없는 어떤 사람들이 다른 사람들이 다른 사람들이 하는데 그 모습니다.	2 -16 questions asked by Senator Grassley.
From: (b)(6)	Dva.gov>
Sent: Thursday, April 22, 2021	
To:(b)(6)	ava.gov>
Subject: RE: Grassley question	va.gov
Subject: NE. Grassley question	
Hi (b)(6)	
Yes. I can send this to a SMF to	answer. What is the VIEWS number?
And the second that the second and and as	A shift and a shift and a shift of the shift
Regards,	
(6)(B)	

(b)(6) @va.gov>
m (⁽⁰⁾⁽⁶⁾ @va.gov> t: Thursday, April 22, 2021 1:14 PM
b)(6) @va.gov>
ject: FW: Grassley question
portance: High
D)(6)
ked to (0)(6) briefly yesterday, so I know she wasn't feeling well. I sent this to her yesterday and swondering if you could help me since she is out of the office today. All I need is for a OALC SME to wer this question below.
ou can get it t me today, that would be outstanding.
m: (b)(6)
t: Wednesday, April 21, 2021 8:53 AM
(b)(6) @va.gov>
ject: Grassley question
estion 5. What steps does the VA take to protect retail investors by feguarding market sensitive information regarding potential enforcement nouncements related to publicly-traded companies?
Response: PENDING
cutive Writer
ce of the Executive Secretary
partment of Veterans Affairs
Vermont Avenue NW

From: (b)(6)

Sent: Mon, 3 May 2021 16:34:03 +0000

To: Parise, Ruthann

Cc: 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)

Sent: To:	
To:	Mon, 3 May 2021 16:51:08 +0000
10.	Farrisee, Gina S.
Subject:	FW: Grassley letter
Attachments:	VIEWS 4890714 - Transmittal Letter.docx, 4890714 FINAL ROUGH DRAFT of
Enclosure v.4 4297	20213 4272021.docx
mportance:	High
20 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	
Gina – here is the la	atest we can use for tomorrow. Below is an update on where we are.
V/R\$	
Carrie A. McVicker	
The Executive Secr	etary
Office of the Secret	ary
Department of Vete	rans Affairs
6)(6) @va	a.gov
rom: ^{(b)(6)}	@va.gov>
Sent: Monday, May	7 3, 2021 12:29 PM
To: McVicker, Carri	e A. (b)(6) @va.gov>
Cc:(b)(6)	@va.gov>
Subject: RE: Grassle	ey letter
Importance: High	
Carrie:	
Carrie:	
	nittal letter and the latest version of the enclosure are attached. The enclosure is
The Grassley transn	
The Grassley transn unchanged from th	nittal letter and the latest version of the enclosure are attached. The enclosure is e one I provided last week. (b)(5)
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The Grassley transn unchanged from th	e one I provided last week. (b)(5)
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The Grassley transnunchanged from the (5) Question 5: What market sensitive	at steps does the VA take to protect retail investors by safeguarding e information regarding potential enforcement announcements cly-traded companies?



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

ubject:	RE: VIEWS 04890714 - Grassley qu	estion	
)			
nanks,			
rom ^{(b)(6)} ent: Monday, I	@va.gov> May 3, 2021 12:16 PM		
o: <mark>(b)(6)</mark> ubject: RE: VIE	OGC)(b)(6) WS 04890714 - Grassley question		
(b)(6)	Manyar Caracas Manager		
5): (b)(6)			
(6)			
om: ^{(b)(6)} ent: Thursday,	(OGC) (6)(6) April 29, 2021 6:00 PM		
o:(b)(6)	@va.gov> WS 04890714 - Grassley question		
(b)(6)	vis 64656/14 Grassley question		

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araket sensitive information regarding potential enforcement announcements elated to publicly-traded companies? A Response (b)(6) From: Hogan, Michael R. (OGC) (b)(6) (ava.gov) ent: Thursday, April 22, 2021 3:55 PM o: Billups, Angela (b)(6) (ava.gov); Christy, Phillip (SES) (b)(6) (ava.gov) c (b)(6) (ava.gov) ubject: RE: VIEWS 04890714 - Grassley question ngela/Phil, ob Fleck provided the following:	araket sensitive information regarding potential enforcement announcements elated to publicly-traded companies? A Response (b)(6) From: Hogan, Michael R. (OGC) (b)(6) (ava.gov) ent: Thursday, April 22, 2021 3:55 PM o: Billups, Angela (b)(6) (ava.gov); Christy, Phillip (SES) (b)(6) (ava.gov) c (b)(6) (ava.gov) ubject: RE: VIEWS 04890714 - Grassley question ngela/Phil, ob Fleck provided the following:	5)	
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From: Hogan, Michael R. (OGC) (b)(6) (ova.gov) Sent: Thursday, April 22, 2021 3:55 PM Fo: Billups, Angela (b)(6) (ova.gov); Christy, Phillip (SES) (b)(6) (ova.gov) Subject: RE: VIEWS 04890714 - Grassley question Angela/Phil, Bob Fleck provided the following:	market sensitive information regarding potential enforcement announcements related to publicly-traded companies? /A Response (b)(5) /A Response (b)(5) /A Response (b)(6) /A Response		
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From: Hogan, Michael R. (OGC) (D)(B) (D)(D)(B) (D)(B) (D)(From: Hogan, Michael R. (OGC) (D)(B) (D)(D)(B) (D)(B) (D)(narket sensitive inform	ation regarding potential enforcement announcements
From: Hogan, Michael R. (OGC) (b)(6) (ova.gov) Sent: Thursday, April 22, 2021 3:55 PM To: Billups, Angela (b)(6) (ova.gov) Cc (b)(6) (ova.gov) Subject: RE: VIEWS 04890714 - Grassley question Angela/Phil, Bob Fleck provided the following:	From: Hogan, Michael R. (OGC) (b)(6) (ova.gov) Sent: Thursday, April 22, 2021 3:55 PM To: Billups, Angela (b)(6) (ova.gov) Cc (b)(6) (ova.gov) Subject: RE: VIEWS 04890714 - Grassley question Angela/Phil, Bob Fleck provided the following:		ed companies?
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To: Billups, Angela (b)(6) @va.gov>; Christy, Phillip (SES)(b)(6) @va.gov> Subject: RE: VIEWS 04890714 - Grassley question Angela/Phil, Bob Fleck provided the following:	To: Billups, Angela (b)(6) @va.gov>; Christy, Phillip (SES)(b)(6) @va.gov> Subject: RE: VIEWS 04890714 - Grassley question Angela/Phil, Bob Fleck provided the following:		a livings
Subject: RE: VIEWS 04890714 - Grassley question Angela/Phil, Bob Fleck provided the following:	Subject: RE: VIEWS 04890714 - Grassley question Angela/Phil, Bob Fleck provided the following:		
Angela/Phil, Bob Fleck provided the following:	Angela/Phil, Bob Fleck provided the following:	Sent: Thursday, April 22, 202 To: Billups, Angela (b)(6)	21 3:55 PM
Bob Fleck provided the following:	Bob Fleck provided the following:	Sent: Thursday, April 22, 202 To: Billups, Angela <mark>(Þ)(6)</mark> Cc ^{(b)(6)}	21 3:55 PM @va.gov>; Christy, Phillip (SES) @va.gov>
		Sent: Thursday, April 22, 202 To: Billups, Angela <mark>(□)(Θ)</mark> Cc (^{(៤)(Θ)}	21 3:55 PM @va.gov>; Christy, Phillip (SES) @va.gov>
		Sent: Thursday, April 22, 202 Fo: Billups, Angela (b)(6) Co ^{(b)(6)} Subject: RE: VIEWS 0489071	21 3:55 PM @va.gov>; Christy, Phillip (SES) @va.gov>
b)(5)	b)(5)	Sent: Thursday, April 22, 202 To: Billups, Angela (b)(6) Co (b)(6) Subject: RE: VIEWS 0489071 Angela/Phil,	@va.gov>; Christy, Phillip (SES) (b)(6) @va.gov> @va.gov> 4 - Grassley question
		Sent: Thursday, April 22, 202 To: Billups, Angela (b)(6) Cc (b)(6) Subject: RE: VIEWS 0489071 Angela/Phil, Bob Fleck provided the follow	@va.gov>; Christy, Phillip (SES) (b)(6) @va.gov> @va.gov> 4 - Grassley question
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		Sent: Thursday, April 22, 202 To: Billups, Angela (b)(6) Cc (b)(6) Subject: RE: VIEWS 0489071 Angela/Phil, Bob Fleck provided the follow	@va.gov>; Christy, Phillip (SES) (b)(6) @va.gov> @va.gov> 4 - Grassley question
		Sent: Thursday, April 22, 202 To: Billups, Angela (b)(6) Cc (b)(6) Subject: RE: VIEWS 0489071 Angela/Phil, Bob Fleck provided the follow	@va.gov>; Christy, Phillip (SES) (b)(6) @va.gov> @va.gov> 4 - Grassley question
		Sent: Thursday, April 22, 202 To: Billups, Angela (b)(6) Cc (b)(6) Subject: RE: VIEWS 0489071	@va.gov>; Christy, Phillip (SES) (b)(6) @va.gov> @va.gov> 4 - Grassley question
		Sent: Thursday, April 22, 202 To: Billups, Angela (b)(6) Cc (b)(6) Subject: RE: VIEWS 0489071 Angela/Phil, Bob Fleck provided the follow	@va.gov>; Christy, Phillip (SES) (b)(6) @va.gov> @va.gov> 4 - Grassley question

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Mike

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(Direct)

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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



From: Christy, Phillip (SES) (b)(6) @va.gov>
Sent: Thursday, April 22, 2021 2:27 PM
To: Billups, Angela (b)(6) @va.gov>
Co: Hogan, Michael B. (OCC) (b)(6)

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).. (D)(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

Subject: FW: VIEWS 04890714 - Grassley question

Importance: High

Hi Sir,

Please see the below question 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 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)

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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)

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)

Subject: RE: Grassley question

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 @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 @va.gov> Subject: FW: Grassley question Importance: High Hi(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 t me today, that would be outstanding. From: Sent: Wednesday, April 21, 2021 8:53 AM @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 **Executive Writer**

Wonderful! The VIEWS number is 4890714. Please note this is a close hold (confidential matter)

Office of the Executive Secretary Department of Veterans Affairs 810 Vermont Avenue NW



From:

(b)(6)

Sent:

Tue, 4 May 2021 13:05:47 +0000

To:

Hogan, Michael R. (OGC);Parise, Ruthann
(0)(6)
McVicker, Carrie A.

Cc: 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)

<u>Whistleblower Protections</u>: 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.

b)(6) OGC) From: Tue, 4 May 2021 14:12:00 +0000 Sent: Parise, Ruthann To: FW: 4890714 FINAL ROUGH DRAFT of Enclosure_v.4 42920213 4272021 Subject: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021.docx Attachments: 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) (D)(6) @va.gov> Sent: Tuesday, May 4, 2021 9:24 AM OGC (b)(6) To:(b)(6) @va.gov> Subject: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021 Importance: High (b)(6) (b)(5)Thank you.

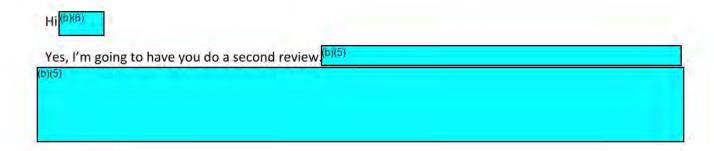
Mike

From: Parise, Ruthann

Sent: Tue, 4 May 2021 14:15:55 +0000

To: (D)(6)

Subject: RE: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021



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,

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>

Sent: Tuesday, May 4, 2021 9:24 AM

To:(b)(6) Qva.gov>

Importance: High

(b)(5)

Thank you.

Mike

Subject: 4890714 FINAL ROUGH DRAFT of Enclosure_ v.4 42920213 4272021

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



Attached is the draft transmittal letter and three Excel spreadsheets.

I sent the transmittal letter to 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 iPhone: (202) 306-3112

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ent: Friday, May 14, o: ^{(b)(6)}	@va.gov>	
c: McVicker, Carrie A ubject: RE: Grassley	A. pva.gov>	Pva.gov>
ou're welcome ^{(b)(6)}	I'm doing the transmittal letter right now. (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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Sent: Friday, May 14, 2021 1:22 PM		
Fo: Parise, Ruthann < Ruthann.Parise@v Cc: McVicker, Carrie A. (b)(6)	a.gov> @va.gov>; ^{(b)(6)}	@va.gov>
Subject: RE: Grassley	e va.gov,	(wva.gov)
hanks Ruthann. I will keep looking out	for them. (b)(5), (b)(6)	
5)		
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.



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 iPhone: (202) 306-3112

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From:(b)(6)	Dva.gov>	
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)	@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.P	arise@va.gov> (b)(6)	@va.gov>
Cc: (b)(6)	@va.gov>	
Subject: RE: Grassley		
Thank you team. Do you think the	his means we may be able to get it out for co	ncurrence today?
Carrie A. McVicker		
The Executive Secretary		
Office of the Secretary		
Department of Veterans Affairs		
@va.gov		
From: Parise, Ruthann < Ruthann	n.Parise@va.gov>	
Sent: Friday, May 14, 2021 8:52		
To:(b)(6)	@va.gov>	
Cc: McVicker, Carrie A. (b)(6)	@va.gov>;(b)(6)	@va.gov>
Subject: RE: Grassley		
Hi(b)(6)		
Just talked w (b)(6) at OGC. He I	neard back from Mike;(0)(6) is doing one last	look at the records and wil
	rill go in and print the redacted records and t	hen I will add some
language to the transmittal lette	er regarding the redactions/exemptions appli	ed.
Respectfully,		
Ruthann Parise		
OSVA FOIA/Privacy Officer		
Office of the Executive Secretary	y	
Office of the Secretary, U.S. Dep	ot. 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 @va.gov> @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 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. (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, 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) @VA.gov ATTURNEY 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 9:44 AM

@va.gov>

To: (b)(6)

Hey (b)(6)

Subject: Grassley

OGC) (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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BEST AVAILABLE COPY

Mary													
Company Comp		Last Name	Middle Initial	Entity ID	Item Type	Entity Type	Item Revision Date				Total Hours Cre	dit Hours	
March			J				8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act			0	0	
Company Comp			1				8/5/2005 08:34 AM America/New York 9/5/2005 09:34 AM America/New York		5/7/2010 01:05 PM America/New York 5/7/2010 12:12 PM America/New York		0	0	
Section Sect			,					Prevention of Sexual Harassment					0.73
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March Marc	THOMAS	MURPHY	J	5508	VA	Item	9/24/2007 10:40 AM America/New York	VA Online Travel Card Training	3/28/2011 12:33 PM America/New York	VA-Complete	0	0	1
March Marc			J										1
March Marc			J										1
March Marc			,					VHA 2010 Leadership Conference: Be the Change You Want To See			0		
March Marc			1					Prevention of Workplace Harassment/No FEAR			0		
March Marc			í								0		
Column		MURPHY	,								0		
Column	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
March 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
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THOMAS MURRHY 1 387880 V. Item 51/6/2014 1023 AM America/New York Leading a Division on Libra Negotiation Sight Negotiatio	THOMAS	MURPHY	J	3878038	VA	Item	5/16/2014 10:24 AM America/New York	Critical Thinking Skills by Dr. Maureen McGuire-Kuletz	6/26/2014 04:18 PM America/New York	VA-Complete		0	1.5
TRIORAM MURRIPY 3 381846 V. Rem 8/16/2014 08.03 AM America/New York Multiple Multiple Multiple Multiple 3 381846 V. Rem 8/16/2014 08.03 AM America/New York Multiple M			J			Item	5/16/2014 10:27 AM America/New York	Leading a Diverse Workforce by OPM Bruce Stewart			0	0	
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THOMAS MURRHY 1 388368 V.A. Rem M.P. (2014 0.60) AM America/New York Vol. Complete 0 0 1.5			J								0	0	
THOMAS MURRHY 3901227 VA Rem 1/29/2015 1815 AM America/New York VA Core Value Training (CARE Recommitment) 1/26/2017 0928 AM America/New York VA Complete 0 0 0.5			J					Whistleblower Rights and Protection & Prohibited Personnel Practices Training					
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THOMAS MURPHY J 4309852 VA Item 9/6/2017 10:38 AM America/New York The EEO, D&I, No FEAR, and Whistleblower Rights and Protection Policy Statement 2/2/2018 04:58 PM America/New York VA-Complete 0 0 0.5			J				10/24/2016 03:29 PM America/New York				2		
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From: Parise, Ruthann

Sent: Fri, 14 May 2021 18:09:27 +0000

To: (b)(6)

Cc: McVicker, Carrie A., (D)(6)

Subject: FW: 21-05513-F SI Notification

Attachments: VIEWS 4890714 - Transmittal Letter (RP edits).docx

Hi(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: (DGC) (D)(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)

@VA.gov

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From: Parise, Ruthann < Ruthann. Parise@va.gov> Sent: Friday, May 14, 2021 1:56 PM (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 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 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. (OGC) (b)(6) From: @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: (D)(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,



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,

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.

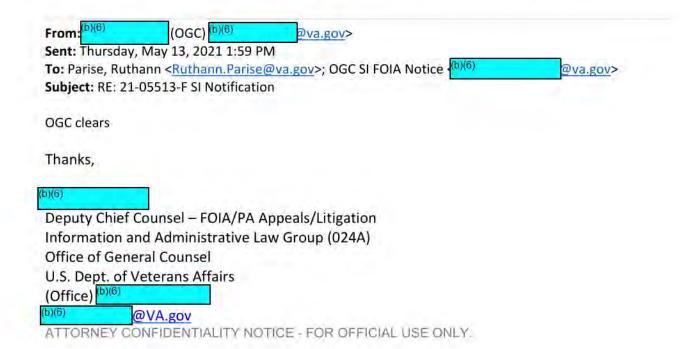
Respectfully,

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: 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 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 The

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From: (b)(6)

Sent: Fri, 14 May 2021 19:58:36 +0000

To: Farrisee, Gina S.

Cc: McVicker, Carrie A. (D)(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)



Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN FERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNEDSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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." 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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)					
2	Aguirre Law, APC					
Ä	501 W. Broadway, Ste. 800					
3	San Diego, CA 92101 Tel: 619-400-4960					
4	Fax: 619-501-7072					
5	Email: Gary@aguirrelawapc.com					
6	Attorney for Plaintiff Maria A. Pomares					
7						
8	UNITED STATES	S DISTRICT COURT				
9	SOUTHERN DISTR	RICT OF CALIFORNIA				
10						
11		Case No.: 21CV84 H MSB				
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY				
13	Plaintiff,	AND INJUNCTIVE RELIEF				
14	V.					
15	UNITED STATES DEPARTMENT OF					
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,					
	Defendant.					
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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The name of the company was changed from Career Education Corporation to Perdoceo Education Corporation effective January 1, 2020. The company's former name is used in

this complaint, because the records requests and released records primarily use that name. ² Danielle Douglas-Gabriel, *VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

⁴ *Id*. ⁵ *Id*.

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

Press Release; Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838...
President (202) 838-5050 Tanya Ang | Vice President (202) 838...

11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

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¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F," A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

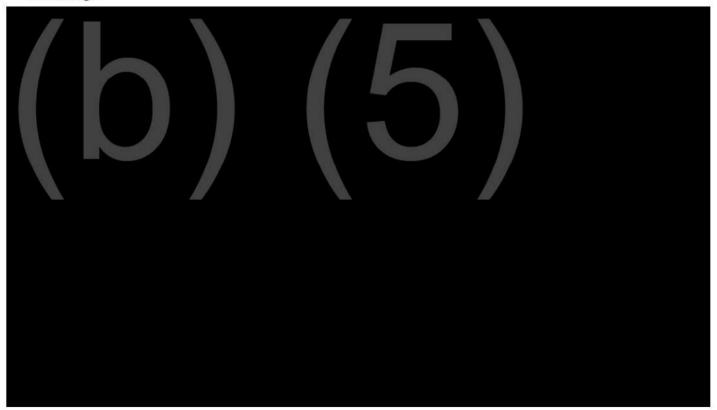
Cc: (b) (6) Mallia, Donna P.

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-

From: (b) (6) .gov>
Sent: Tuesday, March 3, 2020 4:36 PM

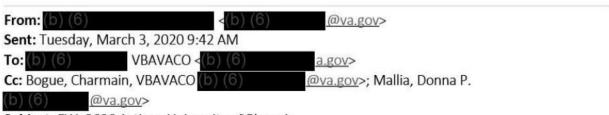
To: (b) (6) VBABUFF (b) (6) @va.gov>
Cc: (b) (6) VBAVACO < (b) (6) a.gov>
Subject: RE: 3696 Actions University of Phoenix

(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.





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!



From: Mallia, Donna P. < 6 @va.gov>

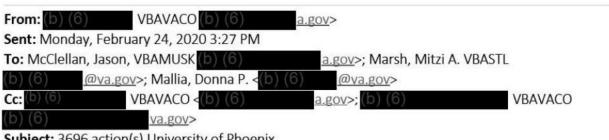
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

BEST AVAILABLE COPY

First Name	Last Name	Middle Initial	Entity ID	Item Type	Entity Type	Item Revision Date	Entity Title	Completion Date	Completion Status	Total Hours Cr	edit 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		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 5506		Item	8/5/2005 08:34 AM America/New York 9/24/2007 01:44 PM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act Prevention of Sexual Harassment	5/7/2010 12:12 PM America/New York 3/1/2010 12:53 PM America/New York	VA-Complete VA-Complete	0	0	0.75
THOMAS	MURPHY	,	5506 5506		ltem ltem	9/24/2007 01:44 PM America/New York 9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment Prevention of Sexual Harassment	5/7/2010 12:53 PM America/New York 5/7/2010 11:38 AM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	,	5508		item	9/24/2007 10:40 AM America/New York	VA Online Travel Card Training	3/28/2011 12:33 PM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	j	7505		Item	8/21/2009 06:44 AM America/New York	Inside Ethics	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	7505		Item	8/21/2009 06:44 AM America/New York	Inside Ethics	2/27/2012 01:37 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	8625		Item	8/11/2010 01:29 PM America/New York	VHA 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		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	1	8872		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		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	
THOMAS	MURPHY	J	8872		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	
THOMAS	MURPHY	,	10176		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	
THOMAS	MURPHY	,	10176 10176		ltem ltem	2/8/2007 10:53 AM America/New York 2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2014 12:25 PM America/New York 1/13/2015 10:43 AM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	,	10176		Item	2/8/2007 10:53 AM America/New York 2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior VA Privacy and Information Security Awareness and Rules of Behavior	1/20/2016 02:29 PM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	í	10176		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	
THOMAS	MURPHY	i	10176		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	ő	1
THOMAS	MURPHY	j	10176		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		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		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		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	
THOMAS	MURPHY	J	10203		Item	2/14/2007 03:47 PM America/New York	Privacy and HIPAA Training	7/5/2011 10:31 AM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	30535		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	
THOMAS	MURPHY	J	31726		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	
THOMAS	MURPHY	,	32755 33157		ltem ltem	4/28/2006 01:16 PM America/New York 3/23/2017 07:27 AM America/New York	General Employee Privacy Awareness VA Senior Leaders Mid-Year Meeting (54677 / BIS 4665)	5/7/2010 11:30 AM America/New York 4/27/2017 05:00 PM America/New York	VA-Complete VA-Complete	22.5	0	12
THOMAS	MURPHY			VA VA	ltem	7/24/2017 05:27 AM America/New York	VA Senior Leaders Mid-Year Meeting (54677 / BIS 4665) Leadership VA (LVA) / 4528 Session 3	9/15/2017 05:00 PM America/New York	VA-Complete VA-Complete	46	0	28
THOMAS	MURPHY	,	34049		Item	7/31/2017 10:28 AM America/New York	VA Accountability and Whistleblower Protection Act Webinar	10/31/2017 03:43 PM America/New York	VA-Complete VA-Complete		0	20
THOMAS	MURPHY	í	58879		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 VA-Complete		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 09:36 AM America/New York	PII Training	11/23/2009 02:29 PM America/New York	VA-Complete	0.5	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		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		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		VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	2/6/2015 08:30 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J		VA	Item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act [USERRA] Training	5/7/2010 12:59 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	897931		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	1261925	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	
THOMAS	MURPHY	J	1286934 1286935		ltem ltem	3/15/2010 01:48 PM America/New York 3/15/2010 02:03 PM America/New York	VBA Leadership Conference - Winter FY2010 Change Management for VBA Executives - Winter FY2010	3/16/2010 01:30 PM America/New York 3/16/2010 01:31 PM America/New York	VA-Complete VA-Complete	20.5	0	
THOMAS	MURPHY	,	1324985		Item	8/3/2010 10:58 AM America/New York	Diversity & Inclusion for VA Senior Executive Service (SES) Members	8/26/2010 01:31 PM America/New York 8/26/2010 05:00 PM America/New York	VA-Complete VA-Complete		0	
THOMAS	MURPHY	,	1324988		item	8/3/2010 10:38 AM America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010 11:00 AM America/New York	VA-Complete VA-Complete	3	0	
THOMAS	MURPHY	í	1328672		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 VA-Complete	0	0	
THOMAS	MURPHY	i	1328672		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	1372648	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/11/2013 12:48 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648	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	1372648	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	12/4/2015 11:21 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648		Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	2/2/2018 04:50 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648		Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	6/26/2014 03:34 PM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	1372648		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	
THOMAS	MURPHY	J	1563310		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 44	0	
THOMAS	MURPHY	J	1563310 1711812		Item	5/24/2011 07:15 AM America/New York 7/12/2011 11:00 AM America/New York	VA Senior Executive Strategic Leadership Course	5/16/2012 02:58 PM America/New York 8/2/2011 09:00 AM America/New York	VA-Complete	44	0	
THOMAS	MURPHY	,	3129973		ltem ltem	5/9/2012 02:52 PM America/New York	ICARE Discussions VA Time & Attendance System (VATAS)- Employees	4/3/2011 09:00 AM America/New York 4/3/2015 02:13 PM America/New York	VA-Complete VA-Complete	1	0	
THOMAS	MURPHY	1	3729078		item	5/24/2012 02:52 PM America/New York	Continuous Readiness in Information Security Program - CRISP	6/1/2012 05:34 PM America/New York	VA-Complete VA-Complete	0	0	0.25
THOMAS	MURPHY	í	3768533		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	ő	
THOMAS	MURPHY	i	3768533		Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	7/10/2013 08:06 AM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	3812493		Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	3812493	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	3812493		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	3871351	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	
THOMAS	MURPHY	J	3873736	VA	Item	3/13/2014 01:34 PM America/New York	Records Management for Records Officers and Liaisons (WBT)	12/4/2015 01:23 PM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	3877492		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	,	3878027 3878029		Item Item	5/16/2014 09:52 AM America/New York 5/16/2014 09:59 AM America/New York	Communicating for Effect (Media Interview Techniques) 2014 Budget Formulation and Execution for VBA Executives	6/26/2014 04:17 PM America/New York 6/26/2014 04:11 PM America/New York	VA-Complete VA-Complete	0	0	3
THOMAS	MURPHY	,	3878030		Item	5/16/2014 10:05 AM America/New York	2014 Compensation Claims Quality and Training for VBA Executives	6/26/2014 04:11 PM America/New York	VA-Complete		0	
THOMAS	MURPHY	1	3878031		Item	5/16/2014 10:08 AM America/New York	2014 Compensation Claims Quarty and Harring for Year Executives	6/26/2014 04:12 PM America/New York	VA-Complete		0	
THOMAS	MURPHY	J	3878033	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	3878034	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	3878036		Item	5/16/2014 10:21 AM America/New York	2014 Data Management for VBA Executives by Mark Seastrom	6/26/2014 04:13 PM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	3878038		Item	5/16/2014 10:24 AM America/New York	Critical Thinking Skills by Dr. Maureen McGuire-Kuletz	6/26/2014 04:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	3878039		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	
THOMAS	MURPHY	J	3878040		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.	3878041 3883649		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 1/26/2017 09:24 AM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	,	3883649		item item	8/8/2014 08:03 AM America/New York 8/8/2014 08:03 AM America/New York	Whistleblower Rights and Protection & Prohibited Personnel Practices Training Whistleblower Rights and Protection & Prohibited Personnel Practices Training	1/26/2017 09:24 AM America/New York 9/16/2014 10:12 AM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	,	3883649		Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommitment)	1/26/2014 10:12 AM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	í	3901227		Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommitment)	2/2/2018 04:49 PM America/New York	VA-Complete	o o	ő	
THOMAS	MURPHY	j	3901227		Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommitment)	3/23/2015 04:26 PM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	3910965	VA	Item	3/3/2015 03:11 PM America/New York	HR Academy: Fair Employment Opportunities (Print)	3/30/2015 11:39 AM America/New York	VA-Complete for Contact Hours	0	0	0
THOMAS	MURPHY	J	3911053	NFED	Item	3/5/2015 09:54 AM America/New York	HR Academy: Fair Employment Opportunities (CDN)	3/30/2015 11:39 AM America/New York	NFED-Complete	0	0	0.5
THOMAS	MURPHY	J	3911737		Item	3/6/2015 11:33 AM America/New York	Conversation with Lawyers: Reasonable Accommodations (Video)	12/4/2015 01:29 PM America/New York	VA-Complete	0	0	2
THOMAS	MURPHY	J	3941927		Item	5/29/2015 03:30 PM America/New York	VBA Executive Leadership Training 2015 End-of-Program Evaluation	10/26/2015 01:02 PM America/New York	VA-Complete	0	0	32
THOMAS	MURPHY	J	3948000		Item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	1/26/2017 09:26 AM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	3948000		item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	12/4/2015 01:25 PM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	J	3948000 3950519		item item	6/23/2015 08:18 AM America/New York 7/21/2015 08:52 PM America/New York	Records Management for All VBA Employees	2/2/2018 04:48 PM America/New York 1/26/2017 12:57 PM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	1	3950519 3950519		Item	7/21/2015 03:52 PM America/New York 7/21/2015 03:52 PM America/New York	VBA Active Threat Response (ATR) Training VBA Active Threat Response (ATR) Training	1/26/2017 12:57 PM America/New York 12/4/2015 01:52 PM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	1	3950519		Item	7/21/2015 US:52 PM America/New York 7/21/2015 US:52 PM America/New York	VBA Active Threat Response (ATR) Training VBA Active Threat Response (ATR) Training	2/2/2018 04:49 PM America/New York	VA-Complete VA-Complete		0	
THOMAS	MURPHY	i	4157154		Item	10/30/2015 12:39 PM America/New York	VSCM conference 2015	2/2/2018 04:49 PM America/New York 10/30/2015 02:15 PM America/New York	VA-Complete VA-Complete	0	0	
THOMAS	MURPHY	j	4181738	VA	Item	4/26/2016 11:31 AM America/New York	VBA/VHA Conference	4/26/2016 01:46 PM America/New York	VA-Complete VA-Complete	ő	ő	32
THOMAS	MURPHY	J	4192231		Item	8/24/2016 11:36 AM America/New York	Senior Leadership Annual Business Meeting (SLABM)	9/15/2016 12:00 PM America/New York	VA-Complete	28	0	28
THOMAS	MURPHY	J	4193355	VA	Item	9/27/2016 03:16 PM America/New York	VBA Director's Training Symposium - October 2016	1/26/2017 09:25 AM America/New York	VA-Complete	40	0	30
THOMAS	MURPHY	J	4194709	VA	Item	10/24/2016 02:52 PM America/New York	Senior Leader Annual Business Meeting (SLABM) Cascade Session	12/19/2016 04:29 PM America/New York	VA-Complete	8	0	8
THOMAS	MURPHY	J	4194711		Item	10/24/2016 03:29 PM America/New York	Senior Leader Annual Business Meeting (SLABM) Town Hall Meeting	12/16/2016 03:05 PM America/New York	VA-Complete	2	0	
THOMAS	MURPHY	J	4245172		Item	4/25/2017 03:51 PM America/New York	VBA Leadership Training Symposium - May 2017 for SES and Directors	2/2/2018 04:37 PM America/New York	VA-Complete	0	0	
THOMAS	MURPHY	,	4309852		Item	9/6/2017 10:38 AM America/New York	The EEO, D&I, No FEAR, and Whistleblower Rights and Protection Policy Statement An Overview of Directive 6008: Acquisition and Management of VA IT Resources (On Den).	2/2/2018 04:58 PM America/New York	VA-Complete	0	0	
THUMAS	MURPHY	,	4407221	VA.	item	11/30/2017 10:46 AM America/New York	An Overview or unwictive bUUS: Acquisition and Management of VA IT Resources (On Demi	ir by 14/2018 12:41 PM America/New York	VA-Complete	0	0	1.5

From:

Tue, 18 May 2021 19:38:15 +0000 Sent:

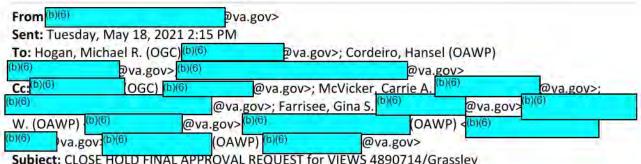
To:

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



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)

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(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.

Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

Washington, DC

(b)(6)

OGC) From: Sent: Tue, 18 May 2021 21:23:42 +0000 To: (OGC) Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley 04890714 - Incoming Letter.pdf, (2) Attachment P Murphy Training records.xlsx, Attachments: 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) **②VA.gov** 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 (FQIA) 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: Hogan, Michael R. (OGC) (b)(5) @va.gov> Sent: Tuesday, May 18, 2021 2:39 PM (OGC) < (b)(5) @va.gov> Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Importance: High For your awareness I reviewed the transmittal letter and the primary attachment.

Thank you.

Mike

From: (b)(6)	ō	ova.gov>		
Sent: Tuesday, May	18, 2021 2:15 PI	M		
To: Hogan, Michael	R. (OGC) (b)(6)	@va.	gov>; Cordeiro, Hansel (OAW	P)
(6)	va.gov>;(b)(6)		@va.gov>	
Cc:(b)(6)	OGC) (b)(6)	@va.gov>	; McVicker, Carrie A. (b)(6)	@va.gov>;
b)(6)	@\	/a.gov>; Farris	ee, Gina S. (b)(6)	a.gov> (b)(6)
W. (OAWP) (b)(6)	@va.go	v>; (b)(6)	Catherine (OAWP) (b)(6)
b)(6) @va.gov (b)(6)		AWP)(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)



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 he sitate to reach out to me.

(b)(6)

Executive Writer

Office of the Executive Secretary

Department of Veterans Affairs 810 Vermont Avenue NW Washington, DC RICHARD J. DURBIN, ILLINOIS, EHAIR

PATRICKUL LEAHY, VERMONT
DIANNE FENSTEIN, CALIFORNIA
BHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHIESTOPHER A. COONS, DELAWARE
RICHAFD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CONY A BOCKER, NEW JERSEY
ALEX ADDILLA, CALIFORNIA
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CHARLES E. GRAESLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNY, TEXAS
MICHAEL S. LEE, LITAH
TED CITUZ, TEXAS
BER SASSE, NEBRASRA
JOSHUA S. HAWLEY, MISSOURI
TOM COTTON, ARICANDAQ
JOHN FERNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLEEBLEN, TENNOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
Ä	501 W. Broadway, Ste. 800	
3	San Diego, CA 92101 Tel: 619-400-4960	
4	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	RICT OF CALIFORNIA
10		
11		Case No.: 21CV84 H MSB
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY
13	Plaintiff,	AND INJUNCTIVE RELIEF
14	V.	
15	UNITED STATES DEPARTMENT OF	
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
	Defendant.	
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This action is brought under the Freedom of Information Act ("FOIA"). 5 1. .C. § 552, as amended, for an order compelling Defendant United States Department Veterans Affairs ("VA") to produce, provide access to, and make available certain ords specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San 3. go.
- 4. Defendant is an agency of the United States Government and has possession control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

Plaintiff seeks records from the Department of Veterans Affairs ("VA") 5. 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 Career Education Corporation ("CEC"), 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

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The name of the company was changed from Career Education Corporation to Perdoceo Education Corporation effective January 1, 2020. The company's former name is used in this complaint, because the records requests and released records primarily use that name. ² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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-suspenduniversity-phoenix-other-colleges-accessing-gi-bill-benefits/, last visited Jan. 13, 2021.

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

- Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.3 The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, making

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

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

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⁴ Id.	
⁵ <i>Id</i> .	
⁶ <i>Id</i> .	

28 10 Id.

⁹ Id.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*.

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16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

The Securities and Exchange Commission provides this concise description of a short sale:

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

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11:26 AM - Mar 9, 2020 - Twitter Web App.

Veterans Education Success

@GIBIIIRights

- 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:

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

 under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

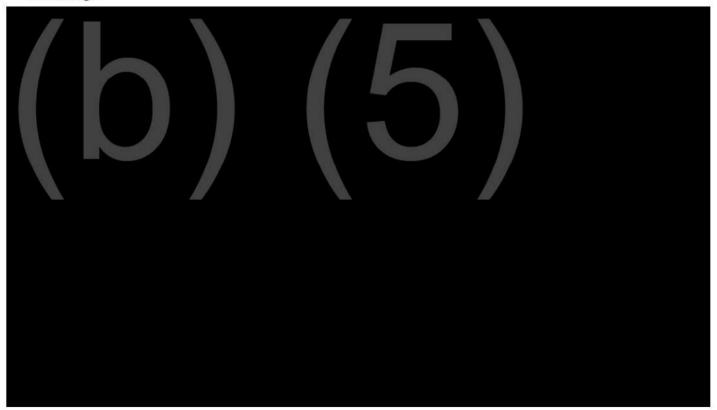
Cc: (b) (6)

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.

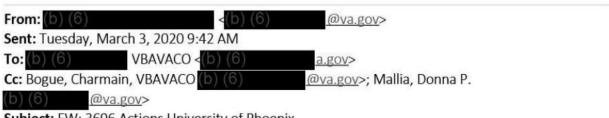
Thanks-

(b) (6)

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.





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!



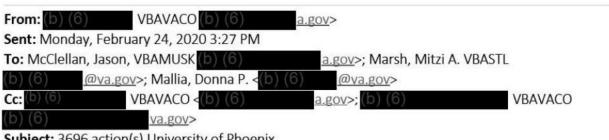
From: Mallia, Donna P. < 6 @va.gov> Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

BEST AVAILABLE COPY

First Name	Last Name	Middle Initial	Entity ID	Item Type	Entity Type	Item Revision Date	Entity Title	Completion Date	Completion Status	Total Hours Cre	edit Hours	
THOMAS	MURPHY	J	565 565	VA VA	ltem ltem	8/5/2005 08:34 AM America/New York 8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retailation) Act No FEAR (Notification & Federal Employee Antidiscrimination & Retailation) Act	3/1/2010 11:56 AM America/New York 5/7/2010 01:05 PM America/New York	VA-Complete VA-Complete	0	0	0.75
THOMAS	MURPHY	1	565		Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 11:05 PM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	j	5506		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		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	5508		Item	9/24/2007 10:40 AM America/New York	VA Online Travel Card Training	3/28/2011 12:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	,	7505 7505		ltem ltem	8/21/2009 06:44 AM America/New York 8/21/2009 06:44 AM America/New York	Inside Ethics	1/11/2013 02:06 PM America/New York 2/27/2012 01:37 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	í		VA	Item	8/11/2010 01:29 PM America/New York	VHA 2010 Leadership Conference: Be the Change You Want To See	8/26/2010 03:00 PM America/New York	VA-Complete	ő	15	15
THOMAS	MURPHY	j	8872		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		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		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		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	,	10176		ltem ltem	2/8/2007 10:53 AM America/New York 2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior VA Privacy and Information Security Awareness and Rules of Behavior	1/11/2013 02:29 PM America/New York 1/13/2014 12:25 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	1	10176		Item	2/8/2007 10:53 AM America/New York 2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior VA Privacy and Information Security Awareness and Rules of Behavior	1/13/2014 12:25 PM America/New York 1/13/2015 10:43 AM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	j	10176		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 VA-Complete	0	0	1
THOMAS	MURPHY	J	10176		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		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		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		item item	2/8/2007 10:53 AM America/New York 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 3/28/2011 01:04 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	1	10176		Item	2/8/2007 10:53 AM America/New York 2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior VA Privacy and Information Security Awareness and Rules of Behavior	5/28/2011 01:04 PM America/New York 5/7/2010 12:02 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	1	10203		item	2/14/2007 03:47 PM America/New York	Privacy and HIPAA Training	7/5/2011 10:31 AM America/New York	VA-Complete VA-Complete	0		1
THOMAS	MURPHY	j	30535		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	o o	o	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		Item	4/28/2006 01:16 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		Item	3/23/2017 07:27 AM America/New York	VA Senior Leaders Mid-Year Meeting (54677 / BIS 4665)	4/27/2017 05:00 PM America/New York	VA-Complete	22.5	0	12
THOMAS	MURPHY	J	33986 34049	VA	ltem ltem	7/24/2017 06:28 AM America/New York 7/31/2017 10:00 AM America/New York	Leadership VA (LVA) / 4528 Session 3 VA Accountability and Whistleblower Protection Act Webinar	9/15/2017 04:00 PM America/New York 10/31/2017 03:43 PM America/New York	VA-Complete VA-Complete	46 0	0	28
THOMAS	MURPHY	1	58879		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 VA-Complete	0	0	0
THOMAS	MURPHY	í	58879		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	ő	ő	1
THOMAS	MURPHY	j	80761	VA	Item	6/18/2008 09:36 AM America/New York	PII Training	11/23/2009 02:29 PM America/New York	VA-Complete	0.5	1	0.5
THOMAS	MURPHY	J	897931		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		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		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			VA VA	item item	5/6/2009 12:23 PM America/New York 5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	2/6/2015 08:30 AM America/New York 5/7/2010 12:59 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	1	897931		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	í	1261925		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	1286934	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	1286935	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	1324985		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	1324988		Item	8/3/2010 12:14 PM America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010 11:00 AM America/New York	VA-Complete	3	0	3
THOMAS	MURPHY	,	1328672 1328672		ltem ltem	9/7/2010 08:06 AM America/New York 9/7/2010 08:06 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors EEO, Diversity, and Conflict Management Training for Managers and Supervisors	2/27/2012 01:34 PM America/New York 6/26/2014 04:03 PM America/New York	VA-Complete VA-Complete	0	0	3
THOMAS	MURPHY	,		VA	item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	1/11/2013 12:48 PM America/New York	VA-Complete VA-Complete	0	0	0.5
THOMAS	MURPHY	j	1372648		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	ō	ō	0.5
THOMAS	MURPHY	J	1372648		Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	12/4/2015 11:21 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648		Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	2/2/2018 04:50 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648		Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	6/26/2014 03:34 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648 1563310		ltem ltem	3/16/2011 10:12 AM America/New York 5/24/2011 07:15 AM America/New York	VBA Continuity of Operations Awareness VA Senior Executive Strategic Leadership Course	7/5/2011 10:35 AM America/New York 10/2/2011 09:04 AM America/New York	VA-Complete VA-Complete	40	0	0.5 40
THOMAS	MURPHY	,	1563310		item	5/24/2011 07:15 AM America/New York 5/24/2011 07:15 AM America/New York	VA Senior Executive Strategic Leadership Course VA Senior Executive Strategic Leadership Course	10/2/2011 09:04 AM America/New York 5/16/2012 02:58 PM America/New York	VA-Complete VA-Complete	44	0	40
THOMAS	MURPHY	i	1711812		Item	7/12/2011 11:00 AM America/New York	ICARE Discussions	8/2/2011 09:00 AM America/New York	VA-Complete	1	0	1
THOMAS	MURPHY	j	3129973		Item	5/9/2012 02:52 PM America/New York	VA Time & Attendance System (VATAS)- Employees	4/3/2015 02:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	3729078		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	3768533		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	3768533 3812493		Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	7/10/2013 08:06 AM America/New York	VA-Complete	0	0	1 0
THOMAS	MURPHY	,	3812493		ltem ltem	6/13/2013 01:25 PM America/New York 6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials Government Ethics - The Essentials	1/11/2013 02:06 PM America/New York 6/16/2014 01:41 PM America/New York	VA-Complete VA-Complete	0	0	0
THOMAS	MURPHY	1	3812493		Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials Government Ethics - The Essentials	7/10/2013 08:06 AM America/New York	VA-Complete VA-Complete	0	0	0
THOMAS	MURPHY	j	3871351		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	3873736		Item	3/13/2014 01:34 PM America/New York	Records Management for Records Officers and Liaisons (WBT)	12/4/2015 01:23 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J		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	3878027		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	3878029 3878030		Item	5/16/2014 09:59 AM America/New York 5/16/2014 10:05 AM America/New York	2014 Budget Formulation and Execution for VBA Executives	6/26/2014 04:11 PM America/New York 6/26/2014 04:12 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	,	3878030		ltem ltem	5/16/2014 10:05 AM America/New York	2014 Compensation Claims Quality and Training for VBA Executives 2014 Acquisition for VBA Executives	6/26/2014 04:12 PM America/New York 6/26/2014 04:09 PM America/New York	VA-Complete VA-Complete	0	0	1.5
THOMAS	MURPHY	j	3878033		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 VA-Complete	0	0	1
THOMAS	MURPHY	j	3878034	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	3878036		Item	5/16/2014 10:21 AM America/New York	2014 Data Management for VBA Executives by Mark Seastrom	6/26/2014 04:13 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	3878038		Item	5/16/2014 10:24 AM America/New York	Critical Thinking Skills by Dr. Maureen McGuire-Kuletz	6/26/2014 04:18 PM America/New York	VA-Complete	0	0	1.5
THOMAS	MURPHY	J	3878039 3878040	VA	Item Item	5/16/2014 10:27 AM America/New York 5/16/2014 10:28 AM America/New York	Leading a Diverse Workforce by OPM Bruce Stewart Negotiation Skills – Bob Gilson on Labor Negotiations	6/26/2014 04:19 PM America/New York 6/26/2014 04:07 PM America/New York	VA-Complete VA-Complete	0	0	1.5 1.5
THOMAS	MURPHY	1	3878041		item	5/16/2014 10:28 AM America/New York	Accountability – Bob Gilson on Holding Federal Employees Accountable	6/26/2014 04:16 PM America/New York	VA-Complete VA-Complete	0	0	1.5
THOMAS	MURPHY	í	3883649		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	ő	0	1.5
THOMAS	MURPHY	J	3883649	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		Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommitment)	1/26/2017 09:16 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	3901227		Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommitment)	2/2/2018 04:49 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	3901227 3910965		ltem ltem	1/29/2015 10:15 AM America/New York 3/3/2015 03:11 PM America/New York	VA Core Values Training (I CARE Recommitment)	3/23/2015 04:26 PM America/New York	VA-Complete VA-Complete for Contact Hours	0	0	0.5
THOMAS	MURPHY	1	3911053		item	3/5/2015 09:54 AM America/New York	HR Academy: Fair Employment Opportunities (Print) HR Academy: Fair Employment Opportunities (CDN)	3/30/2015 11:39 AM America/New York 3/30/2015 11:39 AM America/New York	NFED-Complete	0	0	0.5
THOMAS	MURPHY	j	3911053		item	3/6/2015 11:33 AM America/New York	Conversation with Lawyers: Reasonable Accommodations (Video)	12/4/2015 01:29 PM America/New York	VA-Complete	0	0	2
THOMAS	MURPHY	J	3941927	VA	Item	5/29/2015 03:30 PM America/New York	VBA Executive Leadership Training 2015 End-of-Program Evaluation	10/26/2015 01:02 PM America/New York	VA-Complete	0	0	32
THOMAS	MURPHY	J	3948000	VA	Item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	1/26/2017 09:26 AM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	3948000		item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	12/4/2015 01:25 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	3948000		Item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	2/2/2018 04:48 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	1	3950519 3950519		item item	7/21/2015 03:52 PM America/New York 7/21/2015 03:52 PM America/New York	VBA Active Threat Response (ATR) Training VBA Active Threat Response (ATR) Training	1/26/2017 12:57 PM America/New York 12/4/2015 01:52 PM America/New York	VA-Complete VA-Complete	0	0	1 1
THOMAS	MURPHY	í	3950519		Item	7/21/2015 03:52 PM America/New York 7/21/2015 03:52 PM America/New York	VBA Active Threat Response (ATR) Training VBA Active Threat Response (ATR) Training	2/2/2018 04:49 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	j	4157154		Item	10/30/2015 12:39 PM America/New York	VSCM conference 2015	10/30/2015 02:15 PM America/New York	VA-Complete VA-Complete		0	32
THOMAS	MURPHY	J	4181738	VA	Item	4/26/2016 11:31 AM America/New York	VBA/VHA Conference	4/26/2016 01:46 PM America/New York	VA-Complete	0	0	32
THOMAS	MURPHY	J	4192231		Item	8/24/2016 11:36 AM America/New York	Senior Leadership Annual Business Meeting (SLABM)	9/15/2016 12:00 PM America/New York	VA-Complete	28	0	28
THOMAS	MURPHY	J	4193355		Item	9/27/2016 03:16 PM America/New York	VBA Director's Training Symposium - October 2016	1/26/2017 09:25 AM America/New York	VA-Complete	40	0	30
THOMAS	MURPHY	1	4194709 4194711		ltem ltem	10/24/2016 02:52 PM America/New York 10/24/2016 03:29 PM America/New York	Senior Leader Annual Business Meeting (SLABM) Cascade Session Senior Leader Annual Business Meeting (SLABM) Town Hall Meeting	12/19/2016 04:29 PM America/New York 12/16/2016 03:05 PM America/New York	VA-Complete VA-Complete	8	0	8 4
THOMAS	MURPHY	í	4245172		Item	10/24/2016 03:29 PM America/New York 4/25/2017 03:51 PM America/New York	VBA Leadership Training Symposium - May 2017 for SES and Directors	2/2/2018 04:37 PM America/New York	VA-Complete VA-Complete	0	0	30
THOMAS	MURPHY	1	4909632		Item	9/6/2017 10:38 AM America/New York	The EEO, D&I, No FEAR, and Whistleblower Rights and Protection Policy Statement	2/2/2018 04:58 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	1	\$407221		Item	11/30/2017 10:46 AM America/New York	An Overview of Directive 6008: Acquisition and Management of VA IT Resources (On Demo		VA-Complete	0	0	1.5

Sent: Tue, 18 May 2021 21:27:18 +0000 To: Hogan, Michael R. (OGC) Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grasslev (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) @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: Hogan, Michael R. (OGC) (b)(6) @va.gov> Sent: Tuesday, May 18, 2021 2:39 PM (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

@va.gov>

From: (b)(6)

Sent: Tuesday, May 18, 2021 2:15 PM



Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

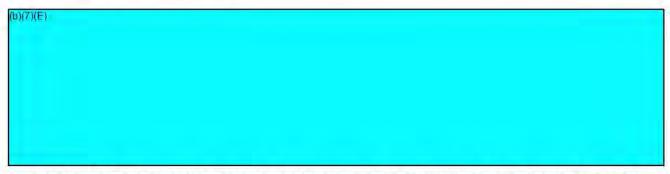
Importance: High

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.
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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 he sitate 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 22:33:20 +0000

To: (D)(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)

Attorney

Office of General Counsel, Information & Administrative Law Group

Washington, DC - outstationed in the Bay Area

4)(4)

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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Thank you.			
mank you.			
Mike			
Mike			
Mike From: (b)(6)	@va.gov>		
From:(^{(b)(6)} Sent: Tuesday, May 18, 2	2021 2:15 PM	Libration a Sandadornia	
From: (b)(6) Sent: Tuesday, May 18, 2 To: Hogan, Michael R. (O	2021 2:15 PM (b)(6) @va.gov	>; Cordeiro, Hansel (OAWP)	
From: (b)(6) Sent: Tuesday, May 18, 2 To: Hogan, Michael R. (O	2021 2:15 PM OGC) (b)(6) @va.gov Ov>(b)(6)	@va.gov>	bus
From: (b)(6) Sent: Tuesday, May 18, 2 To: Hogan, Michael R. (O	2021 2:15 PM OGC) (b)(6)	©va.gov> cVicker, Carrie A. < <mark>(0)(6)</mark>	@va.gov>;
From: (b)(6) Sent: Tuesday, May 18, 2 To: Hogan, Michael R. (O (O)(6) Dva.go (OGC)	2021 2:15 PM OGC) (b)(6) @va.gov Ov>(b)(6)	©va.gov> cVicker, Carrie A. < <mark>(0)(6)</mark>	

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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)

RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grasslev Subject: Attachments: 4890714 DRAFT Enclosure for FINAL Approval (IALG edits to #12).docx Mike, o)(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) @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: 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 For your awareness. (b)(5): (b)(6) (b)(5); (b)(6) Thank you.

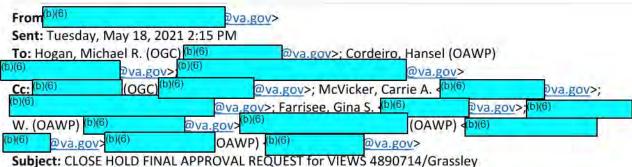
Wed, 19 May 2021 12:28:35 +0000

Hogan, Michael R. (OGC)

Sent:

Mike

To:



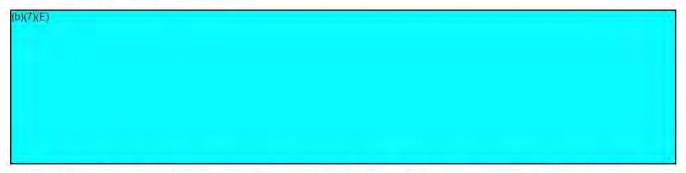
Importance: High

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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



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) @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?



From: Hogan, Michael R. (OGC) va.gov>

Sent: Tuesday, May 18, 2021 2:39 PM

To(b)(6) OGC)(b)(6) 0va,gov>

Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Importance: High

(b)(6)

For your awareness (b)(5)

7)(5)					
Thank you.					
Mike					
From: (b)(6)		@va.gov>			
Sent: Tuesday	y, May 18, 2021 2	:15 PM		o to ver action	
To: Hogan, M b)(6)	lichael R. (OGC) (b)	@va	.gov>; Cordeiro, H		
Cc:(b)(6)	(OGC) (b)(6)	@va.gov	>; McVicker, Carrie	0va.gov> e A. (b)(6)	@va.gov>;
b)(6)			see, Gina S. (b)(6)		(b)(6)
CALL SALES MANAGERS IN	n)(6)	va.gov> (b)(6)	(OAWP) < (b)(6)	
W. (OAWP)	v>; (b)(6)				

Importance: High

Hello All:

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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

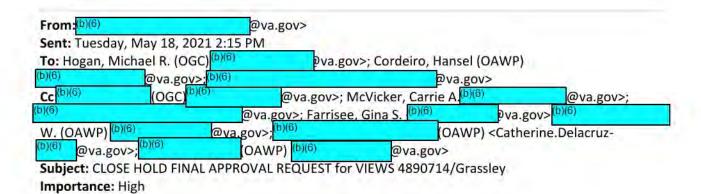
(b)(6)

Hogan, Michael R. (OGC) From: Sent: Wed, 19 May 2021 18:07:52 +0000 Cordeiro, Hansel (OAWP); (b)(6) To: b)(6) Cc: OGC);McVicker, Carrie A. (D)(6) Farrisee, 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
(Direct)

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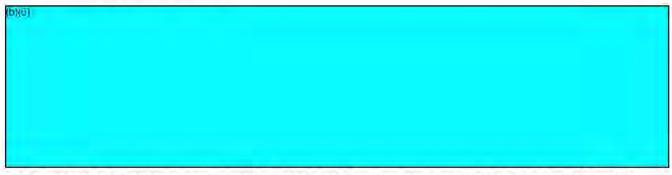
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- Transmittal letter

- Enclosure (rough draft)
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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

(6)(6)

From: (DGC)

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) @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,

(D)(D)

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,			
To:(b)(6) OGC)	(b)(6) @va.gov>		
Subject: FW: CLOSE HOL	LD FINAL APPROVAL REQUE	ST for VIEWS 4890714/0	Grassley
Importance: High			
b)(6)			
No.			
For your awareness (b)(5)			
V6)			
)(5)			
A ROUNG			
Thank you.			
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			
Mike			
From: (b)(6)	@va.gov>		
From: (b)(6) Sent: Tuesday, May 18,	2021 2:15 PM		
From: (b)(6) Sent: Tuesday, May 18, 7 To: Hogan, Michael R. (C	2021 2:15 PM OGC) (<mark>b)(6) </mark>	gov>; Cordeiro, Hansel (C	AWP)
From: (b)(6) Sent: Tuesday, May 18, 7 To: Hogan, Michael R. (C) (b)(6)	2021 2:15 PM OGC) (b)(6) 2 Va.s	g <u>ov</u> >; Cordeiro, Hansel (C ⊉va.gov	
From: (b)(6) Sent: Tuesday, May 18, 17 To: Hogan, Michael R. (C) b)(6) Ova.go C(b)(6) OGC	2021 2:15 PM OGC) (b)(6) 2Va.s ov>(b)(6)		
From: (b)(6) Sent: Tuesday, May 18, 17 To: Hogan, Michael R. (C) (b)(6) OVA.g(C) (c)(b)(6) OGC	2021 2:15 PM OGC) (b)(6) ov>(b)(6) (b)(6) @va.gov>; @va.gov>; Parriso	ava.gov: McVicker, Carrie A. ^{[b)(6)} ee, Gina S. <mark>(b)(6)</mark>	@va.gov>; @va.gov>;
From: (b)(6) Sent: Tuesday, May 18, 7 To: Hogan, Michael R. (C) (b)(6)	2021 2:15 PM OGC) (b)(6) OVA.5 OV> (b)(6) OVA.gov>;	මva.gov McVicker, Carrie A. ^{(b)(6}	@va.gov>; @va.gov>;

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(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



Sent: Wed, 19 May 2021 18:32:56 +0000

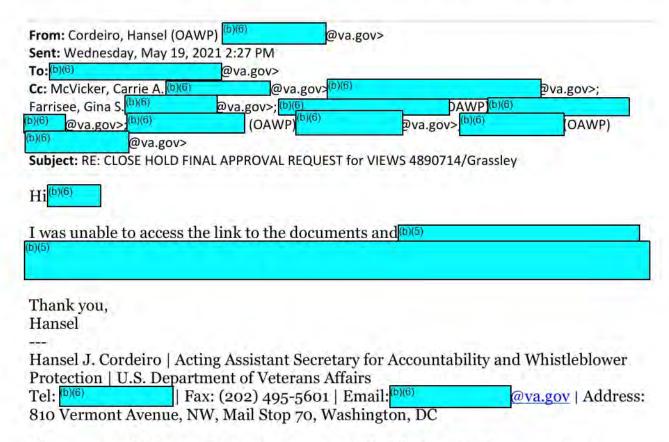
To: Cordeiro, Hansel (OAWP); Parise, Ruthann

Cc: McVicker, Carrie A (b)(6) Farrisee, Gina S. (b)(6)

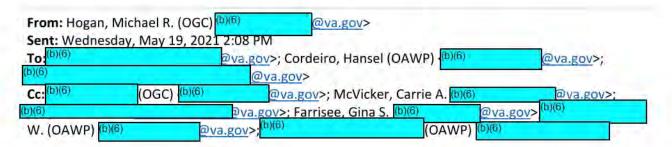
(OAWP) (OAWP) (OAWP)

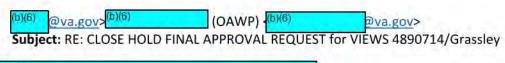
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Hi Hansel. Thank you for your email. I am sorry to hear you weren't able to access the link to documents. Ruthann Parisse provided me with documents and I am adding her to the email so that she can send the



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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
(Direct)

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From ^{(b)(6)}	@va.gov>		
Sent: Tuesday, May 18, 20	021 2:15 PM		
To: Hogan, Michael R. (OG	(b)(6) @va.go	ov>; Cordeiro, Hansel (OA	AWP)
@va.gov	> (b)(6)	@va.gov>	
Cc: ^{(b)(6)} (OGC)	(6) @va.gov>;	McVicker, Carrie A. (b)(6)	@va.gov>;
)(6)	@va.gov>; Farrise	e, Gina S. (b)(6)	@va.gov>; (b)(6)
W. (OAWP) (b)(6)	@va.gov>(b)(6)	(OAWP)	
)(6) @va.gov>(b)(6)	(OAWP) (b)(6)	@va.gov>	

Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

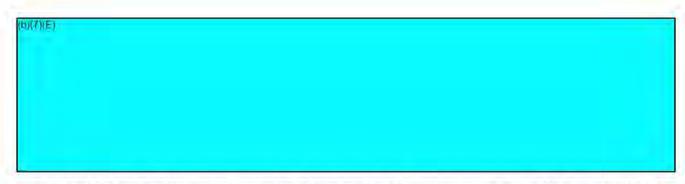
Importance: High

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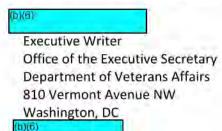
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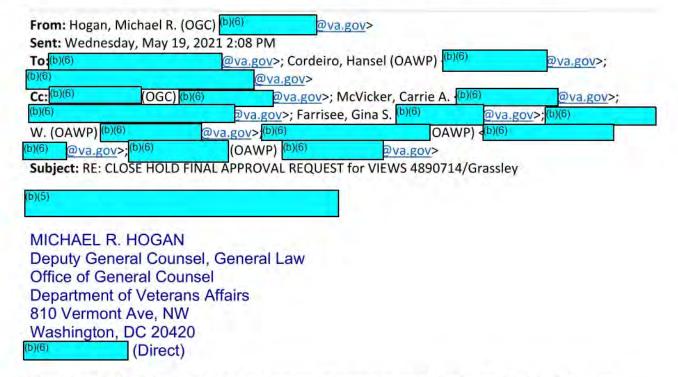
Wed, 19 May 2021 18:40:29 +0000 Sent: Cordeiro, Hansel (OAWP) To: Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Hi Hansel, I think they have to give you Team access for the link. Executive Assistant to the Assistant Secretary Office of Accountability and Whistleblower Protection Department of Veterans Affairs Office: (b)(6) Mobile Phone: (b)(6) Anonymous Toll-Free Disclosure Hotline: (855) 429-6669 | Email (10)(6) @va.gov | Web: https://www.va.gov/accountability This e-mail (including any attachments) may contain information that is private, confidential, or protected by law. If you received this e-mail in error, you are notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy the e-mail and any attachments. 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. @va.gov> @va.gov>; OAWP) (b)(6) Farrisee, Gina S. @va.gov>(b)(6) (b)(6) (OAWP)(b)(6) @va.gov>; @va.gov> (b)(6) (OAWP) @va.gov> Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Hi 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

(OAWP)

From:

Tel: Pax: (202) 495-5601 | Email: Pax: (202)

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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)



Subject: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

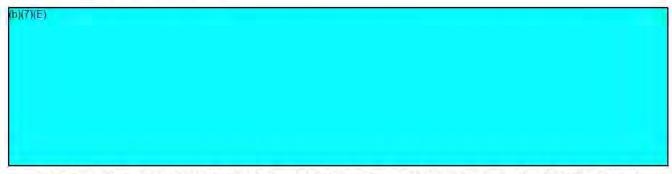
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Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC

Parise, Ruthann From: Sent: Wed, 19 May 2021 18:48:32 +0000 To: Cordeiro, Hansel (OAWP) Farrisee, Gina S^{(b)(6)} McVicker, Carrie A. (b)(6) Cc: (OAWP)(b)(6) (OAWP) (OAWP) Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Hi 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 @va.gov>; Parise, Ruthann <Ruthann.Parise@va.gov> To: Cordeiro, Hansel (OAWP) (b)(6) Cc: McVicker, Carrie A. <Carrie.McVicker@va.gov> @va.gov>; @va.gov>(b)(6) (OAWP) Farrisee, Gina S. b)(6) @va.gov>;(b)(6) (OAWP) @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 Parisse, who I have added to the email chain, to send them to you. From: Cordeiro, Hansel (OAWP) @va.gov> Sent: Wednesday, May 19, 2021 2:27 PM Ta(b)(6) @va.gov> Cc: McVicker, Carrie A. (b)(6) @va.gov> @va.gov>; Farrisee, Gina S. (b)(6) Dva.gov>(b)(6) OAWP) (b)(6) DAWP)(b)(6) @va.gov>; (b)(6) @va.gov>(b)(6)(OAWP)

@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 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. This e-mail (including any attachments) may contain information that is private, confidential, or protected by law. If you received this e-mail in error, you are notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy the e-mail and any attachments. From: Hogan, Michael R. (OGC) @va.gov> Sent: Wednesday, May 19, 2021 2:08 PM To:(b)(6) @va.gov>; Cordeiro, Hansel (OAWP) @va.gov>; b)(6) @va.gov> Cc:(b)(6) (OGC)(b)(6) va.gov>; McVicker, Carrie A. (b)(6) @va.gov>; Dva.gov>; Farrisee, Gina (b)(6) @va.gov> W. (OAWP) (b)(6) Dva.gov×(b)(6) (OAWP) < @va.gov>;(b)(6) OAWP) (b)(6) @va.gov> Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley MICHAEL R. HOGAN Deputy General Counsel, General Law Office of General Counsel

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(b)(6) @va.gov>;(t	@va.gov>
Cc ^{(b)(6)} OGC) (b)(6)	@va.gov>; McVicker, Carrie A. (b)(6) Pva.gov>
0)(6)	Dva.gov>; Farrisee, Gina S. (b)(6) Dva.gov>(b)(6)
W. (OAWP) (b)(6)	Dva.gov>;(b)(6) OAWP) (b)(6)
)(6) @va.gov>	OAWP) (b)(6) @va.gov>

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Importance: High

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b)(7)(E)

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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.

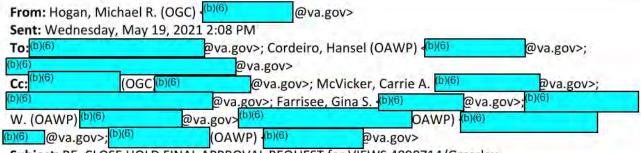
Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Carrie.

Mike Hogan and Hansel have responded. Do you think I'll see this package tonight to get to COS? Thank you,

Gina

(b)(5)



Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

777777777777777

MICHAEL R. HOGAN
Deputy General Counsel, General Law
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420
(Direct)

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To: Hogan, Michael R. (O	GC) (b)(6) @va.gov>; (Cordeiro, Hansel (OAWP)	0
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Cc:(b)(6) OGC		cker, Carrie A ^{(b)(6)}	@va.gov>;
(b)(6)	@va.gov>; Farrisee, Gir	na S. <(b)(6)	gov> (b)(6)
W. (OAWP)(b)(6)	@va.gov>; (b)(6)	OAWP) (b)(6)	
(6) @va.gov>(b)(6)	(OAWP) (b)(6)	@va.gov>	

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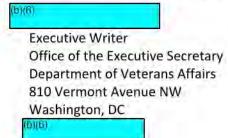
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Hogan, Michael R. (OGC) From:

Sent: Wed, 19 May 2021 20:13:28 +0000

Sauber, Richard A. (OGC); Hipolit, Richard (OGC) To:

Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley 04890714 - Incoming Letter.pdf, (2) Attachment P Murphy Training records.xlsx, Attachments:

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 (Direct)

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From:(b)(6) Sent: Tuesda	y, May 18, 2021 2:15 P	@va.gov> M	
	/lichael R. (OGC) (b)(6)	@va.gov>; Cordeiro, Hansel (O/	AWP)
0)(6)	@va.gov>;(b)(6)	@va.gov>	
Cc (b)(6)	(OGC) (b)(6)	@va.gov>; McVicker, Carrie A. (b)(6)	@na aon>.
0)(6)	@	va.gov>; Farrisee, Gina S. (b)(6)	®va.gov> ^{(b)(6)}
W. (OAWP)	@va.go		

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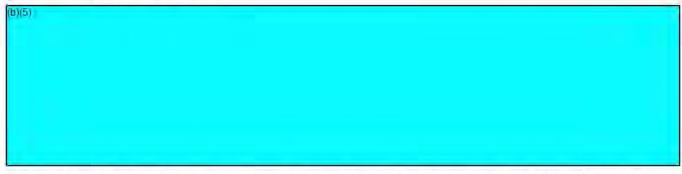
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Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC
(b)(6)

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEAHY, VERMONT
DIANNE FENSTEIN, CALIFORNIA
SHELDON WHITH COURSE, THOOLE ISLAND
AMY KLOBUCHAR, MINNESDOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADULLS, CALIFORNIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E GRABSLEY, KOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNY, TEXAS
MICHAEL S. LEE, LITAH
TED CITUZ, TEXAS
BER SASSE, NEBRASKA
JOSHUA S. HAWLEY, MISSOURI
TOM COTTON, ARIKANSAG
JOHN FERNIEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACEBURN, TERNISSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

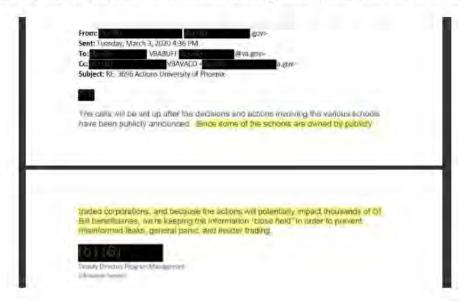
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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).

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?

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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?

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^{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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)					
2	Aguirre Law, APC					
Ä	501 W. Broadway, Ste. 800					
3	San Diego, CA 92101 Tel: 619-400-4960					
4	Fax: 619-501-7072					
5	Email: Gary@aguirrelawapc.com					
6	Attorney for Plaintiff Maria A. Pomares					
7						
8	UNITED STATES	S DISTRICT COURT				
9	SOUTHERN DISTR	RICT OF CALIFORNIA				
10						
11		Case No.: 21CV84 H MSB				
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY				
13	Plaintiff,	AND INJUNCTIVE RELIEF				
14	V.					
15	UNITED STATES DEPARTMENT OF					
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,					
	Defendant.					
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 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

¹ The name of the company was changed from Career Education Corporation to Perdoceo Education Corporation effective January 1, 2020. The company's former name is used in this complaint, because the records requests and released records primarily use that name. ² Danielle Douglas-Gabriel, *VA Backs down from Plan to Suspend University of Phoenix*

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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

⁶ *Id*.

⁴ *Id*. ⁵ *Id*.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior." 5
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

Veterans Education Success

@GIBIIIRights



- 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:

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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.

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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.

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

- Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - 2. Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outsidegroup/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-husbandof-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

 under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

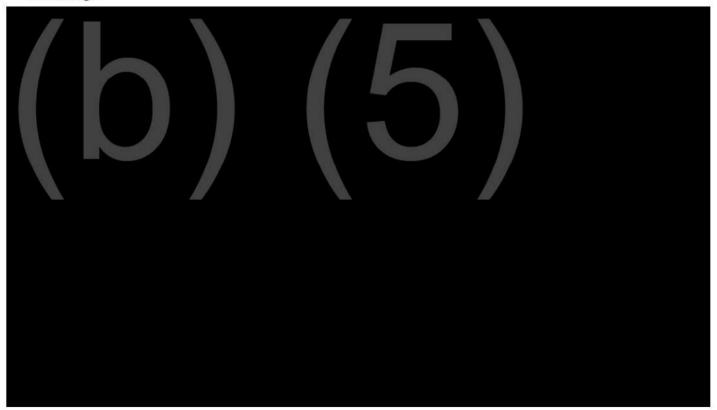
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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



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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. < (b) (6) @va.gov>

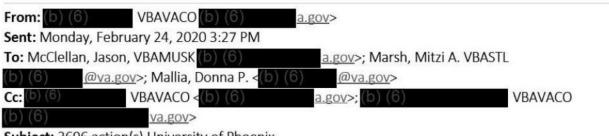
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

BEST AVAILABLE COPY

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THOMAS MURPHY J 4309852 VA Item 9/6/2017 10:38 AM America/New York The EEO, D&L No FEAR, and Whistleblower Rights and Protection Policy Statement 2/2/7018 04:58 PM America/New York VA-Complete 0 0 0.5	THOMAS	MURPHY	J	4194711	VA	Item					2	0	4
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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)

Qva.gov

From: (b)(6) @va.gov> Sent: Wednesday, May 19, 2021 4:12 PM

To: McVicker, Carrie A @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

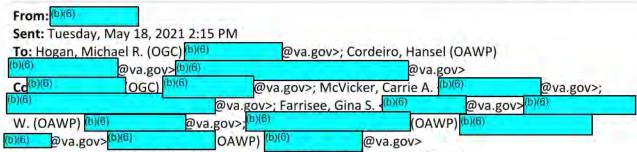
To: McVicker, Carrie A.

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.



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)		- 1

(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 he sitate 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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

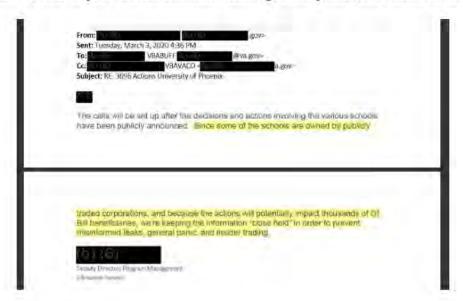
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
4	Tel: 619-400-4960	
	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	RICT OF CALIFORNIA
10		
11		Case No.: <u>'21CV84 H MSB</u>
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY
13	Plaintiff,	AND INJUNCTIVE RELIEF
14	v.	
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
16	Defendant.	
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

28 6 Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ *Id*. ⁵ *Id*.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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

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- 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;
- 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

 under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

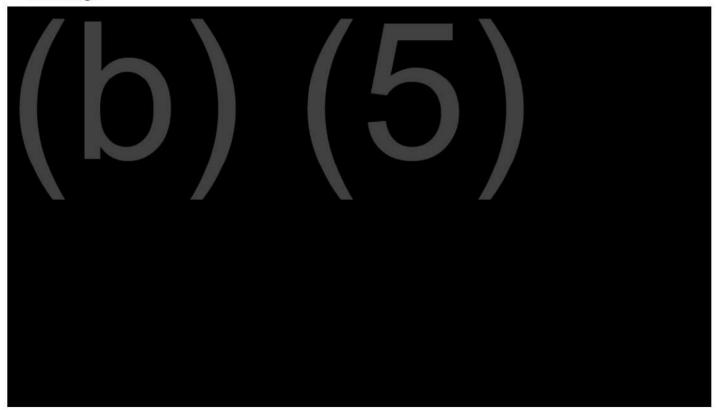
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

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

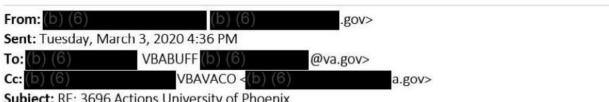
Good Morning (b) (6)

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-



Subject: RE: 3696 Actions University of Phoenix



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.





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!



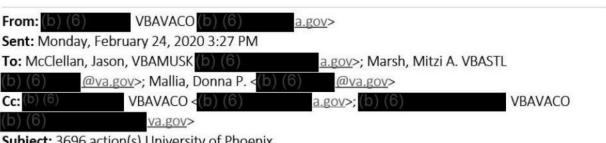
From: Mallia, Donna P. < 6 @va.gov> Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

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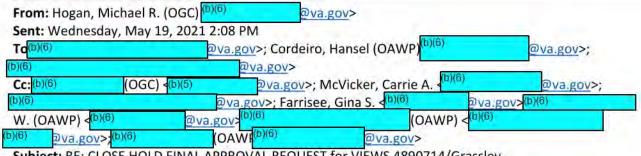
First Name		Middle Initial			Entity Type	Item Revision Date	Entity Title	Completion Date	Completion Status	Total Hours	Credit Hours	Learning Hours
THOMAS	MURPHY	J	565		Item	8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retailation) Act	3/1/2010 11:56 AM America/New York	VA-Complete	0	0	0.75
THOMAS	MURPHY	1	565 565		Item Item	8/5/2005 08:34 AM America/New York 8/5/2005 08:34 AM America/New York	No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act No FEAR (Notification & Federal Employee Antidiscrimination & Retaliation) Act	5/7/2010 01:05 PM America/New York 5/7/2010 12:12 PM America/New York	VA-Complete VA-Complete	0	0	0.75
THOMAS	MURPHY	,	5506	VA	Item	9/24/2007 01:44 PM America/New York	Prevention of Sexual Harassment	3/1/2010 12:32 PM America/New York	VA-Complete	0	0	0.73
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	5508		Item	9/24/2007 10:40 AM America/New York	VA Online Travel Card Training	3/28/2011 12:33 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	7505		Item	8/21/2009 06:44 AM America/New York	Inside Ethics	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	1	7505		ltem	8/21/2009 06:44 AM America/New York	Inside Ethics	2/27/2012 01:37 PM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	1	8625 8872		item item	8/11/2010 01:29 PM America/New York 10/14/2010 01:18 PM America/New York	VHA 2010 Leadership Conference: Be the Change You Want To See Prevention of Workplace Harassment/No FEAR	8/26/2010 03:00 PM America/New York 2/2/2018 04:45 PM America/New York	VA-Complete VA-Complete	0	15	15 1.5
THOMAS	MURPHY	1	8872		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 VA-Complete	0	0	1.5
THOMAS	MURPHY	1	8872		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	1		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		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		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		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		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	,	10176		ltem ltem	2/8/2007 10:53 AM America/New York 2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior VA Privacy and Information Security Awareness and Rules of Behavior	1/26/2017 12:49 PM America/New York 2/2/2018 04:36 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	1	10176		Item	2/8/2007 10:53 AM America/New York 2/8/2007 10:53 AM America/New York	VA Privacy and Information Security Awareness and Rules of Behavior VA Privacy and Information Security Awareness and Rules of Behavior	2/27/2018 04:36 PM America/New York	VA-Complete VA-Complete	0		1
THOMAS	MURPHY	J	10176		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		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		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	10203	VA	Item	2/14/2007 03:47 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		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	1	31726 32755	VA	Item	2/7/2006 07:58 AM America/New York 4/28/2006 01:16 PM America/New York	Ethics Most Wanted	12/8/2009 08:19 AM America/New York 5/7/2010 11:30 AM America/New York	VA-Complete	1.5	0	1.5
THOMAS	MURPHY	,	32755 33157		ltem ltem	4/28/2006 01:16 PM America/New York 3/23/2017 07:27 AM America/New York	General Employee Privacy Awareness VA Senior Leaders Mid-Year Meeting (54677 / BIS 4665)	5/7/2010 11:30 AM America/New York 4/27/2017 05:00 PM America/New York	VA-Complete VA-Complete	22.5	0	1 12
THOMAS	MURPHY	1	33986		Item	7/24/2017 06:28 AM America/New York	Leadership VA (LVA) / 4528 Session 3	9/15/2017 04:00 PM America/New York	VA-Complete VA-Complete	46	0	28
THOMAS	MURPHY	i	34049		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		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		Item	6/18/2008 09:36 AM America/New York	PII Training	11/23/2009 02:29 PM America/New York	VA-Complete	0.5	1	0.5
THOMAS	MURPHY	J	897931		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		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	1	897931 897931		ltem ltem	5/6/2009 12:23 PM America/New York 5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	1/20/2016 02:33 PM America/New York 2/6/2015 08:30 AM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	1	897931		item	5/6/2009 12:23 PM America/New York	The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training The Uniformed Services Employment and Reemployment Rights Act (USERRA) Training	5/7/2010 12:59 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	í	897931		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	í	1261925		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	1286934	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	1286935	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	1324985		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	1324988	VA	Item	8/3/2010 12:14 PM America/New York	EEO & Conflict Management for VA Senior Executive Service (SES) Members	8/27/2010 11:00 AM America/New York	VA-Complete	3	0	3
THOMAS	MURPHY	1	1328672 1328672		ltem ltem	9/7/2010 08:06 AM America/New York 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 6/26/2014 04:03 PM America/New York	VA-Complete VA-Complete	0	0	3
THOMAS	MURPHY	1	1372648		Item	3/16/2011 10:12 AM America/New York	EEO, Diversity, and Conflict Management Training for Managers and Supervisors VBA Continuity of Operations Awareness	1/11/2013 12:48 PM America/New York	VA-Complete VA-Complete	0	0	0.5
THOMAS	MURPHY	í	1372648		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 VA-Complete	0	0	0.5
THOMAS	MURPHY	j	1372648	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	12/4/2015 11:21 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648		Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	2/2/2018 04:50 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648	VA	Item	3/16/2011 10:12 AM America/New York	VBA Continuity of Operations Awareness	6/26/2014 03:34 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	J	1372648		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	1563310		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	1563310		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	,	1711812 3129973		ltem ltem	7/12/2011 11:00 AM America/New York 5/9/2012 02:52 PM America/New York	ICARE Discussions VA Time & Attendance System (VATAS)- Employees	8/2/2011 09:00 AM America/New York 4/3/2015 02:13 PM America/New York	VA-Complete VA-Complete	1 0	0	1
THOMAS	MURPHY	1	3729078		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	i	3768533		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	ő	1
THOMAS	MURPHY	J	3768533		Item	6/27/2012 10:08 AM America/New York	Manual Recording of Annual Ethics Training	7/10/2013 08:06 AM America/New York	VA-Complete	0	0	1
THOMAS	MURPHY	J	3812493		Item	6/13/2013 01:25 PM America/New York	Government Ethics - The Essentials	1/11/2013 02:06 PM America/New York	VA-Complete	0	0	0
THOMAS	MURPHY	J	3812493		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	3812493		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	,	3871351 3873736		ltem ltem	2/10/2014 01:42 PM America/New York 3/13/2014 01:34 PM America/New York	COMPLIANCE IMPACT: Reasonable Accommodation – The Ask Records Management for Records Officers and Liaisons (WBT)	12/4/2015 11:14 AM America/New York 12/4/2015 01:23 PM America/New York	NFED-Complete VA-Complete	0	0	0.1
THOMAS	MURPHY	1	3877492		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 VA-Complete	0	0	8.5
THOMAS	MURPHY	í	3878027		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	í	3878029		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	ő	ő	1
THOMAS	MURPHY	J	3878030	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	3878031		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	3878033	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.	3878034 3878036		ltem ltem	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	,	3878036 3878038		Item	5/16/2014 10:21 AM America/New York 5/16/2014 10:24 AM America/New York	2014 Data Management for VBA Executives by Mark Seastrom Critical Thinking Skills by Dr. Maureen McGuire-Kuletz	6/26/2014 04:13 PM America/New York 6/26/2014 04:18 PM America/New York	VA-Complete VA-Complete	0	0	1.5
THOMAS	MURPHY	1	3878038		item	5/16/2014 10:24 AM America/New York	Leading a Diverse Workforce by OPM Bruce Stewart	6/26/2014 04:19 PM America/New York	VA-Complete VA-Complete	0	0	1.5
THOMAS	MURPHY	i	3878040		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	ő	0	1.5
THOMAS	MURPHY	J	3878041		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	3883649		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	3883649		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		Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommitment)	1/26/2017 09:16 AM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	1	3901227		Item	1/29/2015 10:15 AM America/New York	VA Core Values Training (I CARE Recommitment)	2/2/2018 04:49 PM America/New York	VA-Complete	0	0	0.5
THOMAS	MURPHY	,	3901227 3910965		ltem ltem	1/29/2015 10:15 AM America/New York 3/3/2015 03:11 PM America/New York	VA Core Values Training (I CARE Recommitment) HR Academy: Fair Employment Opportunities (Print)	3/23/2015 04:26 PM America/New York 3/30/2015 11:39 AM America/New York	VA-Complete VA-Complete for Contact Hours	0	0	0.5
THOMAS	MURPHY	1	3911053		item	3/5/2015 09:54 AM America/New York	HR Academy: Fair Employment Opportunities (CDN)	3/30/2015 11:39 AM America/New York	NFED-Complete		0	0.5
THOMAS	MURPHY	j	3911737		item	3/6/2015 11:33 AM America/New York	Conversation with Lawyers: Reasonable Accommodations (Video)	12/4/2015 01:29 PM America/New York	VA-Complete		0	2
THOMAS	MURPHY	J	3941927		Item	5/29/2015 03:30 PM America/New York	VBA Executive Leadership Training 2015 End-of-Program Evaluation	10/26/2015 01:02 PM America/New York	VA-Complete	0	0	32
THOMAS	MURPHY	J	3948000		Item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	1/26/2017 09:26 AM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	j	3948000		item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	12/4/2015 01:25 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	J	3948000		Item	6/23/2015 08:18 AM America/New York	Records Management for All VBA Employees	2/2/2018 04:48 PM America/New York	VA-Complete	0	0	0.25
THOMAS	MURPHY	,	3950519 3950519	VA VA	item item	7/21/2015 03:52 PM America/New York 7/21/2015 03:52 PM America/New York	VBA Active Threat Response (ATR) Training VBA Active Threat Response (ATR) Training	1/26/2017 12:57 PM America/New York 12/4/2015 01:52 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	1	3950519 3950519		Item	7/21/2015 03:52 PM America/New York 7/21/2015 03:52 PM America/New York	VBA Active Threat Response (ATR) Training VBA Active Threat Response (ATR) Training	12/4/2015 01:52 PM America/New York 2/2/2018 04:49 PM America/New York	VA-Complete VA-Complete	0	0	1
THOMAS	MURPHY	i	4157154		Item	10/30/2015 12:39 PM America/New York	VSCM conference 2015	10/30/2015 02:15 PM America/New York	VA-Complete VA-Complete	0	0	32
THOMAS	MURPHY	j	4181738	VA	Item	4/26/2016 11:31 AM America/New York	VBA/VHA Conference	4/26/2016 01:46 PM America/New York	VA-Complete	ő	o o	32
THOMAS	MURPHY	J	4192231	VA	Item	8/24/2016 11:36 AM America/New York	Senior Leadership Annual Business Meeting (SLABM)	9/15/2016 12:00 PM America/New York	VA-Complete	28	0	28
THOMAS	MURPHY	J	4193355		Item	9/27/2016 03:16 PM America/New York	VBA Director's Training Symposium - October 2016	1/26/2017 09:25 AM America/New York	VA-Complete	40	0	30
THOMAS	MURPHY	J	4194709		Item	10/24/2016 02:52 PM America/New York	Senior Leader Annual Business Meeting (SLABM) Cascade Session	12/19/2016 04:29 PM America/New York	VA-Complete	8	0	8
THOMAS	MURPHY	1	4194711 4245172		Item	10/24/2016 03:29 PM America/New York	Senior Leader Annual Business Meeting (SLABM) Town Hall Meeting VBA Leadership Training Symposium - May 2017 for SES and Directors	12/16/2016 03:05 PM America/New York	VA-Complete	2	0	4 30
THOMAS	MURPHY	,	4245172		ltem ltem	4/25/2017 03:51 PM America/New York 9/6/2017 10:38 AM America/New York	VBA Leadership Training Symposium - May 2017 for SES and Directors The EEO, D&I, No FEAR, and Whistleblower Rights and Protection Policy Statement	2/2/2018 04:37 PM America/New York 2/2/2018 04:58 PM America/New York	VA-Complete VA-Complete	0	0	30 0.5
THOMAS	MURPHY	j	4407221		Item	11/30/2017 10:36 AM America/New York	An Overview of Directive 6008: Acquisition and Management of VA IT Resources (On Dema		VA-Complete VA-Complete			1.5

Sent: Thu, 20 May 2021 18:11:56 +0000 To: Cc: McVicker, Carrie A. (b)(6) OAWP) RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Subject: Yes, I concur. Sorry, I meant I do not have an objection = concurrence. Thank you, Hansel Hansel J. Cordeiro | Acting Assistant Secretary for Accountability and Whistleblower Protection | U.S. Department of Veterans Affairs Fax: (202) 495-5601 | Email: (b)(6) Tel: (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. This e-mail (including any attachments) may contain information that is private, confidential, or protected by law. If you received this e-mail in error, you are notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy the e-mail and any attachments. From: @va.gov> Sent: Thursday, May 20, 2021 2:11 PM To: Cordeiro, Hansel (OAWP) (b)(6) @va.gov> @va.gov>; Cc: McVicker, Carrie A. (b)(6) @va.gov> Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Hi Hansel, Checking in to see if you will be able to concur today for OAWP. The front office is eager to get this package moving through the OSVA approval process and my last step is to incorporate any minor edits you may have and add OAWP's concurrence to the 0907 (I already have OGC and OCLA's concurrence). From: Cordeiro, Hansel (OAWP) (D)(6) ova.gov> Sent: Wednesday, May 19, 2021 2:27 PM Dva.gov> @va.gov>: (b)(6) Cc: McVicker, Carrie A. (b)(6) @va.gov>; (OAWP) (b)(6) Farrisee, Gina S. @va.gov> @va.gov> (OAWP) @va.gov>: (OAWP) @va.gov> Subject: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

Cordeiro, Hansel (OAWP)

From:

Hi (b)(6) I was unable to access the link to the documents and (10)(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: @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. This e-mail (including any attachments) may contain information that is private, confidential, or protected by law. If you received this e-mail in error, you are notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy the e-mail and any attachments. From: Hogan, Michael R. (OGC) (b)(6) @va.gov> Sent: Wednesday, May 19, 2021 2:08 PM



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 (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: (D)(O)	@va.gov>			
Sent: Tuesday, May 18	2021 2:15 PM			
To: Hogan, Michael R. (OGC)(b)(6)	@va.gov>; Cordeiro, Hans	sel (OAWP)	
(b)(6) @va.	gov> (b)(6)	@va	.gov>	
		gov>; McVicker, Carrie A.	(b)(6)	@va.gov>;
(b)(6)	@va.gov>; l	Farrisee, Gina S. <(b)(6)	@va.gov	(b)(6)
W. (OAWP) (b)(6)	@va.gov>(b)(6)	(OA	WP)(b)(6)	
	(OAWP) < (b)	(6) @va.gov>		

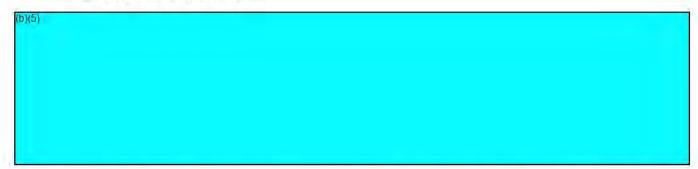
Importance: High

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)



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)(B)

Executive Writer Office of the Executive Secretary Department of Veterans Affairs 810 Vermont Avenue NW Washington, DC

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-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)

<u>Whistleblower Protections</u>: 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.

Cont. Thursday May 70 7071 2.17 DM	@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>
	VAL REQUEST for VIEWS 4890714/Grassley	wva.guv>
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(5)		
Olahand A. Caulana		
Richard A. Sauber General Counsel		
Department of Veterans Affairs		
O-(b)(6)		
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Privileged and Confidential		
From: Hogan, Michael R. (OGC)(b)(6)	@va.gov>	
Sent: Wednesday, May 19, 2021 4:13 P	M	
To: Sauber, Richard A. (OGC) (b)(6)	<u>@va.gov</u> >; Hipolit, Richard (OGC)	
@va.gov>		
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Importance: High		
Dick,		
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I am available to discuss this if you'd like	e.	
I am available to discuss this if you'd like	e.	
I am available to discuss this if you'd like Mike MICHAEL R. HOGAN		
I am available to discuss this if you'd like Mike MICHAEL R. HOGAN Deputy General Counsel, Genera		
I am available to discuss this if you'd like Mike MICHAEL R. HOGAN Deputy General Counsel, Genera Office of General Counsel		
I am available to discuss this if you'd like Mike MICHAEL R. HOGAN Deputy General Counsel, Genera Office of General Counsel Department of Veterans Affairs		
I am available to discuss this if you'd like Mike MICHAEL R. HOGAN Deputy General Counsel, Genera Office of General Counsel Department of Veterans Affairs 810 Vermont Ave, NW Washington, DC 20420		

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From: (b)(6) Sent: Tuesday, Ma	ay 18, 2021 2:15 P	0va.gov>			
To: Hogan, Micha			ov>; Cordeiro,	Hansel (OAWP)	
5)(6)	@va.gov>;(b)(6)			∂va.gov>	
	(OGC) (b)(6)	@va.gov>; ا	McVicker, Carr	ie A ^{(b)(6)}	@va.gov>;
b)(6)	9	va.gov>; Farrise)V>; (b)(6)
W. (OAWP) (b)(6)	@va.go	/HX/GA		(OAWP) < <mark>(b)(6)</mark>	
0)(6) @va.gov>(b)	(6)	AWP) (b)(6)	@va.go	V>	

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.

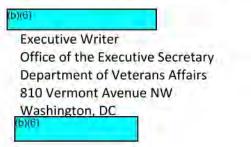
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- · Incoming letter
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For tracking and version control purposes, please send any last comments you may have to me only. If the comments are significant you will have an opportunity to review again.

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.



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



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?

esponse: ^{(b)(5)}	
Question 1a: If so, was Mr. Murphy e	ever suspended?
VA Response: (6)(5)	
Question the Was a recommendation	o for suspension over overturned? If
Question 1b: Was a recommendation so, why and by who?	Tiol suspension ever overturneu? I
VA Boomana (b)(5)	
VA Response: (b)(5)	
stion 2: Had former Deputy Undersecre mmended for suspension for acceptin	
mmended for suspension for acceptin	
mmended for suspension for acceptin	
mmended for suspension for acceptin	
mmended for suspension for acceptin	
mmended for suspension for acceptin	g gifts as prohibited by law?
Response: (6)(5) Question 2a. If so, was Mr. Reynolds	g gifts as prohibited by law?
mmended for suspension for acceptin	g gifts as prohibited by law?
Response: (b)(5) Question 2a. If so, was Mr. Reynolds VA Response: (b)(5)	g gifts as prohibited by law?
Response: (b)(5) Question 2a. If so, was Mr. Reynolds VA Response: (b)(5)	g gifts as prohibited by law?

	Question 2b. Was a recommendation for suspension ever overturned? If so, why and by who?
	VA Response: (b)(5)
	on 3. Had former Principal Undersecretary Jamie Manker ever been mended for suspension for accepting gifts as prohibited by law?
A Re	sponse: (b)(5)
	Question 3a. If so, was Mr. Manker ever suspended?
(b)(5	VA Response: (b)(5)
(6)(5	VA Response: (b)(5)
	VA Response: (b)(5) Question 3b. Was a recommendation for suspension ever overturned? If
Quest	VA Response: (b)(5) Question 3b. Was a recommendation for suspension ever overturned? If so, why and by who?

Question 5: What steps does the VA take to protect retail investor	rs by
safeguarding market sensitive information regarding potential er	nforcement
announcements related to publicly-traded companies?	

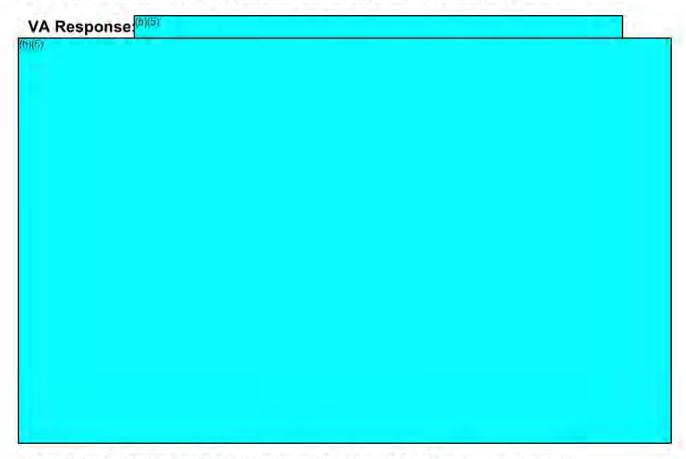
	Is it possible these steps prevent this from happe	
VA Response	(b)(5)	
(b)(5)		
	A is aware that market seinvestigated this leak of ion.	
A Response:		
)		
ith respect to Mrs. ompanies?	VA Office of General Co Bogue and her involven	
A Response:(b)(5)		

(b)(5)	
Question 8: Please provide all records relating to any writter VA attorneys regarding Mrs. Bogue's recusal, whether and woccurred, and all communications regarding Mrs. Bogue's rewith respect to her husband's companies.	vhen this recusal
VA Response: (b)(5)	
Question 9: Did Mrs. Bogue engage in, participate in, or con- business with her husband's business? If so, why did VA all participate?	
VA Response: (5)(5)	
Question 10: Under current law and regulation, is Mrs. Bogu financial information of her spouse via a public financial disc did Mrs. Bogue list her husband?	
VA Response: (b)(5)	
)(5)	
	WANT CONTRA
Question 10a: If Mrs. Bogue did report her husband or disclosure form, did she report Mr. Bogue's employer	

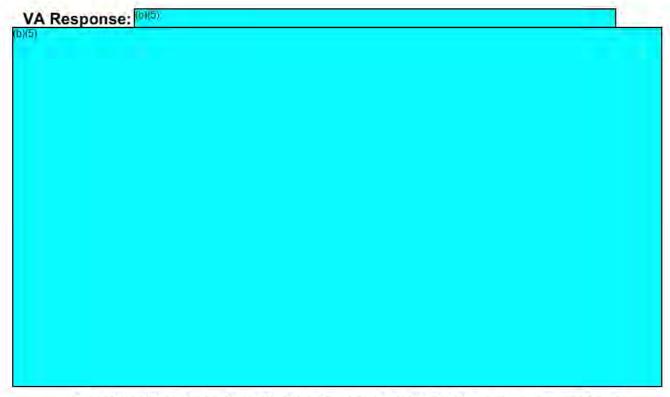
Question 10b: If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue's salary with respect to his work? If not, why not?

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

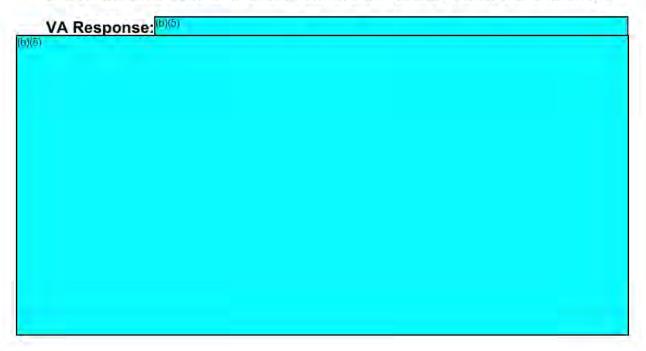
Question 11: If Mrs. Bogue did not report where Mr. Bogue currently works, and if she participated in VA business related to VES, would that constitute a conflict of interest as described by applicable law or regulation? If not, why not?



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



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?



Department of Veterans Affairs

May 2021

RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
BIELLON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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..."

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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." 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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
Ť.	501 W. Broadway, Ste. 800	
3	San Diego, CA 92101 Tel: 619-400-4960	
4	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	RICT OF CALIFORNIA
10		
11		Case No.: 21CV84 H MSB
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY
13	Plaintiff,	AND INJUNCTIVE RELIEF
14	V.	
15	UNITED STATES DEPARTMENT OF	
16	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
	Defendant.	
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ <i>Id</i> .	
⁵ <i>Id</i> .	
⁶ <i>Id</i> .	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

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11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

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

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

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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

- under Exemption 6. 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 14.
- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

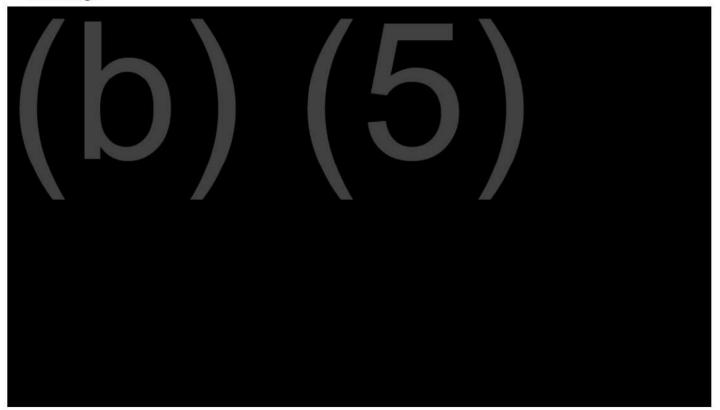
Cc: (b) (6)

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-

From: (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

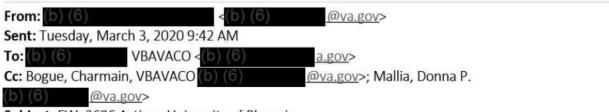
b) (6)

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.



Education Service



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!



From: Mallia, Donna P. < 6 @va.gov>

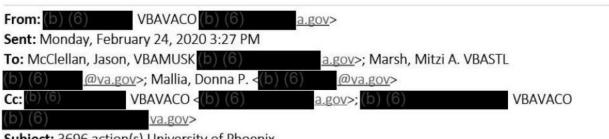
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability

VA U.S. Department of Veterans Affairs			SUMMARY AND APPROVAL SHEET			
NAME OF ORIGINATOR			VIEWS NO. 4890714	DATE 05/20/20	DATE DUE	
NAME OF EXECUTIVE SEC	RETARY STAFF	SUBJECT Response 1	to Incoming Letter fr	om Senator Gra	asslev	
(b)(6)					7	
ROUTING	INITIALS	DATE		COMMEN	ITS	
EXEC SEC						
DEPCOSVA						
DEPCOSVA/WHL						
COSVA						
DEPSECVA						
⋉ SECVA						
		Purno	EXECUTIVE SUMMARY se - Discussion - Recom		Executive Summary Instruction	
officials at the V related to these affirms SECVA's abuse and advis	eterans Be conflicts as s position o ses that the OAWP and	nefits Admir well as pro n the issue of matter that	nistration (VBA), and vided copies of certa of senior leader iden is the subject of the	d asks that VA ain documents. tifies malfeasar incoming letter	cal issues among senior respond to 12+ questions The response firmly nce, under performance, or r is already under questions are in the	

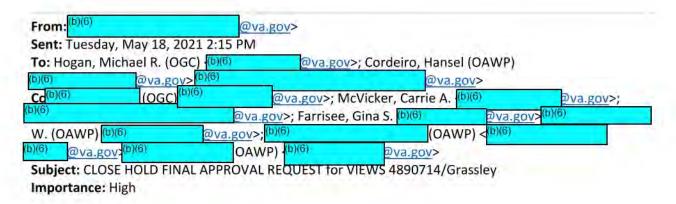
Farrisee, Gina S. From: Sent: Fri, 21 May 2021 21:57:30 +0000 To: Hogan, Michael R. (OGC) Cc: McVicker, Carrie A. FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Subject: Mike, Thank you very much, we will add him to the concurrence. From: Hogan, Michael R. (OGC) @va.gov> Sent: Friday, 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 (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. @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

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, 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 Good afternoon and thanks for your quick turn on this. Thanks, Gina From: Hogan, Michael R. (OGC) (b)(6) @va.gov> Sent: Wednesday, May 19, 2021 2:08 PM @va.gov>; Cordeiro, Hansel (OAWP)^{(b)(6)} To:(b)(6) @va.gov>; @va.gov> Cc (b)(6) (OGC(b)(6) @va.gov>; McVicker, Carrie A. (b)(6) Dva.gov>; @va.gov>; Farrisee, Gina S. (b)(6) @va.gov;(b)(6) W. (OAWP)(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



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.



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)

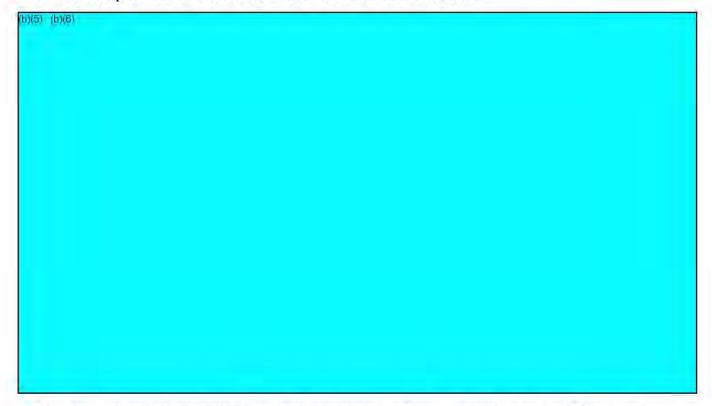
Executive Writer
Office of the Executive Secretary
Department of Veterans Affairs
810 Vermont Avenue NW

Washington, DC

From:	(b)(6)	(OGC)		
Sent:	Mon, 24 May	2021 16:09:53 +00	00	
To:	Hogan, Micha	ael R. (OGC)		
Cc:	Cromwell, So	nya (OGC (b)(6)	(OGC); (b)(6)	(OGC)(b)(6)
(b)(6) (OGC)				
Subject:	RE: 04890714	4 - Letter from Sena	tor Grassley to SECVA	
Attachments:	1. Enclosure	4890714 template -	PLG Final.docx, 1a. PLG	Final (CATT-
338564).pdf, 2.(b)(6)	Res	ponses from VIEW	Task Response Notes.p	df
Importance:	High			

Good Morning Mr. Hogan,

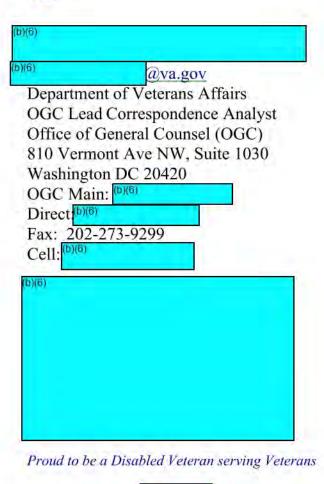
My apologies for the delay but I've been pulling all data together in order to be able to provide you with a reason for the ongoing inquiry and to obtain your assistance in answering the unanswered questions and where/who the answers should come from.



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.



My Name Is

And I Care!

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
(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: Cromwell, Sonya (OGC) (b)(6) Sent: Monday, May 24, 2021 8:09 AM	
To: Hogan, Michael R. (OGC (b)(6) @va.gov>	
C((b)(6) @va.gov>	
Subject: FW: 04890714 - Letter from Senator Grassley to SECVA	
Importance: High	
Hello Mike, (6)(5): (6)(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)	
Fav: 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: 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) (Dva.gov> (b)(6)	(OGC)
(b)(6) @va.gov>	
Subject: RE: 04890714 - Letter from Senator Grassley to SECVA	
Hello including laws 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

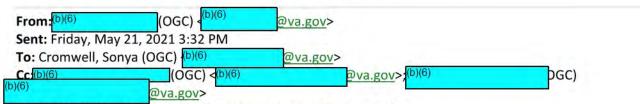


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Subject: FW: 04890714 - Letter from Senator Grassley to SECVA

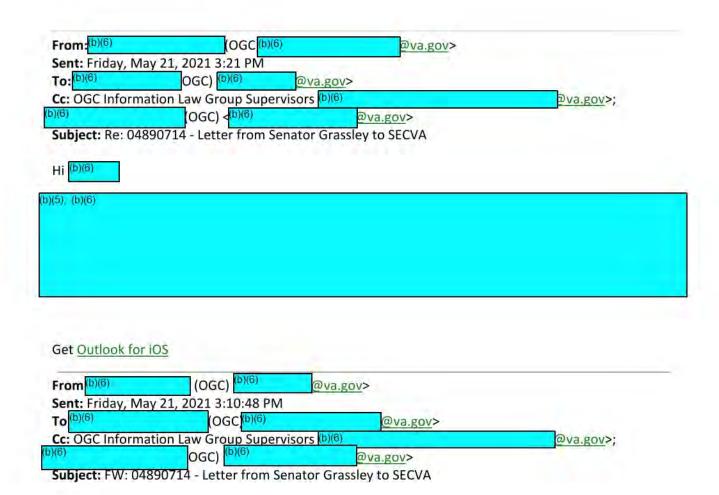
Sonya,

Hi, based on 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

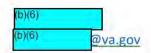


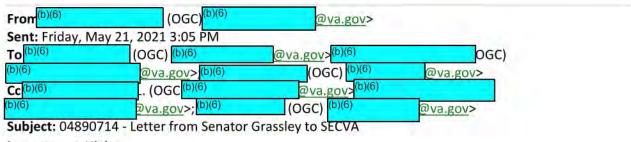


Hi. As noted below, would you please give us a status update on gcl 154271, Chuck Greasley,

Legal Assistant
Office of General Counsel (024), Room 1157A
Information and Administrative Law Group
810 Vermont Avenue, NW
Washington, DC 20420

thank you.





Importance: High

V/r,

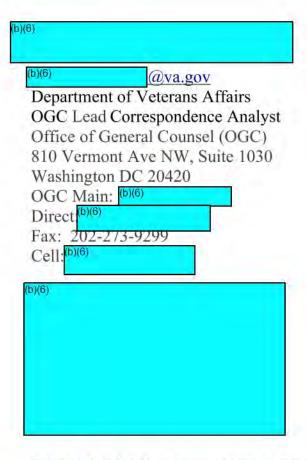
Greetings IALG Team,

I am inquiring on the status of this request for information, the due date was 16 April 2021 and it

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: O	riginal Task	
Link to ^{(b)(6)} Comments (b)(7)(E)	(OGC 02EST E	thics Specialty Team) Task:
Link to Doris Gruntme	eir's Task: Comments	S
Link to (OGC 02EST E	thics Specialty Team) Task: Comments
Link to New Task crea	ated by (b)(6)	For Review



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?

	1a: If so, was Mr. Murphy ever suspended?
VA Respor	nse·(t)(5)
(b)(5)	
	1b. Was a recommendation for suspension ever overturned? If nd by who?
b)(5)	
	former Deputy Undersecretary Robert Reynolds ever been or suspension for accepting gifts as prohibited by law?
mmended fo	

	Question 2b. Was a recommendation for suspension ever overturned? If so, why and by who?
	VA Response: (b)(5)
	stion 3. Had former Principal Undersecretary Jamie Manker ever been mmended for suspension for accepting gifts as prohibited by law?
ı	Response:(b)(5)
	Question 3a. If so, was Mr. Manker ever suspended?
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	VA Response (b)(5)
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	VA Response (b)(5)

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)

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

Q	Department of Veterans of Affairs (VA) Responses to Questions from Senator Charles Grassley uestion 1: Has Acting Undersecretary Tom Murphy ever been recommended for spension for accepting gifts as prohibited by law?	r
	A Response: (b)(5)	
	Question 1a: If so, was Mr. Murphy ever suspended?	
	VA Response: (b)(5)	
	Question 1b. Was a recommendation for suspension ever overturned? If so, why and by who?	
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	(b)(5)	b. Was a rec	commendatio	n for suspen	sion ever overturne
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Que rela Mar VA Que safe	Question 3 so, why and VA Response ted to the susting the susting and Rober Response:	b. Was a record by who? se: (b)(5) se provide all pensions, or ert Reynolds. steps does to ket sensitive	records, cor proposed su	nmunications ispensions, of protect retains	s, and memorandur

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)

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: - -

(b)(5)

Question 89 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?

(0)(5)

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: •

(b)(5)

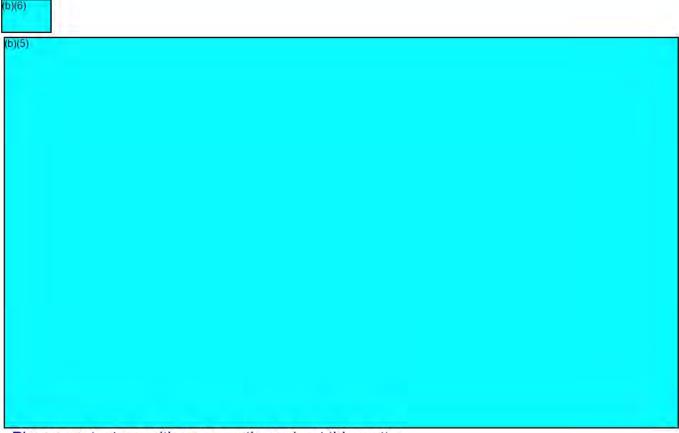
Question 10b. If Mrs. Bogue did report her husband on a public financial disclosure form, did she report Mr. Bogue s salary with respect to his work? If not, why not?

(IbV	VA Response:
(b)(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 **Sent:** Thu, 27 May 2021 17:44:33 +0000

To: Harper, Prevolia

Subject: RE: Tab 1 4890714 Grassley Transmittal Letter Aa (004)



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
(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 Transr	mittal 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

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

Sent: Thursday, May 27, 2021 2:10:18 PM

To: Hogan, Michael R. (OGC) (D)(6) @va.gov>

Subject: Tab 1 4890714 Grassley Transmittal Letter Final 1

Mike, sending you the clean final copy. Thanks

Thu, 27 May 2021 16:15:51 +0000 Sent: Hogan, Michael R. (OGC) To: 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 (OGC) (b)(6) To:(b)(6) @va.gov> Subject: RE: Follow-up b)(5) (OGC) (b)(6) @va.gov> Sent: Thursday, May 27, 2021 11:41 AM To: Hogan, Michael R. (OGC) (b)(6) ova.gov> Subject: RE: Follow-up From: Hogan, Michael R. (OGC) (D)(0) @va.gov> Sent: Thursday, May 27, 2021 11:11 AM To(b)(6) OGC) (b)(6) ova.gov> Subject: Follow-up Re: Senator's request

OGC)

From:

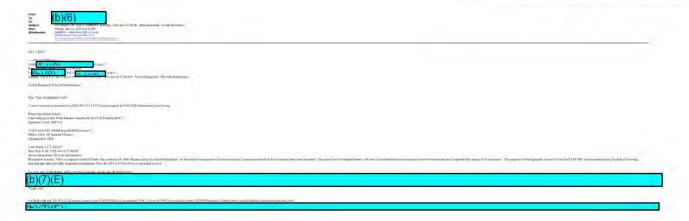
(0)(5)			

Thank you,

Mike

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RICHARD J. DURBIN, ILLINDIS, EHAIR

PATRICK J. LEAHY, VERMONT
DIANNE FENSTEIN, CALIFORNIA
SHELDON WHITH COURSE, HINDE ISLAMI
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADULLS, CALIFORNIA
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JOHN FERNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLEEBLEN, TENNOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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." 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?

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^{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

Rankling Member

Committee on the Judiciary

Exhibit A

	(1)		
1	Gary J. Aguirre (SBN 38927)		
2	Aguirre Law, APC 501 W. Broadway, Ste. 800 San Diego, CA 92101 Tel: 619-400-4960		
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1	Fax: 619-501-7072		
5	Email: Gary@aguirrelawapc.com		
6	Attorney for Plaintiff Maria A. Pomares		
7			
8	UNITED STATES DISTRICT COURT		
9	SOUTHERN DISTRICT OF CALIFORNIA		
0		124 CV04 U MCD	
11		Case No.: 21CV84 H MSB	
12	MARIA A. POMARES,	COMPLAINT FOR DECLARATORY	
13	Plaintiff,	AND INJUNCTIVE RELIEF	
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14	V.		
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,		
16	Defendant.		
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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.

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

⁴ *Id*. ⁵ *Id*.

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

Press Release; Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838...
President (202) 838-5050 Tanya Ang | Vice President (202) 838...

11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

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¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

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

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

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

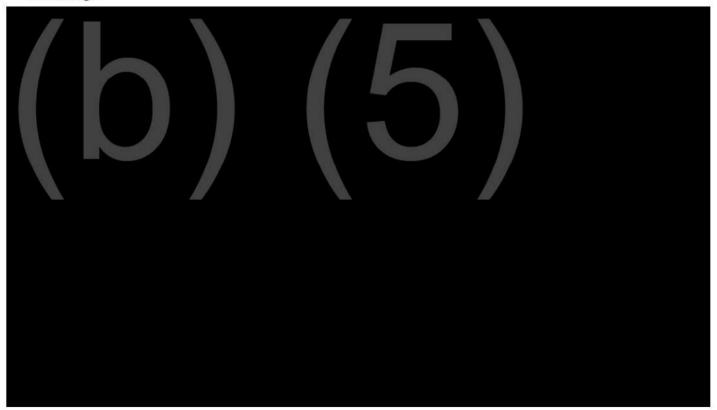
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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



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.



Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. < (b) (6) @va.gov>

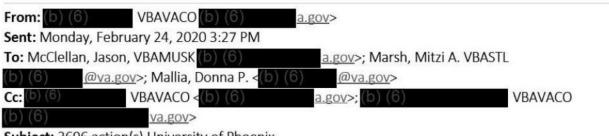
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(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 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 From: (b)(6)

Sent: Fri, 9 Apr 2021 20:18:56 +0000

To: Hogan, Michael R. (OGC)

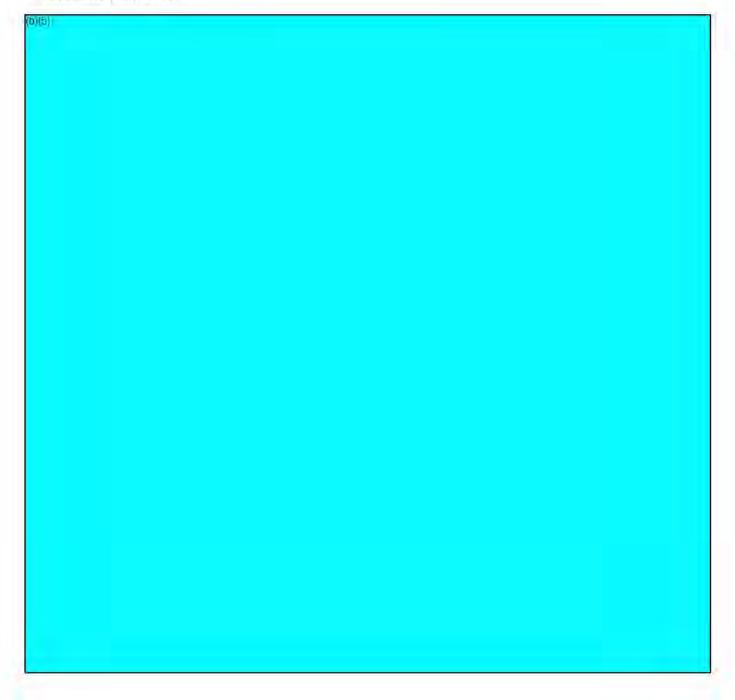
Cc: McVicker, Carrie A.

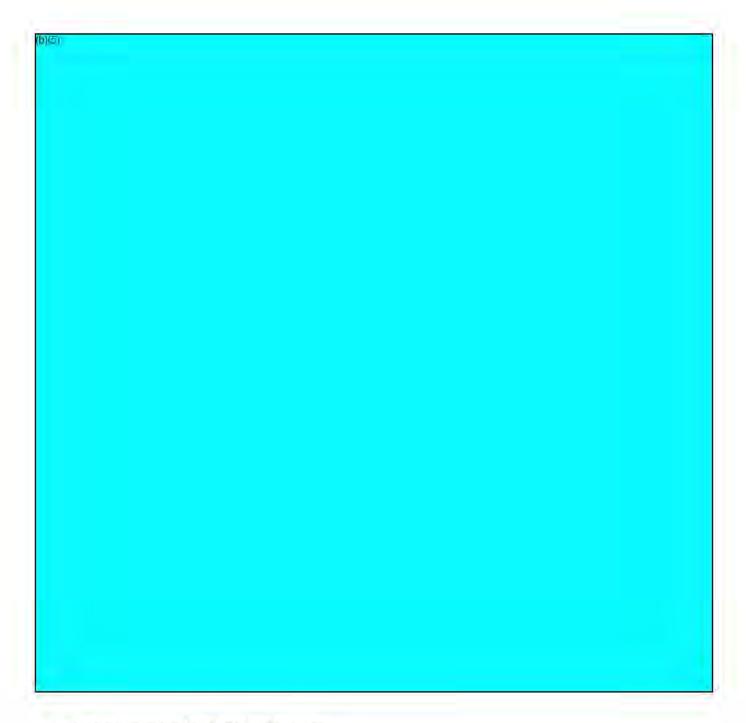
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)

Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf

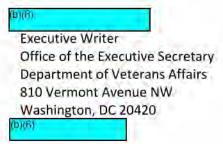
Importance: High

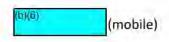
Good afternoon Mike:





Please let me know if you have any questions.





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?

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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?

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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, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX PADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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/.

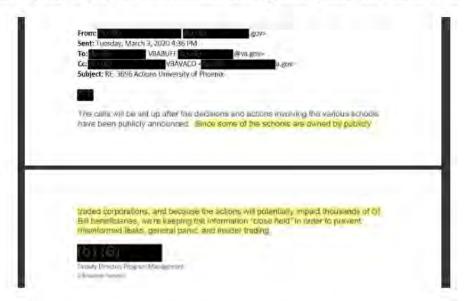
⁶ NLPC Staff, On Tax Return, Group Did Not Disclose Payments to Husband of VA Official, NATIONAL LEGAL AND POLICY CENTER (Dec. 4, 2020), https://nlpc.org/2020/12/04/on-tax-return-group-did-not-disclose-payments-to-husband-of-va-official/.

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..."

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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." 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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)				
2	Aguirre Law, APC				
3	501 W. Broadway, Ste. 800 San Diego, CA 92101				
4	Tel: 619-400-4960				
	Fax: 619-501-7072				
5	Email: Gary@aguirrelawapc.com				
6	Attorney for Plaintiff Maria A. Pomares				
7					
8	UNITED STATES	S DISTRICT COURT			
9	SOUTHERN DISTRICT OF CALIFORNIA				
10					
11		Case No.: '21CV84 H MSB			
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY			
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF			
13	Plaintiff,				
14	v.				
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,				
16					
17	Defendant.				
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This action is brought under the Freedom of Information Act ("FOIA"). 5
 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

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6 Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."4

- VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."5
- Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- The VES letter also pressed the VA to accept as its own all veterans' 12. purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ Id.	
⁵ Id.	
Ia.	

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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The Securities and Exchange Commission provides this concise description of a short sale:

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

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11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

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

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

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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

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- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

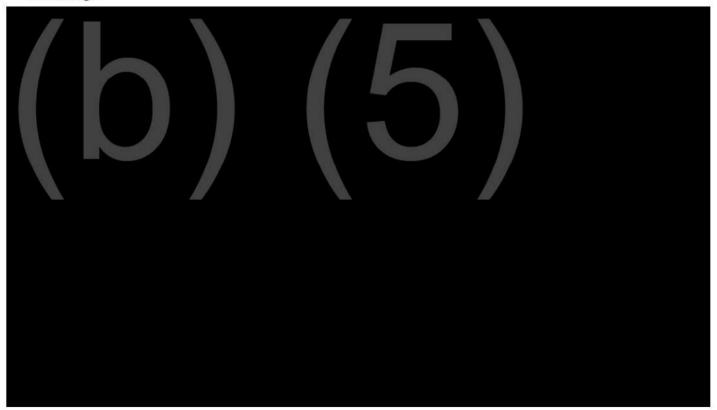
D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: **VBABUFF** To: Cc: 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-

.gov> From: (b) (6) 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

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.





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!



From: Mallia, Donna P. < 6 @va.gov>

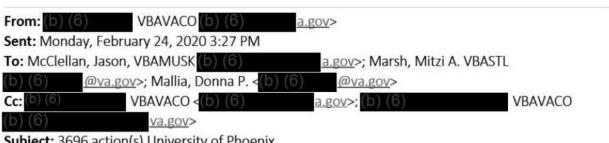
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) @va.gov>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



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.

(b) (6)

Team Chief, Integrity & Protection Branch Oversight & Accountability RICHARD J. DURBIN, ILLINOIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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..."

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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." 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).

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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Aguirre Law, APC		
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3	501 W. Broadway, Ste. 800 San Diego, CA 92101 Tel: 619-400-4960 Fax: 619-501-7072		
4			
5	Email: Gary@aguirrelawapc.com		
6	Attorney for Plaintiff Maria A. Pomares		
7			
8	UNITED STATES DISTRICT COURT		
9	SOUTHERN DISTRICT OF CALIFORNIA		
10			
11		Case No.: '21CV84 H MSB	
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY	
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF	
13	Plaintiff,		
14	v.		
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,		
16	The state of the s		
17	Defendant.		
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1. This action is brought under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San Diego.
- 4. Defendant is an agency of the United States Government and has possession and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

5. Plaintiff seeks records from the Department of Veterans Affairs ("VA") 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 Career Education Corporation ("CEC"), 1 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, 2 but for many investors who sold during the near

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

² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix and Other Colleges from Accessing GI Bill Benefits, WASH. POST, July 2, 2020,

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

- 6. Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- 7. The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- 8. Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- 9. On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.³ The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, *making*

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ Id. ⁵ Id.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

¹² Press Release, VES, 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 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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

Press Release; Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838...
President (202) 838-5050 Tanya Ang | Vice President (202) 838...

11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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;
 - 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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

28

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

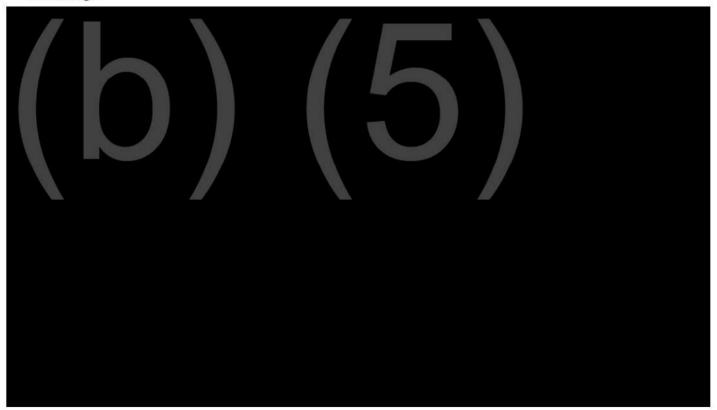
Cc: (b) (6) Mallia, Donna P.

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)

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.

@va.gov>



Education Service

From: (b) (6)

Sent: Tuesday, March 3, 2020 9:42 AM

VBAVACO < (b) (6) a.gov>

Cc: Bogue, Charmain, VBAVACO (b) (6) @va.gov>; Mallia, Donna P.

@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!



From: Mallia, Donna P. < 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

@va.gov>; Mallia, Donna P. < 6) @va.gov>

VBAVACO <(b) (6) Cc: (b) (6) a.gov>; (b) (6) **VBAVACO**

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.

(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 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 From: (D)(6)

Sent: Fri, 9 Apr 2021 20:18:56 +0000 **To:** Hogan, Michael R. (OGC)

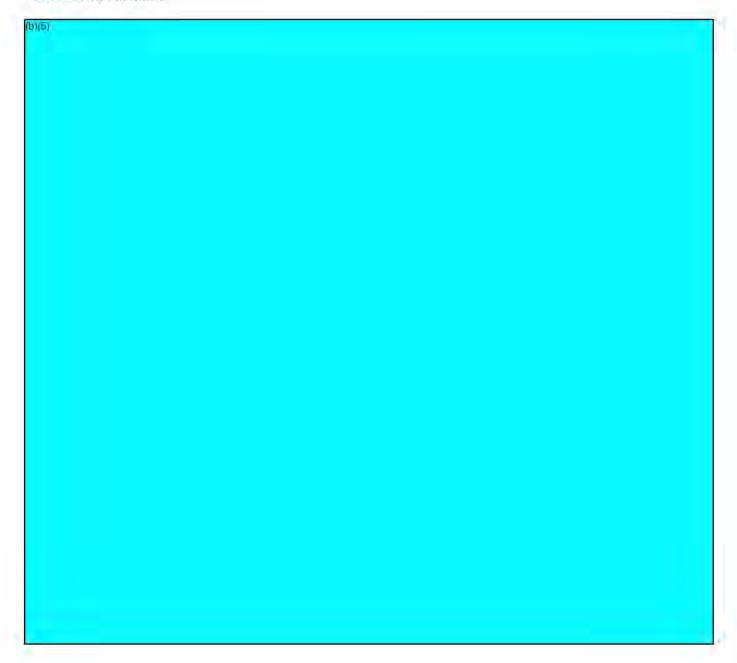
Cc: McVicker, Carrie A.

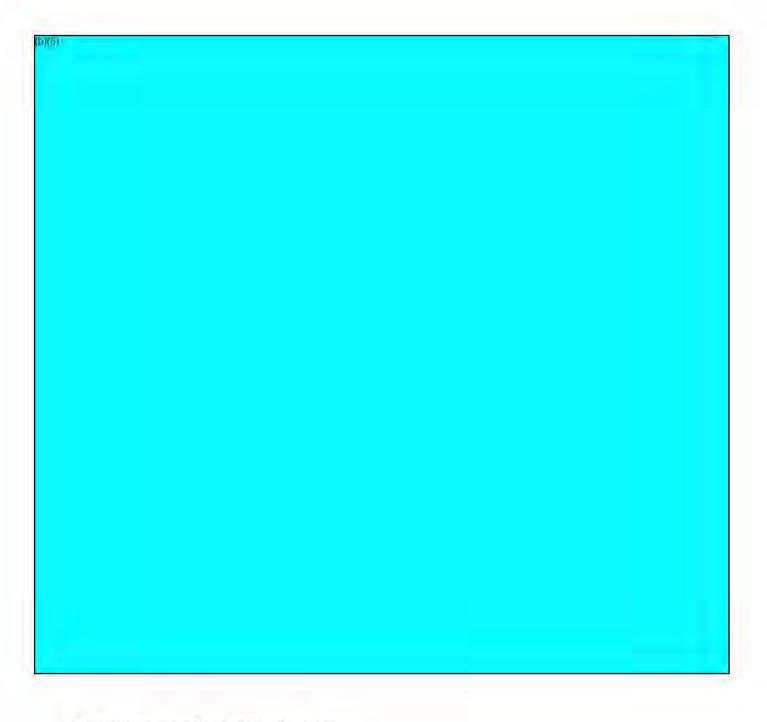
Subject: Regarding VIEWS 4890714 (SME DATA REQUEST)

Attachments: 4890714 Enclosure template..docx, 2021-04-02 CEG to VA.pdf

Importance: High

Good afternoon Mike:



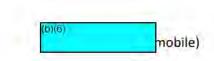


Please let me know if you have any questions.



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





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:

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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:

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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?

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

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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?

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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, ILLINDIS, EHAIR

PATRICK J. LEARY, VERMONT
DIANNE FENSTEIN, CALEGONIA
SHELDON WHITEHOUSE, HHODE ISLAND
AMY KLOBUCHAR, MINNESDATA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL CONNECTICUT
MAZIE K. HIRONO, NAWAII
CORY A. BOCKER, NEW JERSEY
ALEX FADILLA, CALEGONIA
JON OSSOFF, GEORGIA
JON OSSOFF, GEORGIA

CHARLES E. GRAESLEY, IOWA LINDSEY O. GRAHAM, SOUTH CAROLINA JOHN CORNY, TEXAS MICHAEL S. LEE, UTAH TEO CITUZ, TEXAS BER SASSE, NEBIASRA JOSHUA S. HAWLEY, MISSOURI TOM COTTON, ARICANDAQ JOHN BERNEDY, LOUSIANA THOM TILLIS, NORTH CAROLINA MARSHA BLEDBLIN, TERNIOSSEE



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." It is further alleged that Mrs. Bogue failed to disclose her husband's place of work and his income on her mandatory ethics paperwork. Additionally, it appears that VES may have also failed to disclose payments it made to Mr. Bogue for his work.

Whistleblowers further allege that the Bogues 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 Bogues. 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.'" 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.

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. 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..."

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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." 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?

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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?

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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

Rankling Member

Committee on the Judiciary

Exhibit A

1	Gary J. Aguirre (SBN 38927)	
2	Aguirre Law, APC	
3	501 W. Broadway, Ste. 800 San Diego, CA 92101	
4	Tel: 619-400-4960	
	Fax: 619-501-7072	
5	Email: Gary@aguirrelawapc.com	
6	Attorney for Plaintiff Maria A. Pomares	
7		
8	UNITED STATES	S DISTRICT COURT
9	SOUTHERN DISTR	CICT OF CALIFORNIA
10		
11		Case No.: '21CV84 H MSB
12	MADIA A DOMADES	COMPLAINT FOR DECLARATORY
	MARIA A. POMARES,	AND INJUNCTIVE RELIEF
13	Plaintiff,	
14	v.	
15	UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	
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17	Defendant.	
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This action is brought under the Freedom of Information Act ("FOIA"). 5 1. U.S.C. § 552, as amended, for an order compelling Defendant United States Department of Veterans Affairs ("VA") to produce, provide access to, and make available certain records specified below that were requested by Plaintiff Maria Pomares.

JURISDICTION AND VENUE

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

PARTIES

- Plaintiff is a citizen of the United States and a resident of the County of San 3. Diego.
- Defendant is an agency of the United States Government and has possession 4. and control of the records that are the subject of this action.

THE RELEASE OF THE RECORDS SOUGHT WOULD SERVE THE HIGHEST PUBLIC INTEREST

Plaintiff seeks records from the Department of Veterans Affairs ("VA") 5. 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 Career Education Corporation ("CEC"), 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

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The name of the company was changed from Career Education Corporation to Perdoceo Education Corporation effective January 1, 2020. The company's former name is used in this complaint, because the records requests and released records primarily use that name. ² Danielle Douglas-Gabriel, VA Backs down from Plan to Suspend University of Phoenix 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-suspenduniversity-phoenix-other-colleges-accessing-gi-bill-benefits/, last visited Jan. 13, 2021.

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

- Plaintiff is informed and believes, and thereon alleges, that the agency decisions and the release of this nonpublic information involved a relationship between a high-level agency official and an individual in the private sector that should have required the agency official to recuse herself pursuant to agency regulations, which she did not do, and that she should have fully disclosed in her Public Financial Disclosure Report, which she also did not do.
- The VA took the action at the prompting of a nonprofit organization with prior and current relationships with market participants who may have profited by the price movement of the public company.
- Plaintiff seeks VA records containing information relating to (i) its decision to make selective releases of nonpublic information, (ii) the identity of those who received the selective releases of the nonpublic information, and (iii) the possible conduits through which this nonpublic information may have flowed to market participants who profited by its use.
- On January 21, 2020, the nonprofit organization Veterans Education Success ("VES") delivered a letter to Charmain Bogue, Executive Director of the Veterans Benefits Administration ("VBA") Education Service in the VA.3 The letter, which sought severe penalties against several for-profit educational institutions, began with this salutation, "Dear Charmain." From this first-name greeting, VES proposed that Director Bogue take action to put four schools and a public company out of business in the letter's first sentence: "We are writing to bring information to your attention troubling complaints alleging misleading advertising and enrollment practices by schools, making

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

Id.

those schools ineligible for educational benefits under 38 U.S.C. § 3696 (emphasis added)."⁴

- 10. VES's letter sought this extraordinary sanction based on evidence it had helped prepare and deliver to the VA: "our staff has gathered evidence that these schools aggressively recruit veterans and other GI Bill beneficiaries, making it especially important that VA take appropriate action to address their behavior."
- 11. Based on this evidence, VES's letter pushed the VA to choke off the schools' income flow by declaring the schools were ineligible for educational benefits under 38 U.S.C. § 3696.
- 12. The VES letter also pressed the VA to accept as its own all veterans' purported complaints submitted by VES to the VA regarding for-profit educational institutions and forward all VES generated complaints to law enforcement. To these ends, the VES letter urged the VA to:
 - A. Modify its tracking system of veterans' complaints, the GI Bill tool, so it would contain all complaints VES had collected from veterans and submitted to the VA;
 - B. Modify its GI Bill tool to reflect student disagreement with the school's response to a VA complaint, similar to the way the U.S. Consumer Financial Protection Bureau reports that information;
 - C. Upload all complaints delivered by VESS to the VA "into Consumer Sentinel, which law enforcement relies upon" in its investigations of forprofit schools; and
 - D. Explain why the VA had not reported all 1,189 complaints VES had submitted to it.

⁴ *Id*. ⁵ *Id*.

- 13. On 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 in its January 21, 2020, letter—to choke off the schools' income flow—using similar language to the VES letter and citing the same federal statute.⁷
- 14. In particular, on March 9, the VA "notified the University of Phoenix [and] Career Education Corporation (Colorado Technical University and American InterContinental University) of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions." In particular, the VA took the following actions:
 - A. "The U.S. Department of Veterans Affairs (VA), acting within its required approval authority under the law limiting certain advertising, sales, and enrollment practices, notified the University of Phoenix, Career Education Corporation (Colorado Technical University, American InterContinental University), Bellevue University and Temple University, March 9, of the agency's intent to disapprove the enrollment of new GI Bill students at these institutions."
 - B. "After careful review and consideration of findings provided by the Federal Trade Commission and State Attorneys General Offices, VA has concluded there is sufficient evidence to support a finding that these schools have utilized advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation against GI Bill beneficiaries, in violation of the law." ¹⁰

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

⁸ *Id*. ⁹ *Id*.

16. 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. The VES press release identified CEC and stated the VA had "notified military and veterans service organizations today" of its impending enforcement action. 12

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

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

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If the price of the stock drops, short sellers buy the stock at the lower price and make a profit. If the price of the stock rises, short sellers will incur a loss. Short sales must be done in compliance with SEC Regulation SHO.

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

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¹² Press Release, VES, 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 Corporation Institutions, Bellevue University, and Temple University (March 9, 2020),

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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.

BREAKING 🚨 @DeptVetAffairs announced their

of Phoenix, Colorado Technical University, American

InterContinental University, Bellevue University, and

Temple University. Read our reaction:

intent to stop new #GIBill enrollments at the University

Press Release; Veterans Education Success Praises Decision by...
For Immediate Release Contact: Carrie Wofford |
President (202) 838-5050 Tanya Ang | Vice President (202) 838...
Vetsedsuccess.org

11:26 AM - Mar 9, 2020 - Twitter Web App

Veterans Education Success

@GIBIIIRights

- 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:

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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.

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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.

- 21. Plaintiff is informed and believes and thereon alleges that Director Bogue was obligated to recuse herself under 18 U.S.C. § 208 and 5 C.F.R. 2640.101, but failed to do so. Plaintiff is further informed and believes and thereon alleges, that Defendant VA is withholding records relating to Director Bogue's failure to enforce 18 U.S.C. § 208 and 5 C.F.R. 2640.101.
- 22. Plaintiff is further informed and believes and thereon alleges, that the VA Office of the Inspector General ("OIG") conducted an investigation of Director Bogue's failure to comply with 18 U.S.C. § 208 and 5 C.F.R. 2640.101 and is wrongfully withholding nonexempt agency records relating to that investigation.
- 23. On January 15, 2021, Defendant VA's OIG delivered a letter to Plaintiff in which it asserted a "Glomar" response and, on that basis, neither admitted nor denied whether any of the following inquiries of investigative records exist:
 - 1. Any OIG inquiry or investigation or audit where Charmain Bogue was the subject.
 - Any OIG inquiry or investigation or audit where Charmain Bogue a witness.
 - 3. Any OIG inquiry or investigation or audit relating to the handling or material nonpublic information.

¹⁶ National Legal and Policy Center, VA Official Charmain Bogue Did Not Disclose Links to Outside Group, Nov. 12, 2020,

https://nlpc.org/2020/11/12/va-official-charmain-bogue-did-not-disclose-links-to-outside-group/, last visited Jan. 15, 2021.

¹⁷ Id., See also: supra, n. 13 and National Legal and Policy Center, On Tax Return, Group 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-of-va-official/, last visited Jan. 15, 2021.

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

FACTS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff has submitted two FOIA requests to Defendant VA that are the subject of this complaint seeking records relating to the facts alleged in paragraphs 5 through 22. 18 Defendant VA in effect restructured Plaintiff's two FOIA requests into 12 FOIA requests with separate tracking numbers, separate processing by different offices and administrations within the VA, separate appeal processes, and separate dates for exhausting administrative remedies. Plaintiff seeks declaratory and injunctive relief regarding two tracks of the VA's restructured FOIA requests where the administrative remedies have been exhausted. Plaintiff will seek leave of this Court to amend this complaint as necessary to incorporate Plaintiff's claims relating to the other tracks of her FOIA requests as the administrative remedies are exhausted.

FIRST CAUSE OF ACTION

- 25. On November 9, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted a letter¹⁹ to Defendant VA requesting access to and copies of specified documents as follows:
 - 1) All emails sent by any of the Designated VA Persons²⁰ to 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;

¹⁸ Plaintiff's FOIA requests were submitted on November 9 and 13, 2020. A true and correct copy of said FOIA requests is attached hereto and incorporated herein as Exhibits 1, and 2. ¹⁹ A copy of the request is attached hereto and incorporated herein by reference as Ex. 1.

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:

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

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

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

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

- 28. On November 13, 2020, Plaintiff's counsel was contacted by a different FOIA specialist who was "taking the lead" on Plaintiff's November 9 FOIA request, because it had "been assigned to multiple VA FOIA directorates." In this way, the lead FOIA specialist explained, if any of the FOIA officers processing the requests needed clarification, they "will submit their request to me. I have requested they provide me a response by close of business on Monday, November 16, 2020 so that I may send you one request for clarification for the group on Tuesday, November 17, 2020." The lead FOIA specialist further explained that "each FOIA Officer will process the portion of the request pertaining to their directorate and will provide a response directly to you." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 5.
- 29. On November 17, the lead FOIA specialist and Plaintiff's counsel exchanged emails for the purpose of clarifying Plaintiff's FOIA requests. After the requests were clarified to the satisfaction of the lead FOIA specialist, she forwarded the clarifications to the FOIA officers in the different administrations working on Plaintiff's FOIA request. The email also clarified the Veterans Benefits Administration ("VBA") was "processing the request under FOIA tracking numbers 21-00931-F and 21-00956-F." A true and correct copy of this email chain is attached hereto and incorporated herein as Exhibit 6.

- 30. On November 17, 2020, Plaintiff received a letter via email from the VBA, which once again acknowledged receipt of her FOIA request and assigned it tracking number 21-00931-F. A true and correct copy of said letter is attached hereto and incorporated by reference as Exhibit 7.
- 31. On November 27, 2020, Plaintiff's counsel received an email from the VBA's FOIA specialist extending the response time 20 business days and setting the date for the VBA FOIA Office to issue a response as January 6, 2021. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 30.
- 32. On November 30, 2020, Plaintiff's counsel responded to the VBA's FOIA specialist November 27 email pointing out the extension failed "to comply with at least two terms of 5 USC § 552(a)(6)(B)." A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29-30.
- 33. On the same day, November 30, 2020, the VBA FOIA specialist replied reiterating Plaintiff would have a response by January 6, 2021, and offering to discuss with Plaintiff's counsel the extension. A true and correct copy of said email is attached hereto and incorporated by reference as Exhibit 8 at 29.
- 34. After several email exchanges on November 30, the VBA FOIA specialist and Plaintiff's counsel held a conference call which Plaintiff's counsel confirmed in his email of December 1, 2020, as follows: the VBA FOIA specialist agreed to provide an update on December 2, 2020, regarding (1) when the VBA's Office of Information Technology ("OIT") would provide the search results to the FOIA specialist and (2) how many pages had to be reviewed. A true and correct copy of said email is attached hereto and incorporated by reference as the bottom email in Exhibit 9 at 35-36.
- 35. On December 2, 2020, the VBA FOIA specialist informed Plaintiff's counsel the OIT was working on the ticket and "it should be resolved in a matter of a few days." A true and correct copy of said email is attached hereto and incorporated by reference as the second email from the bottom in Exhibit 9 at 35.

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

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

Plaintiff's counsel requested further information. Specifically:

- 1. Is there any internal rule or regulation (CFR) that defines, states, or discusses the different tier? For example, what is the guidance for deciding what is tier 2 versus tier 3?
- 2. Is there any internal rule or regulation (CFR) that expand the period to respond to a FOIA request when the agency transfers a request to a new 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?

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

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

Once I receive feedback from OGC, I'm hopeful that a disclosure will be made 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

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

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

- 38. Defendant VA's time for responding to restructured FOIA request 21-00931-F has expired for each of the following reasons:
 - A. Defendant VA knew the grounds for its designation of this request as a Substantial Interest request from the date of its receipt of Plaintiff's November 9, 2020, request and thus Defendant VA was dilatory in making said designation;
 - B. Defendant VA failed to comply with 38 C.F.R. § 1.556 in its processing of this request; and
 - C. All conceivable time periods have expired for Defendant VA to comply with this request under FOIA and 38 § C.F.R. § 1.556.

SECOND CAUSE OF ACTION

- 39. On November 13, 2020, pursuant to the applicable provisions of FOIA, Plaintiff submitted her FOIA request to Defendant VA's (1) FOIA Office, (2) Office of the General Counsel, (3) Veterans Benefits Administration and (4) Office of Information Technology by email and first-class mail. Plaintiff requested access to and copies of specified documents as follows:
 - 1) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain the following name: Charmain Bogue.
 - 2) All FOIA requests received by the VA or any of its Administrations, Offices, and Centers that contain any of the following terms:
 - a) University of Phoenix,
 - b) Perdoceo,
 - c) Bellevue University,
 - 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

under Exemption 6. 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 14.

- 45. On December 24, 2020, Plaintiff, though her counsel, appealed the OIG's determination. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated by reference as Exhibit 15.
- 46. On December 28, 2020, the VA OIG denied the appeal finding the response was proper. The OIG's letter advised Plaintiff of her right to file a complaint with the U.S. District Court. A true and correct copy of the OIG's appeal denial is attached hereto and incorporated by reference as Exhibit 16.

PLAINTIFF'S CLAIM FOR RELIEF: VIOLATIONS OF FOIA

- 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 48. Plaintiff is entitled by law to access the records requested under the FOIA.
- 49. Defendant VA is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully comply with Plaintiff's November 9 and November 13, 2020, requests for records (Exhibits 1 and 2), as specified in paragraphs 25 and 39 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Declare that Defendant VA has violated the FOIA by failing to satisfy Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39 above;
- B. Order Defendant VA to immediately search for and release all records responsive to Plaintiff's November 9 and November 13, 2020, requests for records as specified in paragraphs 25 and 39above;
- C. Award Plaintiff her costs and reasonable attorney's fees and litigation costs in this action; and

D. Grant such other and further relief as the Court may deem just and proper. DATED: January 15, 2021 Gary J. Aguirre, CA Bar #38927 Aguirre Law, A.P.C. 501 W Broadway, Ste 800 San Diego, CA 92101 Telephone: 619-400-4960 Facsimile: 619-501-7072 Attorney for Plaintiff Maria A. Pomares

Exhibit B

From: (b) (6) VBABUFF

To: (b) (6)

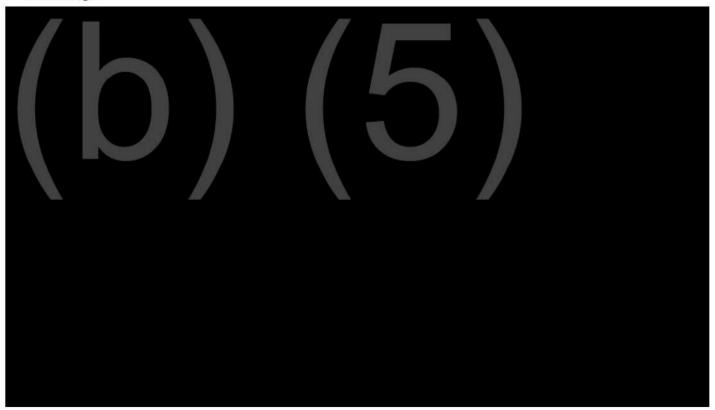
Cc: (b) (6) Mallia, Donna P.

Subject: RE: 3696 Actions University of Phoenix

Date: Wednesday, March 4, 2020 8:19:39 AM

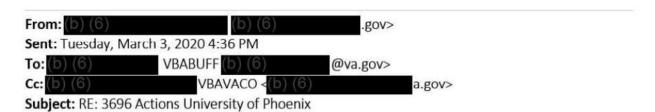
Good Morning (b) (6)

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)

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.



Cc: Bogue, Charmain, VBAVACO (b) (6) @va.gov>; Mallia, Donna P.

@va.gov>

Subject: FW: 3696 Actions University of Phoenix

Importance: High

Good Morning (5) (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!



From: Mallia, Donna P. (6) @va.gov>

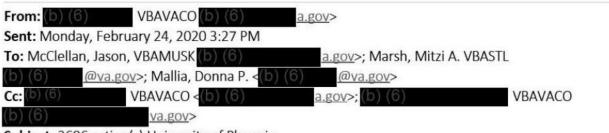
Sent: Monday, March 2, 2020 3:48 PM

To: (b) (6) VBABUFF (b) (6) <u>@va.gov</u>>

Subject: 3696 Actions University of Phoenix

Importance: High

FYSA



Subject: 3696 action(s) University of Phoenix

Importance: High

Good Afternoon,

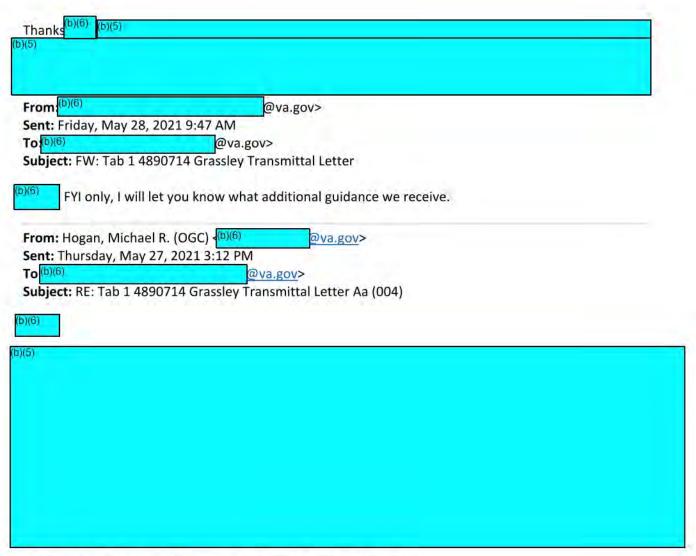
The purpose of this message is to provide attached details regarding University of Phoenix.

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.

(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



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
(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)

Cromwell, Sonya (OGC) From: Fri, 2 Jul 2021 12:13:27 +0000 Sent: (OGC)(b)(6) (OGC)(b)(6) To: (OGC)(b)(6) (OGC) (OGC) OGC) Cc: Subject: RE: 04890714 Letter from Senator Grassley to SECVA Attachments: RE: VIEWS 4890714, RE: Pomares Litigation

Thanks 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:

Fax: 202-273-6388



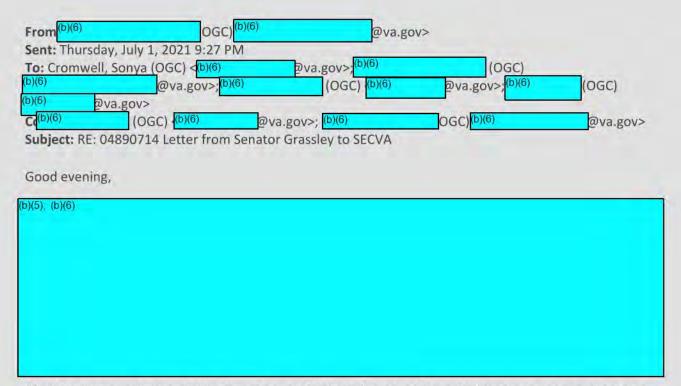
Suicide Prevention is Everyone's Business - #BeThere.
The Veterans Crisis Line is 1-800-273-8255 and Press 1

VA Core Values: Integrity Commitment Advocacy Respect Excellence

VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

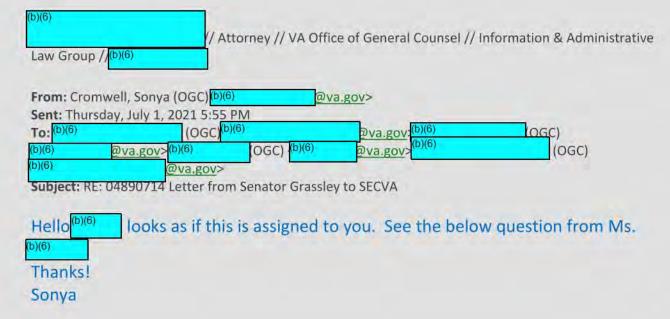
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Al of the above said, I would like to make sure that I don't have a little asterisk next to my name in views because someone somewhere thinks I'm holding it up. I don't know what more I can provide but if you want me to look into it further, I can do it on Tuesday upon my return to the office.

Thanks.



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



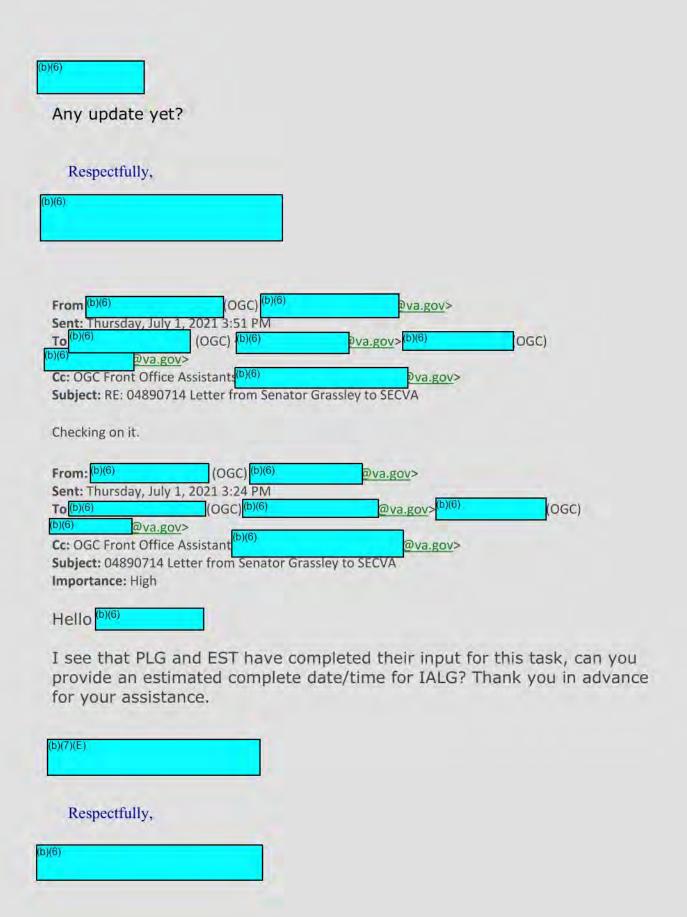
Suicide Prevention is Everyone's Business - #BeThere.
TheVeterans Crisis Line is 1-800-273-8255 and Press 1

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)

Sent: Wed, 19 May 2021 19:23:02 +0000

To: (b)(6) (OGC)(b)(6) (OGC)

Cc: (b)(6)

Subject: RE: VIEWS 4890714

Attachments: RE: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley

The coop hold have the region hold the coop has been asset to

Mike Hogan is reviewing today – it was too big to fit in VIEWS. See attached.

Thanks,

(b)(6)

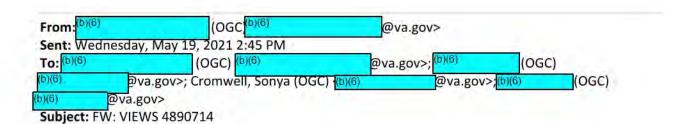
Deputy Chief Counsel – FOIA/PA Appeals/Litigation Information and Administrative Law Group (024A)

Office of General Counsel
U.S. Dept. of Veterans Affairs

(Office) (b)(6) @VA.gov

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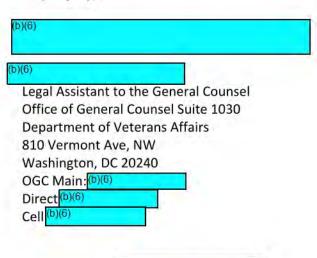
This is over due and the front office need status.

From: (b)(6)	@va.gov>		
Sent: Wednesday, May 19,	2021 2:41 PM		Et 2004
To: OGC Information Law (Group Support ^{(b)(6)}	@va.g	gov>; (b)(6)
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,



"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

ATTENTION: For internal OGC use only and not for external transmission. This electronic document may contain attorney work-product or information protected under the attorney-client privilege. Do not release this information without prior authorization. If you received this message in error, please destroy it and all attachments immediately.

Hogan, Michael R. (OGC) From: Sent: Wed, 19 May 2021 18:08:29 +0000 To: (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) (OGC) (b)(6) From (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, 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) @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 rellance on this information is prohibited. If you receive this e-mail in error, please notify this office immediately by return e-mail.

From: Hogan, Michael R. (OGC) (b)(6) @va.gov>
Sent: Tuesday, May 18, 2021 2:39 PM

To:(b)(6) @va.gov>
Subject: FW: CLOSE HOLD FINAL APPROVAL REQUEST for VIEWS 4890714/Grassley Importance: High

(b)(6)

(5)				
hank you.				
Mike				
VIIKE				
From:(b)(6)		@va.gov>		
	ay, May 18, 2021 2:15	PM		
Fo: Hogan, N	/lichael R. (OGC) (b)(6)	@va.gov>; Core	deiro, Hansel (OAWP)	
(b)(6)	@va.gov>(b)(6)		@va.gov>	
Cc: (b)(6)	(OGC) <(b)(6)	@va.gov>; McVicke		@va.gov>;
)(6)		ova.gov>; Farrisee, Gina S	. ₄(b)(6) @va.	gov> (b)(6)
W. (OAWP)	(b)(6) @va.s	gov>(b)(6)	(OAWP) (b)(6)	
			va.gov>	
		OVAL REQUEST for VIEWS		
Importance:		2 Mandeta Street Inches	and a restriction of the second	

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

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,

Respectfully, Ruthann Parise

OSVA FOIA/Privacy Officer
Office of the Executive Secretary

Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA)

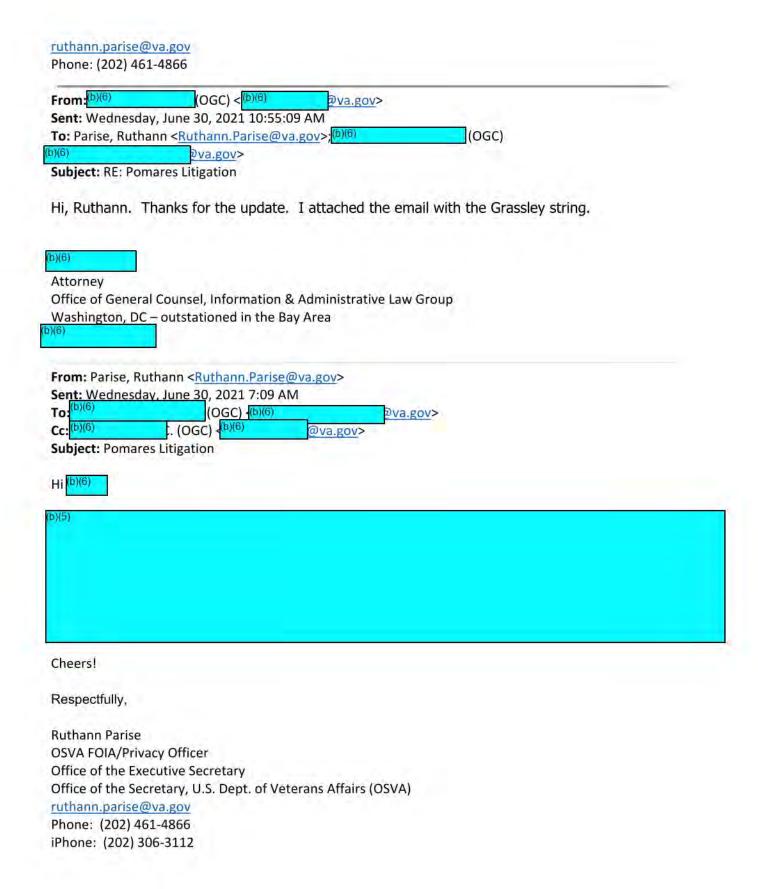
Ruthann Parise
OSVA FOIA/Privacy Officer
Office of the Executive Secretary

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: Thursda	y, July 1, 2021 11:17 AM			
To: Parise, Rut	thann <ruthann.parise@< td=""><td>va.gov></td><td></td><td></td></ruthann.parise@<>	va.gov>		
Subject: RE: P	omares Litigation			
Thanks for kee	eping track of this Ruthar	n. Much appreciated.		
Cathy				
Catherine Flat	ley Nachmann // Attorne	y // VA Office of Genera	al Counsel // Information & Ac	ministrative
Law Group //	5)(6)			
From: Parise,	Ruthann < Ruthann, Parise	e@va.gov>		
	day, June 30, 2021 11:08	AM		
To: (b)(6)	(OGC) <(b)(6)	@va,gov>; (b)(6)	(OGC)	
(b)(6)	@va.gov>			
Subject: Re: P	omares Litigation			
Thanks (b)(6)				



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