



**Department of Veterans Affairs  
Office of Inspector General**

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**Administrative Investigation  
Alleged Conflict of Interest  
Veterans Benefits Administration  
VA Central Office, Washington, DC**

REDACTED



DEPARTMENT OF VETERANS AFFAIRS  
Office of Inspector General  
Washington, DC 20420

**TO:** Associate Deputy Under Secretary for [REDACTED] b6  
Veterans Benefits Administration [REDACTED]  
Assistant General Counsel/Designated Agency Ethics Official (023)

**SUBJECT:** Administrative Investigation – Alleged Conflict of Interest  
Veterans Benefits Administration, VA Central Office  
Washington, DC (Report: 2007-00649-IQ-0074)

### Summary

We substantiated that the duties and responsibilities of the Veterans Benefits Administration (VBA) [REDACTED] b6  
[REDACTED] at times, place him in conflicting roles with his position as the [REDACTED]  
[REDACTED]. We determined that serving in both positions did not in itself constitute a conflict of interest; however, we agree with the Office of General Counsel (OGC) that the situation was “fraught with possibilities for running afoul of the Standards of Conduct.” We recommend the employee’s activities be closely monitored and that he be instructed on what matters may require his recusal.

### Introduction

The VA Office of Inspector General, Administrative Investigations Division, investigated an allegation that there is a conflict of interest between [REDACTED] position as a Department of Veterans Affairs employee and his position as a [REDACTED] b6  
[REDACTED] Veterans Benefits Administration, Washington, DC, and has responsibility for oversight of program direction of the VBA business lines, to include Compensation and Pension, Education, Loan Guaranty, Vocational Rehabilitation, Employment, and Insurance. To assess this allegation, we interviewed [REDACTED], the VBA Associate Deputy Under Secretary for [REDACTED] (ADUS), and an OGC Staff Attorney. We also consulted the VA Designated Agency Ethics Official (DAEO), who is the Assistant General Counsel (023). We reviewed [REDACTED] position description, performance plan, [REDACTED] Bylaws and Constitution, [REDACTED] strategic plan, Federal regulations, VA policies, and other relevant documents. b6

## Results

Issue: Whether [REDACTED] position as a high level [REDACTED] official [REDACTED] [REDACTED] conflicted with his position as a VA employee

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The General Provisions of the Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall not allow the improper use of nonpublic Government information to further any private interest, shall not use public office for private gain, shall act impartially and not give preferential treatment to any private organization or individual, shall not engage in outside activities that conflict with official Government duties and responsibilities, and shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101(b).

The specific regulation which states that an employee shall not engage in any outside activity that conflicts with their official duties goes on to caution employees that even though an outside activity may not be prohibited, it may violate other principles or standards or require employees to disqualify themselves from participation in certain matters. Additionally, specific regulations provide that an employee shall not use public office for private gain or for the private interest of another, and an employee shall not use Government property for other than authorized purposes. 5 CFR § 2635.502(a), 702, and 704.

[REDACTED] told us that he became a [REDACTED] member in [REDACTED] holding numerous Chapter and National positions. In August [REDACTED] he was elected [REDACTED] and [REDACTED] of the [REDACTED] Board of Directors, and in that position, he represented the [REDACTED] when he was not available to serve as the [REDACTED] and [REDACTED] spokesperson, and was responsible for voting on [REDACTED] organizational issues or amendments at the national level. [REDACTED] said that he planned to run for the position of [REDACTED] and we later found that [REDACTED] was elected to that position in August [REDACTED]

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[REDACTED] said that he was actively involved in [REDACTED] prior to being employed by VA, and that in June 2006, he became the VBA [REDACTED]. He told us that in that position, he was responsible for oversight of the five VBA business lines and coordinated and facilitated the information technology reorganization. He told us that he occasionally reviewed policy and that policy written for his office's programs came through his office as a repository. However, the ADUS told us that [REDACTED] served as the Deputy to the ADUS, and he was responsible for the policies in the five VBA business lines: compensation and pension, education, loan guaranty, insurance, and vocational rehabilitation. His specific responsibilities related to VBA policy are contained in his position description.

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The position description and performance plan for ██████████ reflected that he acted as an advisor and consultant to the ADUS on policy matters related to ██████████ ██████████ directed the development of VBA ██████████ assisted in the development of policy, proposed legislation and specific changes to current laws; made recommendations on the impact of new laws, legislation, program initiatives, and policies to be implemented; and represented the ADUS on the interpretation of regulations, procedures, and standards. b6

██████████ *National Constitution Bylaws and Regulations* vested the executive power of ██████████ in the ██████████. It stated that the ██████████ was "hereby placed under a continuing mandate by these Bylaws to resist and oppose any changes in laws or regulations that would repeal or deprive ██████████ of benefits already provided by such laws or regulations." In a message posted on the ██████████ internet website, ██████████ stated that "it is absolutely crucial that veterans and their needs are not ignored as their government sets national policies and funding priorities... Our government must make veterans a national priority and make the necessary investment in programs to ensure that ██████████ veterans and their families receive the earned benefits and services that were promised them." b6

██████████ told us that having knowledge of VA policies did not affect or compromise ██████████ duties and that he never recused himself from any ██████████ activity because of his VA position. He said that he stood for both VA and ██████████. He told us that he believed the VA and ██████████ missions were one and the same, both serving the Nation's veterans. However, ██████████ admitted that he never spoke to anyone from the Office of General Counsel or the Ethics Office regarding his ██████████ posts for a legal opinion as to whether any particular matter was a conflict of interest. ██████████ told us that, after we interviewed him, he met with a General Counsel Staff Attorney, along with the ADUS, to determine if there was a possible conflict between his two positions. He said the Staff Attorney discussed with him the ethics issues, determined there was not a conflict, but advised him that he could not use his position as ██████████ against the VA. b6

Prior to his speaking to ██████████ the General Counsel Staff Attorney, in an electronic mail message, told us that ██████████ position with ██████████, in and of itself, did not constitute a conflict of interest; however given the level of interaction between VBA and ██████████ there existed a significant potential for ██████████ to "run afoul of the criminal conflict of interest laws and/or standards of conduct." He said that as a ██████████ officer, ██████████ financial interests were ██████████ financial interests, so he may not participate as a VA employee in official particular matters that would directly and predictably affect ██████████ interests. He also said that should this prohibition require ██████████ to recuse himself from matters so central or critical to the performance of his official duties that his ability to perform his position would be materially impaired, then he would have to decide between his VA and ██████████ positions. He also said that law b6

prohibits [REDACTED] from representing [REDACTED] before any Federal agency or court, and when representing [REDACTED] before Congress, he must not use his official title or authority and he must be clear that any views he presents to Congress are on behalf of [REDACTED] and not VA. b6

The Staff Attorney later told us that when he spoke to [REDACTED] and the ADUS, he explained to them the criminal conflict of interest law and told them that there was no "per se conflict of interest" and that, should a situation arise where [REDACTED] had to recuse himself and there was no one to perform his duties, it was a management decision as to what they should do. The Staff Attorney said he could not recall if he went into detail with [REDACTED] concerning his VA responsibilities should [REDACTED] file litigation against VA. He said that as long as [REDACTED] name did not appear on the legal pleading, his position as the [REDACTED] did not conflict with his position at VA in the case of litigation. However, he said that [REDACTED] must clearly "disassociate the two positions" and that when working for VA, his loyalty was to VA. b6

In our opinion, as the [REDACTED] was the face of that organization and [REDACTED] outside activities with [REDACTED] could take precedence over his VA duties and his loyalty to VA, and at a minimum, created the appearance of a conflict of interest. [REDACTED] VA position provided him with nonpublic information that could be inappropriately provided to [REDACTED] for the political benefit of [REDACTED]. Furthermore, [REDACTED] is a veterans service organization whose primary purpose is to build better lives for [REDACTED] veterans and their families; however, VA is an agency that must use its limited resources for a much broader range of beneficiaries than just [REDACTED]. [REDACTED] mission does not appear to include the needs of [REDACTED] veterans and therefore, there could be a conflict between the missions of VA [REDACTED]. b6

In addition, we believe that VA's broader mission may at times require that it prioritize resources and fund programs for [REDACTED] veterans at the expense of providing resources and funding for [REDACTED] veterans. While VA may initiate programs or policies that it believes benefit veterans, Veteran Service Organizations (VSO) often disagree with the specific initiatives. Certain VA initiatives and proposals result in efforts by [REDACTED] to lobby Congress in opposition to the VA proposal, and the issue is not whether VA or [REDACTED] are right about a specific issue, the issue is that [REDACTED] and VA are opposed on many issues. Furthermore, a VA employee in a senior policy and advisory role who is the [REDACTED] cannot serve "two masters who have conflicting positions." As an example, [REDACTED] sued VA over a regulation proposed by VA. The case was litigated in both the United States Court of Appeals for the Federal Circuit and, after it received an unfavorable decision, [REDACTED] appealed the ruling to the United States Supreme Court. One individual cannot reasonably be expected to provide senior level services to two adversarial entities engaged in litigation in the Federal court system. [REDACTED] has filed suit against VA on many occasions. b6

We found the following as examples of DAV litigation against VA:

- [REDACTED] *R. James Nicholson, Secretary of Veterans Affairs*, [REDACTED]
- [REDACTED] *et. al. v. Secretary of Veterans Affairs*, [REDACTED]
- [REDACTED] *et. al., v. Secretary of Veterans Affairs*, [REDACTED]
- [REDACTED] *Principi, Secretary of Veterans Affairs*, [REDACTED]
- [REDACTED] *U.S. Department of Veterans Affairs*, [REDACTED]
- [REDACTED] *Gober, Secretary of Veterans Affairs*, [REDACTED]

b6

We consulted the VA Designated Agency Ethics Official (DAEO) to determine whether there was a conflict between [REDACTED] position in [REDACTED] and the duties and responsibilities of his VA position. The DAEO agreed that our identified concerns were significant and stated that the situation was "fraught with possibilities of running afoul of the Standards of Conduct." The DAEO recommended making [REDACTED] supervisor aware of the issues and identify matters from which [REDACTED] needs to recuse himself.

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With respect to the apparent conflict with [REDACTED] bylaws, the DAEO advised that, notwithstanding [REDACTED] by-laws, [REDACTED] conduct as a VA employee was governed by the ethical principles, Standards of Conduct, and criminal conflict of interest laws, which supersede any obligations that an outside organization might impose upon him. Therefore, his first loyalty must be to the VA, even if there is a conflict with [REDACTED] bylaws.

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The DAEO agreed that [REDACTED] participation in certain matters would result in at least the appearance of a conflict of interest and cited the following Standard of Conduct:

- (a) Consideration of appearances by the employee. Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section. 5 CFR § 2635.502(a).

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The DAEO noted that the prohibition was on participation in particular matters and not general policy issues. Hence, in order to avoid the appearance of a conflict of interest, if not an actual one, ██████████ should recuse himself from particular VA matters, where ██████████ was, or represented, a party, e.g. legislation on which ██████████ is providing comments. The DAEO also stated that ██████████ must also recuse himself from particular matters that would directly and predictably affect the financial interests of ██████████. Assuming there was an appearance issue, the DAEO noted that the Standard only required the employee to refrain from participation unless he has informed the agency designee of the issue and received authorization under 5 CFR 2635.502(d). b6

The DAEO agreed that ██████████ may not use nonpublic information in performing his duties as ██████████ because it would be a violation of 5 USC 2635.705. In response to our concerns that given his senior level position involving policy issues, ██████████ has knowledge of nonpublic information about VA issues, positions, and initiatives and has the opportunity, or temptation, to use the nonpublic information to benefit ██████████ or to give them advance notice of what is forthcoming from VA, the DAEO stated that if the access to nonpublic information raises an appearance question, the matter should be evaluated as provided in 5 USC 2635.502(d). b6

#### *Improper Use of VA Electronic Mail Address and Phone Numbers*

We found that when ██████████ was the ██████████ he listed his VA electronic mail address (@vba.va.gov), which clearly identified him as a VA employee, and VA office telephone numbers on the 200/200 ██████████ roster as a means to contact him. The DAEO stated that ██████████ should not use his VA telephone number and electronic mail address as a point of contact as this could lead to confusion as to in what capacity he was communicating – as a VA or ██████████ official. Standards of Ethical Conduct for Employees of the Executive Branch state that an employee shall use official time to perform official duties and must protect and conserve Government property and not use such property for other than authorized purposes. Additionally, an employee shall not use or permit the use of his Government position or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. 5 CFR § 2635.702 (b), 704 (a), 705. b6

#### **Conclusion**

We concluded that ██████████ dual roles as a VA employee and as a high level ██████████ official were problematic. Because of the interactions between VA and ██████████ there existed a significant potential for ██████████ to “run afoul of the criminal conflict of interest laws and/or standards of conduct.” ██████████ VA position could provide him with nonpublic information that could be inappropriately provided to ██████████ for the political benefit of ██████████. Although we found no circumstance or particular matter that b6

created a conflict of interest or the appearance thereof, ██████████ said that he stood for both VA and ██████████ and that the missions were one and the same. He clearly could not distinguish between these two distinct organizations which, at times, have adversarial or opposing viewpoints. While the DAEO stated that ██████████ first loyalty must be to VA, not ██████████ did not recognize that he must make VA his first priority. ██████████ was actively involved in ██████████ matters for over two decades, much longer than his employment with VA. He said his VA responsibilities did not affect or compromise his ██████████ duties and he never recused himself from any ██████████ matters due to his VA position. However, prior to our investigation, he never sought VA legal and/or ethics guidance as to whether his responsibilities at ██████████ created a conflict or the appearance of a conflict of interest with his VA official duties, nor did he seek guidance on whether he should recuse himself from particular VA matters or seek authorization from appropriate VA officials. b6

In addition, we found that ██████████ improperly listed his official VA electronic mail address and telephone numbers on a ██████████ roster as a means to contact him. We found no instance of ██████████ using VA-owned equipment to conduct non-VA business; however, it would seem that with this information listed on the ██████████ roster, he could be contacted concerning ██████████ matters during his VA workday. In addition, his official VA electronic mail address associated his public office in a manner that could imply that the VA endorsed his personal activities with the ██████████ b6

**Recommendation 1.** We recommend the VBA Associate Deputy Under Secretary for ██████████ closely monitor ██████████ activities and set clear and precise boundaries to ensure ██████████ recuse himself from particular VA matters where ██████████ is or represents a party and from particular matters that would directly and predictably affect the financial interests of ██████████ b6

**Recommendation 2.** We recommend the VBA Associate Deputy Under Secretary for ██████████ instruct ██████████ to remove his official VA electronic mail address and telephone numbers from all ██████████ rosters and to refrain from using them as a means of contact for ██████████ activities. b6

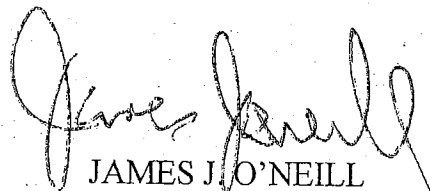
**Recommendation 3.** We recommend the VBA Associate Deputy Under Secretary for ██████████ counsel ██████████ on the official use of Government resources and official use of time while performing VA duties. b6

**Recommendation 4.** We recommend the Office of General Counsel instruct ██████████ on the differing missions of VA and ██████████ and what activities pose a possible conflict or the appearance of a conflict of interest in his dual roles at VA and ██████████ and provide in-depth advice on what particular matters may require his recusal. b6

## Comments

We found that [REDACTED] duties and responsibilities, at times, placed him in conflicting roles with his position as the [REDACTED] [REDACTED] and we recommended that his activities be closely monitored and that he be instructed on what matters may require his recusal. The Associate Deputy Under Secretary for [REDACTED] and the Assistant General Counsel/Designated Agency Ethics Official both concurred with our recommendations. The Associate Deputy Under Secretary told us that he discussed these matters with [REDACTED]. The Assistant General Counsel told us that although a staff attorney previously provided informal advice to [REDACTED] on the potential conflicts in his serving as the [REDACTED] he agreed that further counseling was needed.

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JAMES J. O'NEILL  
Assistant Inspector General for  
Investigations

## VBA Associate Deputy Under Secretary Comments

Department of  
Veterans Affairs

Memorandum

**Date:** May 29, 2008

**From:** VBA Associate Deputy Under Secretary for [REDACTED] b6

**Subject:** Administrative Investigation - Alleged Conflict of Interest,  
VBA, VA Central Office, Washington, DC

**To:** Director, Administrative Investigations Division (51Q)

As Associate Deputy Under Secretary for [REDACTED] b6  
[REDACTED] I concur with the 3 recommendations in  
subject report that fall under the purview of my position  
(recommendations 1, 2, and 3). I have had a discussion with  
[REDACTED] and consider the actions necessary to carryout  
these recommendations to have been completed. Please let  
me know if any further actions on my part are necessary.

## VBA Associate Deputy Under Secretary's Comments to Office of Inspector General's Report

The following comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

### OIG Recommendation(s)

**Recommendation 1.** We recommend the VBA Associate Deputy Under Secretary for [REDACTED] closely monitor [REDACTED] activities and set clear and precise boundaries to ensure [REDACTED] recuse himself from particular VA matters where [REDACTED] is or represents a party and from particular matters that would directly and predictably affect the financial interests of [REDACTED] b6

Concur **Target Completion Date:** Completed

**Recommendation 2.** We recommend the VBA Associate Deputy Under Secretary for [REDACTED] instruct [REDACTED] to remove his official VA electronic mail address and telephone numbers from all [REDACTED] rosters and to refrain from using them as a means for contact for [REDACTED] activities. b6

Concur **Target Completion Date:** Completed

**Recommendation 3.** We recommend the VBA Associate Deputy Under Secretary for [REDACTED] counsel [REDACTED] on the official use of Government resources and official use of time while performing VA duties. b6

Concur **Target Completion Date:** Completed

## Assistant General Counsel Comments

Department of  
Veterans Affairs

Memorandum

**Date:** June 10, 2008

**From:** Assistant General Counsel/Designated Agency Ethics Official  
(023)

**Subject:** Administrative Investigation - Alleged Conflict of Interest,  
VBA, VA Central Office, Washington, DC

**To:** Inspector General (50)

1. You have submitted for our comment a draft report on an alleged conflict of interest arising from the fact that [REDACTED] the [REDACTED] also services at the [REDACTED] one of my staff attorneys whom you interviewed in connection with this report, previously provided informal advice to [REDACTED] on the potential conflicts in his servicing as the [REDACTED]. We concur in the report's conclusions and recommendations.

2. As to Recommended Action 4, while our office did previously advise [REDACTED] on the potential conflicts in his serving as [REDACTED] given his statements to your office that he stood for both VA and [REDACTED] and that distinguish between these two distinct organizations, we agree that further counseling is needed. We will endeavor to provide this counseling by June 30, 2008. [Edited for non substantive content]



Walter A. Hall

**Assistant General Counsel's Comments  
to Office of Inspector General's Report**

The following comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

**OIG Recommendation(s)**

**Recommendation 4.** We recommend the Office of General Counsel instruct [REDACTED] on the differing missions of VA and [REDACTED] and what activities pose a possible conflict or the appearance of a conflict of interest in his dual roles at VA and [REDACTED] and provide in-depth advice on what particular matters may require his recusal.

b6

Concur

**Target Completion Date:** June 30, 2008

## OIG Contact and Staff Acknowledgments

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OIG Contact	Linda Fournier (202) 461-4500
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Acknowledgments	Kristinn Watkins
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