



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL**



**CLOSING
REPORT OF INVESTIGATION**

(b) (6), (b) (7)(C)

I18EAS03180

AUGUST 1, 2019

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CLOSING

REPORT OF INVESTIGATION

(b) (6), (b) (7)(C)

SUMMARY

This case was predicated on information received from a Congressional hearing during which members of Congress questioned Department of Education officials about possible conflicts of interest involving (b) (6), (b) (7)(C). The conflict of interest query involved (b) (6) emails and calendar entries (b) (6), (b) (7)(C).

The investigation focused on (b) (6) disclosed recusals pertaining to Gainful Employment (GE), Borrower Defense (BD) and other potential conflicts of interests. Several interviews, email queries, and other investigative measures were conducted in this matter. After several attempts were made to interview (b) (6) at OIG offices regarding his recusals, the Acting Inspector General notified the Deputy Secretary of (b) (6) failure to cooperate with the OIG. Subsequently, (b) (6) appeared for an interview. No evidence proving a violation of (b) (6) recusals were uncovered. These matters were also discussed with (b) (6), (b) (7)(C), the Department's (b) (6), (b) (7)(C), who also concluded that no conflict of interest was presented in this case.

VIOLATIONS

The activities identified in this report are potential violations of:

- 18 U.S.C. § 209 - Conflict of Interest
- 18 U.S.C. § 208 - Acts Affecting a Personal Financial Interest
- 5 C.F.R § 2635.502 – Violation of Personal and Business relationships
- E.O. 13770 – Violation of Ethics Pledge Executive Branch Employees
- ACS Departmental Directive OIG: 1-102 – Failure to Cooperate with the Office of Inspector General

PREDICATION

This case was predicated on information that arose during a Congressional hearing regarding possible conflicts of interest involving (b) (6). The conflict of interest query involved (b) (6) emails and calendar entries (b) (6), (b) (7)(C).

ED OIG initiated an investigation into potential violations committed by (b) (6).

NARRATIVE

ED OIG initiated an investigation into potential violations committed by (b) (6), (b) (7)(C) involving alleged conflicts of interest. ED OIG requested and received access to (b) (6), (b) (7)(C) Department email account which identified several emails associated with (b) (6), (b) (7)(C) recusals and other potential conflicts of interest involving the work (b) (6), (b) (7)(C) was performing.

On September 19, 2018, (b) (6), (b) (7)(C), U.S. Department of Education, was interviewed. (b) (6), (b) (7)(C) stated that she worked with (b) (6), (b) (7)(C) on occasion for matters involving policies (Attachment 1). (b) (6), (b) (7)(C) always removed himself from GE matters whether it was on emails or in meetings. If the subject turned to GE, (b) (6), (b) (7)(C) would either excuse himself or remove himself from an email. She also recalled that he was recused from working on BD claims regarding his former employers and for-profit schools that were involved with BD actions with ED. (b) (6), (b) (7)(C) excused himself from meetings when the discussion turned to GE related matters and removed himself from emails.

On September 19, 2018, (b) (6), (b) (7)(C), U.S. Department of Education, was interviewed (Attachment 2). (b) (6), (b) (7)(C) In that position, she worked with (b) (6), (b) (7)(C) on occasion for matters involving the Secretary. (b) (6), (b) (7)(C) could not recall if (b) (6), (b) (7)(C) was recused from any BD matters. She did not recall any recusals having to do with former employers and for-profit schools that were involved with BD actions with the Department. (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) always removed himself from GE matters whether it was on emails or in meetings. (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) was emphatic about removing himself from GE related issues, and he would communicate the fact that he could not participate or be involved with any GE related matters.

(b) (6), (b) (7)(C) was contacted for an interview on October 17, 2018 and he advised that he needed to speak with an attorney. On November 7, 2018, ED OIG was contacted by (b) (6), (b) (7)(C) attorney and between November 14, 2018 and January 22, 2019, ED OIG attempted to set up an interview with (b) (6), (b) (7)(C) attorney tried to dictate the terms of the interview and eventually refused to make (b) (6), (b) (7)(C) available for an interview at ED OIG offices on January 23, 2019.

On March 29, 2019, Acting Inspector General (IG) Sandra Bruce sent a letter to Deputy Secretary Mitchell Zais regarding (b) (6), (b) (7)(C) failure to cooperate with the OIG (Attachment 3). In this letter, Acting IG Bruce advised (b) (6), (b) (7)(C) the Deputy Secretary that the OIG cannot allow employees, no matter their seniority within the Department, to dictate how and where an interview is to be conducted. Acting IG Bruce also advised that (b) (6), (b) (7)(C) refusal to submit to an interview prevents the OIG from completing their mission to investigate fraud, waste and abuse within Departmental programs. Acting IG Bruce advised Deputy Secretary Zais that (b) (6), (b) (7)(C) non-cooperation would be reported in the semiannual report and would be referred to the Department for potential discipline if he continued to refuse to cooperate.

On April 15, 2019, ED OIG was contacted by (b) (6), (b) (7)(C) new attorney who advised that (b) (6), (b) (7)(C) would agree to be interviewed.

On May 9, 2019, (b) (6), (b) (7)(C) U.S. Department of Education, was interviewed (Attachment 4). (b) (6), (b) (7)(C) advised that he contacted (b) (6), (b) (7)(C) shortly after his arrival at the Department to discuss potential conflicts of interests regarding his employment with the Department. After his arrival, he was directed that he could not work on matters involving specific borrower defense claims where his former employer was a party to the claim. (b) (6), (b) (7)(C) also voluntarily recused himself from borrower defense matters and policy discussions regarding pending claims under the old borrower defense regulations and from participating in discussions about, the review of, or modifications to the Department's gainful employment regulations and guidance until February 2019.

(b) (6), (b) (7)(C) reviewed a series of tweets that (b) (6), (b) (7)(C) posted via Twitter. The tweets included two of (b) (6), (b) (7)(C) emails and a calendar entry. One email, (b) (6), (b) (7)(C) the presentation on Higher Education, and he did not organize any presentations or meetings on gainful employment. He attended the presentation but left when the subject turned to gainful employment. (b) (6), (b) (7)(C) reviewed a calendar entry from his calendar that displayed a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) admitted that he was on this call for the portion that included borrower defense and recused himself for the GE matters. In another email from (b) (6), (b) (7)(C), which included an attached draft backgrounder, (b) (6), (b) (7)(C) requested that the gainful employment insert be removed before it was sent over to the White House. (b) (6), (b) (7)(C) explained that this email referenced regulatory resets and when it was sent it still had an insert for gainful employment, and he wanted it removed. (b) (6), (b) (7)(C) maintained that he did not violate any of his recusals and did not have any conflicts of interest regarding his work at the Department.

On June 19, 2019, ED OIG discussed the results of this investigation with (b) (6), (b) (7)(C), who in turn consulted with the Office of Government Ethics (OGE). (b) (6), (b) (7)(C) concluded, in consultation with OGE, that (b) (6), (b) (7)(C) did not appear to be in violation of a statutory, regulatory and/or an ethics pledge disqualification. (b) (6), (b) (7)(C) was not barred from working on specific legal matters other than those he was already recused from involving GE and pending BD claims against the Department.

PROSECUTIVE/ADMINISTRATIVE STATUS

On October 9, 2018, this investigation was presented to the USAO for the District of Columbia and on October 10, 2018, was declined for prosecution.

On March 29, 2019, Acting Inspector General Bruce referred (b) (6), (b) (7)(C) failure to cooperate with the OIG to Deputy Secretary Mitchell.

SUBJECT OF INVESTIGATION

Name: (b) (6), (b) (7)(C)
Title: (b) (6), (b) (7)(C)
Address: 400 Maryland Avenue SW, Washington D.C. 20202
Phone: (b) (6), (b) (7)(C)

EXHIBITS

1. Interview of (b) (6), (b) (7)(C), dated September 19, 2018
2. Interview of (b) (6), (b) (7)(C), dated September 19, 2018
3. Acting Inspector General letter to Deputy Zais, dated March 29, 2019
4. Interview of (b) (6), (b) (7)(C), dated May 9, 2019