



Department of Energy

Washington, DC 20585

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M St., NW, Suite 300
Washington, DC 20036-4505

Re: OIG Case No. 20-0020-I/ OSC Case No. DI-18-005859

Dear Mr. Kerner,

This letter is in reference to the U.S. Office of Special Counsel (OSC) referral to the Department of Energy ("Department" or DOE) regarding its investigation into William Bryan, (former DOE employee), and [REDACTED] (current DOE employee). The purpose of this letter is to provide a final Report of Investigation in response to OSC's August 29, 2019, referral to the Secretary of Energy. The Secretary of Energy has delegated to me the authority to respond to this matter.

On August 29, 2019, OSC referred to then DOE Secretary Rick Perry alleged whistleblower disclosures regarding the Department's Office of International Affairs. On September 17, 2019, Secretary Perry's office referred the case to the Department's Office of Inspector General (OIG) for investigation.

From September 2019 through November 2020, OIG investigators conducted a thorough and detailed investigation of the allegations set forth by OSC in its referral to Secretary Perry. In the conduct of this investigation, investigators initiated eighteen interviews of staff personnel and officials from DOE, as well as the Department of State (DOS) and Department of Commerce. Over 15,000 official Government emails were reviewed, as well as numerous supporting documents from the Department of Justice (DOJ) Foreign Agents Registration Act filings, and the Commonwealth of Virginia Employment Commission and Corporations Division. Investigators further reviewed personnel security files, personnel action reports, and analyzed translations of over 150 pages of Ukrainian authored documents and electronic communications. Open source research was conducted on Congressional testimony, personal and business addresses and associates, non-partisan government financial research groups, and related U.S. and Ukrainian media articles. Investigators engaged the assistance of the Federal Bureau of Investigation (FBI), DOJ Public Integrity, and Inspectors General Offices of Investigation from the DOS, Homeland Security (DHS), and the U.S. Agency for International Development.

Investigators also participated in a compelled interview of Mr. Bryan lead by his current employing agency, DHS. The interview was primarily directed toward concerns DHS investigators uncovered in their parallel investigation developed from collaborating on the Department's OIG investigation of the August 2019 OSC referral. Mr. Bryan's statements

during the compelled interview failed to provide information that altered the findings set forth in the paragraphs below. He rested heavily upon his claim that any continued involvement in Ukraine following the expiration of his term as a Special Government Employee (SGE) for the Department was conducted at the direction of the FBI, for whom he claimed to be an informant.

DOE is mindful of the gravity of any deficiencies identified by OIG or OSC and takes all ethical violations seriously. Since the conclusion of the investigation, DOE has worked extensively to understand and address the initial findings. DOE has resolved any current issues and taken steps to prevent future violations. Further, given the unique circumstances surrounding the violation, and that the employee in question is no longer employed with the agency, DOE does not believe that there is any reasonable likelihood that there will be any future ethical violations of this nature.

Upon entry on duty the Department provides all federal employees, including Special Government Employees (SGEs), 1) a summary of the Standards of Conduct for Employees of the Executive Branch, 2) DOE's supplemental agency regulations, and 3) instructions for contacting a DOE ethics official. Within 90 days of their entry on duty date, SGEs are required to complete a New Employee Ethics Training (NEET) interactive course through our on-line learning platform, Learning Nucleus. The topics covered by the NEET course include financial conflicts of interest, loss of impartiality, misuse of position, gifts, outside activities, partisan political activity, and instructions for contacting a DOE ethics official. The Department tracks compliance with the new employee training requirements and follows up with supervisors of non-compliant employees until the training is completed. SGEs are further required to complete annual ethics training through an interactive course on Learning Nucleus. The annual training topics include financial conflicts of interest, loss of impartiality, misuse of position, gifts, and instructions for contacting a DOE ethics official. Other topics are rotated in the training, including partisan political activity, non-Federal source travel and participation in outside organizations. The Department tracks compliance with the annual ethics training requirements and heads of each departmental element are notified of incompletions until all required annual ethics trainings have been completed.

When Mr. Bryan became an SGE not all of these procedures were in place. DOE made these changes to its ethics training and tracking systems as a result of routine internal reviews and examinations of improving our internal operations and the issuance of new training regulations by the Office of Government Ethics.

Since Mr. Bryan's departure there has also been a complete change in the DOE management, including a new Assistant Secretary for International Affairs (IA). Under the new leadership IA has engaged in efforts across all levels of the Department to engage with colleagues at DOS, the Assistant Secretary has communicated to IA staff that they are to work with and ensure proper coordination is done with DOS counterparts. Moreover, within the Department, IA leadership holds weekly staff meetings that involve participation from multiple DOE components who engage in international work, to ensure that IA is aware of and available to assist or direct any DOE international work consistent with DOE policies. DOE does not believe that there is any reasonable likelihood that there will be any future international actions taken of the nature undertaken by Mr. Bryan.

Should you have any questions, please do not hesitate to contact me.

SUSAN
BEARD

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by SUSAN BEARD
Date: 2022.06.17
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Susan Beard
Deputy General Counsel for General Law



**U.S. Department of Energy
Office of Inspector General
Office of Investigations**

Investigative Report to Management

20-0002-I

November 19, 2020

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Department of Energy
Washington, DC 20585

November 19, 2020

MEMORANDUM FOR THE OFFICE OF THE SECRETARY

FROM: LEWE SESSIONS **Lewe F. Sessions** Digitally signed by Lewe F. Sessions
DEPUTY ASSISTANT INSPECTOR GENERAL Date: 2020.11.19 05:22:52 -05'00'
FOR INVESTIGATIONS

SUBJECT: Ethics Violations and Personal Conflicts of Interest Investigation
(OIG Case No. 20-0020-I)

This report serves to advise you of the results of an investigation conducted by the U.S. Department of Energy, Office of Inspector General. This investigation involved allegations that William Bryan, a former Department Deputy Assistant Secretary and Ukraine Winter Action Plan team leader, engaged in unethical behavior by manipulating energy policy overseas, using his official position for personal financial gain, and not being forthright in his sworn statements to Congress. The investigation examined an additional allegation that [REDACTED] a current Department [REDACTED] in the Office of International Affairs, improperly disclosed proprietary coal pricing information.

During our investigation, we were unable to substantiate three of the allegations. However, the investigation substantiated the claim that Mr. William Bryan was not forthright in his sworn testimony to Congress.

This report makes no recommendations for your consideration, but outlines three summary observations resulting from the investigation. Should you have any questions regarding this matter, please contact me at (202) 586-[REDACTED] or Special Agent [REDACTED] at (202) 586-[REDACTED].

cc: Office of General Counsel

OIG Case No. 20-0002-I

This document is for ~~OFFICIAL USE ONLY~~. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).

INVESTIGATIVE REPORT TO MANAGEMENT

I. INITIATION

On August 29, 2019, the U.S. Office of Special Counsel (OSC) referred to the Department of Energy (Department), Secretary Richard Perry, whistleblower disclosures regarding the Department's Office of International Affairs. OSC determined there was a substantial likelihood these disclosures demonstrated a violation of law, rule, or regulation by International Affairs, and directed Secretary Perry to conduct an investigation. Specifically, the disclosures alleged former Department employee William N. Bryan, and current Department employee [REDACTED] engaged in unethical, and potentially illegal, behaviors while working on various projects in Ukraine from 2014 through 2017. OSC cited the following allegations to be investigated:

- 1) William Bryan manipulated DOE energy policy to further personal business interests.
- 2) William Bryan utilized his position as a DOE Special Government Employee to develop his private business interests as president of Valuebridge Energy Group (VBEG), an entity in the same sector in which Mr. Bryan was working as a government official.
- 3) William Bryan was not forthright in his sworn statements to Congress, including the following: (1) he refrained from working in his capacity as president of VBEG while employed as an SGE for the Department; (2) he mischaracterized as strictly personal his ongoing association with [REDACTED], a former DOE Ukrainian partner; and (3) he claimed ignorance of Department contractor [REDACTED] employment by VBEG as an industry expert.
- 4) [REDACTED] hindered U.S. interests when he disclosed proprietary U.S. Government information on coal pricing to EIR Center's [REDACTED] during government-assisted negotiations for the purchase of coal by Centrenergy, a Ukrainian state-owned power producer, from XCoal Energy and Resources, an American coal company.

On September 17, 2019, Secretary Perry's office referred the case to the to the Department's Office of Inspector General (OIG) for investigation.

II. CONDUCT OF INVESTIGATION

The investigation focused, primarily but not exclusively, on potential violations of Title 18, U.S. Code (U.S.C.), § 208 (Acts Affecting a Personal Financial Interest); Title 18, U.S.C., § 207 (Restrictions on Former Officers of the Executive and Legislative Branches); and Title 5, Code of Federal Regulations, § 2635 (Standards of Ethical Conduct of Employees of the Executive Branch).

From September of 2019 through November of 2020, investigators conducted a thorough and detailed investigation of the allegations set forth by OSC in its letter to Secretary Perry. In the conduct of this investigation, Special Agents initiated eighteen interviews of staff personnel and officials in the Departments of Energy, State, and Commerce. Over 15,000 official Government emails were reviewed, as well as numerous supporting documents from the Department of Justice (DOJ) Foreign Agents Registration Act (FARA) filings, and the Commonwealth of Virginia

Employment Commission and Corporations Division. Investigators further reviewed personnel security files, personnel action reports, and analyzed translations of over 150 pages of Ukrainian authored documents and electronic communications. Open source research was conducted on Congressional testimony, personal and business addresses and associates, non-partisan government financial research groups, and related U.S. and Ukrainian media articles. Investigators engaged the assistance of the Federal Bureau of Investigation (FBI), DOJ Public Integrity, and Inspectors General Offices of Investigation from the Departments of State (DOS), Homeland Security (DHS), and the U.S. Agency for International Development (USAID).

Department OIG investigators participated in a compelled interview of William Bryan (Bryan) lead by his current employing agency, DHS. The interview was primarily directed toward concerns DHS investigators uncovered in their parallel investigation developed from collaborating on the Department's OIG investigation of the August 2019 OSC inquiry. Bryan's statements during the compelled interview failed to provide information that altered the findings set forth in the paragraphs below. He rested heavily upon his claim that any continued involvement in Ukraine following the expiration of his term as a Special Government Employee (SGE) for the Department was conducted at the direction of the FBI, for whom he claimed to be an informant.

III. BACKGROUND

William Bryan

Bryan was a full time Department employee from November 2007 until September 2015, and served as a Deputy Assistant Secretary (DAS) in the Office of Electricity Delivery and Energy Reliability. In this role, Bryan specialized in energy resilience and critical infrastructure security of threatened or disrupted energy systems. He retired as a full time employee on September 30, 2015. Following a 25-day break in service, Bryan was rehired by the Department in October 2015 as a SGE, Senior Advisor for International Affairs. He served as such until October 2016. From March 2014 until the termination of his appointment as an SGE in October 2016, Bryan led the Department's Winter Action Plan (WAP) team in Ukraine.

Ukrainian Energy Needs

In March 2014, the Russian Federation invaded the Crimean Peninsula, and installed a pro-Russian Government in the region. Crimea held a number of political and strategic advantages for the Russian Federation, among which was the control of significant coal and natural gas resources and infrastructure essential to Ukraine. The Administration had grave concerns over the invasion, and tasked then Secretary of Energy, Ernest Moniz (Moniz), with assisting Ukraine in addressing a projected energy shortage during the winter of 2014 - 2015. Secretary Moniz in turn tasked International Affairs with assisting Ukraine in the formulation of a WAP. As the Deputy Assistant Secretary of Infrastructure Security and Energy Restoration, Bryan was assigned to lead a team of experts from the U.S., Canada, and the European Union (EU) to collaborate with the Government of Ukraine (GOU) in formulating an energy security and sustainability plan for the coming winter.

The WAP team worked within the Ukrainian Ministry of Energy to provide advice and expertise in addressing a number of issues, chief among which was securing adequate reserves of coal and

natural gas to carry Ukraine through the coming winter. The WAP team ultimately collaborated in the production of two action plans, one in 2014-2015, and the other in 2015-2016.

[REDACTED]
[REDACTED] is a full time Department employee serving as an [REDACTED] in International Affairs. From 2014 until 2016, [REDACTED] worked closely with Bryan as a member of the WAP team. In 2017, he represented International Affairs in the solidification of a U.S. Government assisted agreement for the purchase of anthracite coal by the GOU from Xcoal Energy and Resources (Xcoal), a U.S. based company.

In July 2017, Pennsylvania based Xcoal signed a contract to sell Centrenergy PJSC (Centrenergy), a large State-owned power company in Ukraine, anthracite coal to fuel its three thermal power plants. Centrenergy represented approximately 14 percent of the total capacity of power plants in Ukraine. While not directly connected to the 2014 and 2015 WAPs, the agreement was representative of the continued struggle by GOU to ensure energy stability in the region.

IV. INVESTIGATIVE FINDINGS

The summary of investigative findings is divided below in order of the allegations presented for investigation by OSC.

1) William Bryan manipulated DOE energy policy to further personal business interests- Not substantiated

Investigators determined that of the two WAPs Bryan led, only the 2014-2015 plan saw any appreciable use by the GOU. The plan was incorporated into the *Transition Plan for Ukrainian Energy Independence*, a Ukrainian authored document presented to the Cabinet of Ministers in September 2015. The executive summary section of this document stated the recommendations were derived from “an effort of subject matter experts from the United States of America, Canada, European Union Commission, and Ukraine who have studied the present energy fuels landscape and have developed a prioritized list of recommendations.” Investigators found the WAP and resulting Ukrainian transition plan were not reflective of specific Department policy, but of a multinational collaborative effort. While U.S. representatives on the WAP team worked closely with the Ukrainians, the final document and recommendations submitted to the Cabinet of Ministers for consideration and acceptance were authored by representatives of the GOU.

The findings of both the 2014-2015 and 2015-2016 WAPs were reported to Secretary Moniz, but the investigation did not locate a specific domestic policy, program, or directive resulting from either WAP. Furthermore, policy experts from both the Department and the State Department declared that despite the recommendations in both plans, no changes, improvements, or recommendations for infrastructure security or energy resilience were implemented by the GOU. The repeated lack of implementation was so significant as to cancel Department plans for participation in a third WAP in 2017.

Central to the allegation of policy manipulation was Bryan's work with [REDACTED] [REDACTED] and the Energy Industry Research (EIR) Center; three entities alleged to have close associations with pro-Russian business oligarch [REDACTED] [REDACTED]. Engagement with business oligarchs and energy industry monopolies was inherently contrary to U.S. foreign policy in Ukraine. While many of the sources interviewed suggested a known association between the aforementioned entities and the oligarch system, investigators were unable to prove this fact. Specifically, [REDACTED] funding of the EIR Center to indirectly exert influence over the WAP was not proven.

The investigation also reviewed the allegation that [REDACTED] and [REDACTED] were proxies put in place to steer WAP policy recommendations to favor Ukrainian energy interests owned and controlled by [REDACTED]. Investigators determined proper steps, consistent with internal Department controls, were taken on a number of occasions to vet both [REDACTED] and [REDACTED]. This vetting did not trigger any direction to restrict engagement with either party by Department personnel. However, efforts to determine who specifically requested the vetting of these individuals were inconclusive.

The connection between Bryan's work for the Department and his work for VBEG, a private energy company in which Mr. Bryan held an ownership stake, is addressed in depth in the below response to the second allegation. In relation to the allegation of policy manipulation, the connection was sufficiently vague as not to support the allegation that his work on the WAPs was either diminished by, or singularly benefited his work for VBEG.

2) William Bryan utilized his position to develop private business interests— Not substantiated

VBEG is a now defunct subsidiary of Valuebridge, Inc. (Valuebridge) based in Reston, VA. VBEG was registered with the Commonwealth of Virginia State Corporation Commission for approximately three years, with Bryan serving as president from October 2015 through February 2017. State employment commission records indicated Bryan received approximately \$15,000 in compensation over a three-year period beginning sometime in the fourth quarter of 2015. A review of Bryan's personnel file determined this compensation began after his retirement as a full-time employee of the Department.

Through employee interviews and open source research, investigators determined VBEG never evolved into a sustained independent business enterprise. The investigation did not uncover any contracts in Ukraine between VBEG and the Department or USAID. Searches of public databases showed neither Valuebridge nor VBEG received any Federal funding. A 2016 proposal submitted to the Governor of Lviv, Ukraine for VBEG to build waste recycling plants there was reported in foreign media, but construction never came to fruition.

A February 2017 FARA filing signed by Bryan showed VBEG as the facilitator, or subcontractor, of a contract for public relations work between CabinetDN, a Belgium based public affairs and

international relations firm, and Naftogaz (Naftogaz), Ukraine's national oil and gas company. Despite the requirement to do so, a copy of the contract outlining the specific roles of VBEG, CabinetDN, and Naftogaz was not attached to the FARA filing. Significant investigative efforts to locate the contract were met with negative results.

The agreement between CabinetDN and Naftogaz was executed 17 months after Bryan's retirement as a full time employee, and 5 months after the expiration of his appointment as an SGE. At the time of the FARA filing, [REDACTED] was [REDACTED] of Naftogaz. However, investigators were unable to prove Bryan conducted negotiations on behalf of VBEG during his association with [REDACTED] and while leading the WAP team in Ukraine.

Beginning in January 2015 and lasting through February 2017, Bryan engaged ethics attorneys in the Department's Office of General Counsel (GC) in email and in person conversations regarding outside employment and post-retirement employment activities with VBEG. Detailed examination of these communications identified what investigators believed to be a reasonable and ongoing attempt to determine the specific legal and ethical parameters surrounding work he proposed to do for VBEG.

In support of the above allegation, OSC cited Bryan's chairmanship of the March 2016 Power Grid Resilience Conference in Philadelphia in which Department credentials were listed in his biography for the forum. In an April 2015 email communication with GC ethics attorneys, Bryan was advised of a one year restriction for senior employees under Title 18, U.S.C., § 207 by which an employee is prohibited "[to] knowingly make, with the intent to influence, any communication to or appearance before an employee of the Department of Energy, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which you seek official action by the Department of Energy employee."

Investigators conducted a search of the Department's Corporate Human Capital Resource Information System (CHRIS), which in 2016 was the online portal to access a variety of human capital resources to include tracking of employee attendance at trainings and conferences. The search yielded no results indicating any Department employees attended the Power Grid Resilience Conference in Philadelphia that Bryan chaired.

During the detailed review of his email communications with GC attorneys, investigators noted a number of times in which Bryan was advised of the optics or appearance of conflict related to proposed outside employment and post-retirement employment activities. Frequently, GC advised Bryan that while not a technical violation of Title 18, U.S.C., § 207 or Title 18, U.S.C., § 208, certain activities would reflect poorly on the Department, and might bring into question the ethics of his behavior in the public eye. In a February 2015 email responding to Bryan's request to participate in an energy roundtable on behalf of VBEG, CG went as far as to advise, "Although we [GC] could likely make a legal distinction to permit you to participate, the optics concerns are strong enough that we would advise you not to participate." Investigators were unable to determine if Bryan attended this roundtable as no specific name or location for the event appeared in the email communications.

3) William Bryan was not forthright in his sworn statements to Congress-Substantiated

The investigation substantiated the allegation as investigators discovered several statements in his August 22, 2018, Congressional *Post-Hearing Questions for the Record*, that were inconsistent with independent investigation of the responses. While the inconsistencies did not appear to rise to the level of a criminal violation, independent review of the statements cited below uncovered information which Bryan did not note in his responses.

In response to this allegation, investigators reviewed transcripts of Bryan's testimony before the Senate Committee on Homeland Security and Government Affairs, specifically the *Minority Pre-Hearing Questionnaire* and *Senator Claire McCaskill Post-Hearing Questions for the Record*. To provide context to his responses, investigation of Bryan's personnel action reports yielded the following significant dates: September 30, 2015 (retirement as a full-time Department employee), October 26, 2015 (re-hire as an SGE), and October 26, 2016 (termination of SGE appointment). Due to his compensation rate at retirement and his compensation rate as an SGE, Bryan's post-employment restrictions under Title 18, U.S.C., § 207, commenced on September 30, 2015, and were effective for one year.

In response to a question from Senator McCaskill requesting a detailed description of his relationship and business ventures with [REDACTED] Bryan responded in part, "We have maintained periodic contact (2-3 times per year) as friends but with no further business endeavors [since working together on the WAP.]" Investigators determined this statement did not fully articulate Bryan's post-WAP endeavors relating to [REDACTED] and common business interests held by both men.

The interview of a Department Foreign Affairs Specialist yielded emails sent from Bryan's Valuebridge email account in 2017. Specifically, in January, Bryan sent an email on behalf of Naftogaz to a State Department employee in Washington, DC requesting a meeting between the former U.S. Ambassador to Serbia and representatives from the company. The representatives for whom Bryan made the request were [REDACTED] and [REDACTED]. Investigators were unable to determine if this meeting took place, but Bryan's request and description of its purpose possibly indicated a business and not personal relationship with [REDACTED].

An interview with the president of Valuebridge revealed Bryan traveled to Texas in 2016 or 2017 on behalf of VBEG. Valuebridge's president was vague in his response as to the timing and purpose of this trip. However, a March 7, 2017, Valuebridge media alert obtained by investigators promoted an event in Houston for business executives to meet representatives of Naftogaz. [REDACTED] was among the company's Ukrainian delegation listed in the media alert. A footer at the bottom of the alert stated, "This material is distributed by ValueBridge [sic] International on behalf of Naftogaz." This event appeared consistent with the public relations work Valuebridge was subcontracted to perform for CabinetDN and Naftogaz as listed in the 2017 FARA filing referenced earlier in this report. While investigators were unable to confirm Bryan's attendance at the event, both Bryan's and

[REDACTED] positions within their respective companies during this time period possibly indicated a post-WAP business relationship.

In response to a question from Senator McCaskill requesting a detailed timeline describing his exit from VBEG, Bryan responded in part stating, “Dec 2015 became Valuebridge employee (no salary/compensation) but postponed work until July 2016 when DOE work was completed as an SGE.” A state employment commission wage and earning report referenced earlier in this investigative report, showed that Bryan received \$5,000 in earnings from Valuebridge in quarter four of 2015 (October through December), and an additional \$5,000 in quarter one of 2016 (January through March). Investigators also located a February 2016 email from [REDACTED] to Bryan’s official Department email address in which [REDACTED] wrote in reference to an upcoming visit to the U.S. during which he would “love to have dinner with you [Bryan] and Valuebridge guys.” Investigators were unable to prove this dinner took place, but found the email conversation possibly indicated Bryan was conducting business on behalf of Valuebridge.

Finally, an April 2016 news article, previously referenced in this investigative report, reported a proposal by Valuebridge to build waste recycling plants in Ukraine. The article by a Russian journalist does not provide the date of the agreement; however, a second report from a Ukrainian media source stated a “protocol on intentions” was signed between the Governor of Lviv and “Energy Group Co. president, William Bryan” on September 1, 2016. While the formal agreement was not signed until September, it seemed likely the agreement was negotiated in some form prior to publishing the April 2016 article. Despite the date of a formal agreement with Valuebridge, the April media report of a pending project conflicted with Bryan’s statement that he postponed his work for Valuebridge until July of 2016.

Investigators also found an inconsistency in the timeline Bryan presented in response to Senator McCaskill’s question. Bryan stated, “Oct. 2015, became a Special Gov’t Employee (SGE), a part time employee, which ended in June 2016.” A review of Bryan’s Department personnel action reports showed his appointment as an SGE terminated on October 26, 2016.

In response to a question from Senator McCaskill regarding Bryan’s relationship with [REDACTED] and his employment by VBEG, investigators determined Bryan’s response that [REDACTED] was never a VBEG employee was accurate.

4) [REDACTED] hindered U.S. interests in a coal deal between Xcoal and Centrenergy—
Not substantiated

Investigators determined the purchase agreement between Xcoal and Centrenergy was completed in a timeframe consistent with negotiations. The interview of a Department DAS determined [REDACTED] provided information requested by the GOU to [REDACTED] who was acting on behalf of the Ministry of Energy. In broad terms, the purpose of the disclosure was to quell GOU concerns that Ukraine was overpaying for the anthracite coal needed to power its thermal power plants through the winter of 2017. Ranking members of International Affairs leadership were aware of the disclosure of this information.

Interviews of both Department and Department of Commerce officials determined that while intended to be “close hold”, the information [REDACTED] disclosed was neither classified nor proprietary. However, both officials stated the intervention of [REDACTED] and the Department in the execution of the contract was not consistent with Department of Commerce protocols.

V. ADDITIONAL FINDINGS—ENERGY INDUSTRY RESEARCH CENTER

Questions concerning the role and influence of the EIR Center on the 2014-2015 and 2015-2016 WAPs spanned all of the allegations in this investigation. The EIR Center was a research group and think tank based in Ukraine, and recommended to Bryan by the GOU upon his initial arrival in Ukraine in 2014. Both [REDACTED] and [REDACTED] held high level positions within the EIR Center. As the WAP team’s work progressed, concerns about the scientific accuracy of the data presented by the EIR Center were brought to the attention of the Department by both the Minister of Energy in a 2015 letter to Secretary Moniz, and numerous communications from the Department’s site office at Embassy Kyiv. Additional concerns regarding the source of its funding and potential pro-Russian motivations of the EIR Center were conveyed in these communications.

In almost all of the interviews conducted, investigators asked about the role and influence of the EIR Center on the WAPs, the Ukrainian authored *Transition Plan for Ukrainian Energy Independence*, and Bryan specifically. The information gained from these responses varied widely, but all pointed generally to the following: (1) The EIR Center was recommend to Bryan by the legitimate GOU as a resource to assist in the work with which the WAP team was tasked; (2) Concerns about corruption, pro-Russian, and pro-oligarch influence in the EIR Center and other aspects of foreign policy work in Ukraine are prolific, and permeate diplomatic work in the region; (3) Attempts to vet the concerns about the EIR Center were undertaken at several levels within the Department; but no apparent action was taken to direct a severing of the relationship; (4) An alternative to the EIR Center that could provide equivalent institutional knowledge of the intricacies of the Ukrainian energy sector may have existed, but aside from Bryan, the level within the Department at which these options were considered was unable to be determined in this investigation.

VI. RECOMMENDATION

The OIG makes no recommendations for administrative action; however, three summary observations are outlined in the paragraph below.

VII. SUMMARY OBSERVATIONS

A thorough and detailed investigation of the allegations set forth in the OSC memorandum to Secretary Perry identified three issues specific to the actions undertaken in response to the energy crisis in Ukraine following the March 2014 invasion by the Russian Federation.

First, the lack of Bryan's qualification and experience in conducting work overseas, specifically in a diplomatic climate as nuanced and challenging as Ukraine, surfaced in interviews conducted by investigators. While he was highly competent in domestic energy resilience and infrastructure security, witnesses interviewed described Bryan as unprepared and unskilled in foreign relations creating concerns about Bryan's susceptibility to attempts by pro-Russian actors to influence policy in the region, a persistent issue faced by the U.S. mission there.

Secondly, the relationship between the WAP team and the Department Attaché Office in Ukraine as well as Embassy Kyiv was conflicted. When conducting interviews of overseas personnel at both the Department and Department of State, investigators uncovered concerns about the interface of the WAP team members with their corresponding counterparts in Ukraine. Specifically, the interaction with their counterparts and credence given to concerns from the Department Attaché Office at Embassy Kyiv by the WAP team and representatives of International Affairs in Washington, DC was an issue identified by investigators during witness interviews.

Finally, Bryan's decision to conduct business for VBEG in a geographic region and with parties closely associated with work recently completed on behalf of the Department resulted in negative perceptions. While investigators fell short of proving a violation of law, Bryan's private business ventures with [REDACTED] and Naftogaz brought the ethics of his character and behavior into question with a number of the witnesses interviewed during the investigation. Bryan's decision to engage in these specific business ventures came after he had been advised of the optics and appearances of such activity by Department ethics officials.



Department of Energy

Washington, DC 20585

MEMORANDUM FOR

[REDACTED]
[REDACTED]
U.S. OFFICE OF SPECIAL COUNSEL

FROM:

JOCELYN RICHARDS
DEPUTY GENERAL COUNSEL FOR GENERAL LAW

JOCELYN RICHARDS
Digitally signed by JOCELYN RICHARDS
Date: 2024.01.23 19:02:29 -05'00'

LEWE SESSIONS Lewe F. Sessions
ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS

Digitally signed by Lewe F. Sessions
Date: 2024.01.24 08:12:14 -05'00'

SUBJECT:

WILLIAM BRYAN INVESTIGATION

You requested that our offices revisit the previous Department of Energy's (DOE) Office of Inspector General (OIG) Investigative Report to Management (hereafter, "the Report") regarding allegations made against former DOE employee William Bryan. Specifically, you asked our offices to conduct a fresh analysis of the facts to determine whether an ethics violation occurred.

Based on this review, we have not identified a violation of federal ethics statutes. At most, he may have created an appearance of impropriety. This potential appearance, however, is unlikely to support further remedial action. The OIG's conclusions are sound. After reviewing the Report and the facts of this investigation, as compiled by the OIG, it appears that Mr. Bryan may have misused his public office for his private interests as President of ValueBridge International's Energy Group (VBEG) under 5 C.F.R. § 2635.702. However, it does not appear that he violated federal ethics statutes.

ALLEGATIONS

On August 29, 2019, your office referred alleged whistleblower disclosures regarding DOE's Office of International Affairs (IA) to former DOE Secretary Rick Perry. Your office determined that there was a substantial likelihood these disclosures demonstrated a violation of law, rule, or regulation by IA, and directed former Secretary Perry to conduct an investigation. Specifically, the disclosures alleged former DOE employee Mr. Bryan engaged in unethical, and potentially illegal, behaviors while working on various projects in Ukraine from 2014 through 2017. Your office cited the following allegations to be investigated:

- 1) Mr. Bryan manipulated DOE energy policy to further personal business interests.
- 2) Mr. Bryan utilized his position as a DOE Special Government Employee (SGE) to develop his private business interests as President of VBEG, an entity in the same sector in which Mr. Bryan was working as a government official.
- 3) Mr. Bryan was not forthright in his sworn statements to Congress, including the

following: (1) he refrained from working in his capacity as president of VBEG while employed as an SGE for DOE; (2) he mischaracterized as strictly personal his ongoing association with [REDACTED] [REDACTED] a former DOE Ukrainian partner; and (3) he claimed ignorance of DOE contractor [REDACTED] employment by VBEG as an industry expert.

However, in subsequent correspondence with you, it was agreed that our offices would conduct a review of the facts to determine whether Mr. Bryan engaged in any ethics violations.

FACTS

On November 25, 2007, William Bryan was appointed as the Deputy Assistant Secretary for Infrastructure Security and Energy Restoration in the Office of Electricity Delivery and Energy Reliability (EERE) at DOE, a full-time career position in the Senior Executive Service (SES).¹ As the Deputy Assistant Secretary, Mr. Bryan led integration efforts with the National Security staff, other U.S. federal government agencies, and international partners to enhance the security and resilience of critical energy infrastructure and facilitate the reconstruction and recovery of damaged or disrupted energy systems.² He also led the EERE in support of the electricity, oil, and natural gas industries in the development and implementation of infrastructure protection strategies both in the U.S. and abroad.³

On August 10, 2014, Mr. Bryan was then reassigned as Senior Advisor, International Energy Infrastructure Security for EERE, which was also a full-time career SES position.⁴ As Senior Advisor, Mr. Bryan responded to pressing global energy challenges, such as energy security, market volatility, and hazard/threat impacts, particularly with the Ukrainian winter energy crisis.⁵ In this capacity, he provided emergency management expertise to Ukrainian and other international partners that addressed resiliency and recovery requirements.⁶ Moreover, he collaborated on security improvements to critical energy infrastructures and analyzed information on international energy trade to advocate global awareness related to infrastructure resilience and

¹ Employee Service Record from DOE's Office of the Chief Human Capital Officer for William Bryan, p. 6.

² See Hearing Before the Committee on Homeland Security and Governmental Affairs United States Senate, One Hundred Fifteenth Congress, Second Session: Nomination of William N. Bryan to Be Under Secretary for Science and Technology, U.S. Department of Homeland Security and Peter T. Gaynor to Be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security (Aug. 22, 2018), p. 39 and Expert/Consultant Justification from DOE's Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 1.

³ See Expert/Consultant Justification from DOE's Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 1.

⁴ Employee Service Record from DOE's Office of the Chief Human Capital Officer for William Bryan, p. 4.

⁵ See Hearing Before the Committee on Homeland Security and Governmental Affairs United States Senate, One Hundred Fifteenth Congress, Second Session: Nomination of William N. Bryan to Be Under Secretary for Science and Technology, U.S. Department of Homeland Security and Peter T. Gaynor to Be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security (Aug. 22, 2018), p. 39 and Expert/Consultant Justification from DOE's Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 1.

⁶ See Expert/Consultant Justification from DOE's Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 1.

security.⁷ He also was responsible for supporting international collaboration efforts regarding electrical transmission.⁸

While serving as a full-time career SES employee, email correspondence between Mr. Bryan and DOE Attorney-Advisor ██████ stated that Mr. Bryan was on a detail in DOE's Office of International Affairs (IA). During this detail, Mr. Bryan focused exclusively on energy infrastructure security and development in Ukraine.¹⁰ OIG cites that Mr. Bryan started performing this work in March 2014, where he led DOE's Winter Action Plan (WAP) team in Ukraine.¹¹ This team consisted of experts from the U.S., Canada, and the European Union, and its purpose was to collaborate with the Ukrainian government to form an energy security and sustainability plan for Ukraine following Russia's invasion of the Crimean Peninsula.¹² The Crimean Peninsula was significant from an energy standpoint because it contained significant coal and natural gas resources.¹³ While Mr. Bryan served as the WAP team lead, Ukraine's Vice Prime Minister Volodymyr Groysman presented ██████ and ██████ to Mr. Bryan.¹⁴ ██████ and ██████ led the Energy Industry Research (EIR) Center, a private energy consulting group, and would serve as the Ukrainian government's representatives to assist Mr. Bryan and the WAP team in providing knowledge of the Ukrainian energy industry.¹⁵ U.S. government officials working with Mr. Bryan noted that he held and/or attended meetings with Ukrainian officials where U.S. embassy officials were not present and which was contrary to U.S. embassy protocols.¹⁶ In fact, there was a concern that Mr. Bryan may have developed this relationship with these Ukrainian officials and the EIR Center so that he could advance his private interests with ValueBridge International; while, in turn, he would manipulate terms in the WAP for the EIR Center's benefit.¹⁷ There were also concerns and allegations of corruption specifically against ██████.¹⁸ However, Mr. Bryan vetted ██████, and the EIR Center through DOE's Office of Counterintelligence. No derogatory information was found and Mr. Bryan continued to work with them.²⁰ One of Mr. Bryan's colleagues also noted to DOE's OIG that Mr. Bryan was a man of "complete integrity" and did not believe that Mr. Bryan engaged in unethical behaviors.²¹ In addition, there were concerns that the U.S. embassy was critical of

⁷ See DOE Office of the Chief Human Capital Officer's Position Description for Senior Advisor, International Energy Infrastructure Security, Office of Electricity Delivery and Energy Reliability, Infrastructure Security and Energy Restoration, p. 2-3.

⁸ See *id.* at p. 2.

⁹ See Email Chain Between GC ██████ and William Bryan, 1.14.15 to 1.15.15, p. 2.

¹⁰ See *id.*

¹¹ See DOE OIG's Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 3.

¹² See *id.*

¹³ See *id.*

¹⁴ See DOE OIG's Memorandum of Investigative Activity, ██████ Witness Interview, p. 2 and DHS Office of the Chief Security Officer Memorandum of Activity, William Bryan Subject Interview, p. 1.

¹⁵ See *id.*

¹⁶ See DOE OIG's Memorandum of Investigative Activity, ██████ Witness Interview, p. 2 and ██████ Initial Disclosure to OSC, 9.10.2018, p. 20.

¹⁷ See ██████ Initial Disclosure to OSC, 9.10.2018, p. 21-22, 33.

¹⁸ See DOE OIG's Memorandum of Investigative Activity, ██████ Witness Interview, p. 3-4 and DOE OIG's Memorandum of Investigative Activity, ██████ Witness Interview, p. 2.

¹⁹ See DOE OIG's Memorandum of Investigative Activity, ██████ Witness Interview, p. 2-3 and DOE OIG's Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 9.

²⁰ See DOE OIG's Memorandum of Investigative Activity, ██████ Witness Interview, p. 3.

²¹ DOE OIG's Memorandum of Investigative Activity, ██████ Witness Interview, p. 4.

DOE and Mr. Bryan.²²

On September 30, 2015, Mr. Bryan retired from DOE, but was quickly rehired by DOE to serve as an Expert within IA on October 26, 2015.²³ According to the Justification for Mr. Bryan's Expert position, this appointment would continue through 2016 and would extend to September 30, 2016, with the possibility of a further extension if needed, as the full-time position for this role would not be filled for six to eight months.²⁴ As an Expert, Mr. Bryan was appointed as a Special Government Employee (SGE) and he continued his role as WAP team lead.²⁵ Additionally, Mr. Bryan focused on other special projects in Ukraine, including the Ukrainian Plan for Energy Independence, which would include analysis and policy research on cross-cutting issues such as international clean energy integration, grid stability, and energy security.²⁶ Mr. Bryan's appointment as an Expert was extended on April 26, 2016, but then officially terminated on October 26, 2016.²⁷ However, documentation from DOE's payroll office show that Mr. Bryan was only paid as an Expert for less than 130 days through June 8, 2016.²⁸

While working for DOE, Mr. Bryan contacted DOE's Office of the Assistant General Counsel for General Law to seek approval of an uncompensated outside activity with ValueBridge International.²⁹ Mr. Bryan was also planning on working for ValueBridge International once he left DOE, and had already started finalizing employment negotiations with ValueBridge International, which included salary negotiations, as of January 2015.³⁰ His duties at ValueBridge International would include designing strategies to work with developing countries to develop and maintain reliable energy infrastructure, and serving as the CEO of VBEG.³¹ Mr. Bryan would also be recruiting staff to join VBEG.³² DOE Attorney-Advisor [REDACTED] informed Mr. Bryan that DOE advised against performing the above duties at VBEG while he was still employed with DOE, as he must not do any work that could be viewed as similar to the work he did for IA.³³ During his appointment as an Expert, DOE Attorney-Advisor [REDACTED] informed Mr. Bryan that while he was an Expert for DOE on Ukrainian energy issues, he may also not work with VBEG on Ukrainian energy issues because "the real and appearance of conflict of interest issues are too great in this area for [him] to wear both hats . . ."³⁴ [REDACTED] advised Mr. Bryan that if VBEG begins to work in Ukraine, it may be "untenable for [him] to be both an SGE working on Ukrainian energy issues on behalf of DOE and also be working on Ukrainian energy issues on behalf of

²² See *id.*

²³ Employee Service Record from DOE's Office of the Chief Human Capital Officer for William Bryan, p. 2.

²⁴ See Expert/Consultant Justification from DOE's Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 2.

²⁵ See DOE OIG's Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 3.

²⁶ See Expert/Consultant Justification from DOE's Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 1.

²⁷ See Employee Service Record from DOE's Office of the Chief Human Capital Officer for William Bryan, p. 2 and DOE OIG's Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 3.

²⁸ See Bryan William Hours worked spreadsheet from DOE's Office of the Chief Financial Officer.

²⁹ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 1.15.15, p. 2.

³⁰ See *id.* at p. 2-3.

³¹ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 1.15.15, p. 2.

³² See *id.* at p. 3.

³³ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 2.2.15, p. 1.

³⁴ See Email between GC [REDACTED] and William Bryan, 4.27.16 (p. 14 of Request to Inspect of Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records)..

ValueBridge.”³⁵ [REDACTED] also advised Mr. Bryan of his conflict of interest with VBEG pursuant to 18 U.S.C. § 208, and that Mr. Bryan would be subject to the same limitations as an SGE that he was subject to as a full-time federal employee.³⁶ Finally, [REDACTED] informed Mr. Bryan that while he served as an Expert, the post-employment restrictions at 18 U.S.C. § 207(c) did not apply to him because he was not considered a senior employee under the statute.³⁷ As a result, his post-employment restrictions under 18 U.S.C. § 207(c) only began on the date of his separation as a full-time DOE employee.³⁸

In February 2016, while Mr. Bryan was serving as an Expert, [REDACTED] contacted Mr. Bryan on his DOE email address regarding an upcoming visit, where [REDACTED] would “love to have dinner with [Bryan] and Valuebridge guys.”³⁹ Mr. Bryan also served as the Chairperson for the Power Grid Resilience Forum from March 21-23, 2016.⁴⁰ In advertisement materials for this Forum, Mr. Bryan listed himself as President of VBEG and Former Deputy Assistant Secretary of Energy, Infrastructure Security & Energy Restoration.⁴¹ In addition, a New York Times article explained that ValueBridge teamed up with the EIR Center for funding from the United States Agency for International Development (USAID) for a project in Ukraine related to energy and economic development shortly after Mr. Bryan became an SGE.⁴²

After Mr. Bryan’s retirement from his full-time Career SES position at DOE, he served as President of VBEG from December 2015 to March 2017.⁴³ While Mr. Bryan alleged to have postponed this work until after his Expert appointment with DOE ended, a report from the Virginia Employment Commission for ValueBridge showed that Mr. Bryan received compensation from ValueBridge in April 2015, while he was a full-time DOE employee, and in January 2016 and January 2017.⁴⁴

APPLICABLE AUTHORITIES

³⁵ See *id.*

³⁶ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 2.2.15, p. 1, Email Between GC [REDACTED] and William Bryan, 2.19.15, p. 1, and Email Chain between GC [REDACTED] and William Bryan, 8.31.15 to 9.1.15 (p. 18 of Request to Inspect of Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records).

³⁷ See Email Chain between GC [REDACTED] and William Bryan, 6.8.16 to 9.6.16 (p. 10 of Request to Inspect of Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records).

³⁸ See *id.*

³⁹ See DOE OIG’s Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 8.

⁴⁰ See 2016 Power Grid Resilience Forum Online Flyer.

⁴¹ See *id.*

⁴² See Kenneth P. Vogel, *Trump Nominee Draws Scrutiny for Ties to Ukrainian Energy Interests*, N.Y. TIMES, Oct. 10, 2018, at p. 4.

⁴³ See Hearing Before the Committee on Homeland Security and Governmental Affairs United States Senate, One Hundred Fifteenth Congress, Second Session: Nomination of William N. Bryan to Be Under Secretary for Science and Technology, U.S. Department of Homeland Security and Peter T. Gaynor to Be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security (Aug. 22, 2018), p. 74.

⁴⁴ See Hearing Before the Committee on Homeland Security and Governmental Affairs United States Senate, One Hundred Fifteenth Congress, Second Session: Nomination of William N. Bryan to Be Under Secretary for Science and Technology, U.S. Department of Homeland Security and Peter T. Gaynor to Be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security (Aug. 22, 2018), p. 75 and Virginia Employment Commission Wage/Earnings Report for William Bryan, 11.13.19.

1. 18 U.S.C. § 202: Definitions, Special Government Employee

An SGE is defined under 18 U.S.C. § 202(a) as:

[A]n officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate judge, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28.⁴⁵

Federal government agencies must only designate an employee as an SGE after making an advanced estimate of the number of days that the employee is expected to serve as an SGE during the ensuing 365 day time period.⁴⁶ However, according to guidance provided by the Office of Government Ethics (OGE), if the agency makes a good faith estimate of the number of days the employee is expected to serve as an SGE, but the employee unexpectedly serves more than 130 days during the 365 day time period, the employee will still be an SGE for the remainder of that time period.⁴⁷

2. 18 U.S.C. § 203: Compensation to Members of Congress, officers, and others in matters affecting the Government; and 18 U.S.C. § 205: Activities of officers and employees in claims against and other matters affecting the Government

18 U.S.C. § 203 and 18 U.S.C. § 205 include restrictions on a federal employee's representational services in connection with a particular matter in which the U.S. is a party or has a direct and substantial interest. Specifically, 18 U.S.C. § 203 states that:

Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another— . . .

(B) at a time when such person is an officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the

⁴⁵ 18 U.S.C. § 202(a).

⁴⁶ See OGE DO-00-003: Conflict of Interest and the Special Government Employee, A Summary of Ethical Requirements Applicable to SGEs (Feb. 15, 2000), p. 3.

⁴⁷ See *id.* at p. 4; see also An Ethics Guide For Special Government Employees, Including Consultants and Experts (Such As Advisory Committee Members), U.S. Department of Defense Standards of Conduct Office, p. 1 (explaining that to accurately calculate the 130-day time period for SGEs, one must aggregate all the employee's federal service).

Government, or in any agency of the United States,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect, Delegate, Delegate Elect, Commissioner, Commissioner Elect, Federal judge, officer, or employee;

shall be subject to the penalties set forth in section 216 of this title.⁴⁸

Similarly, 18 U.S.C. § 205 states that:

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.⁴⁹

3. 18 U.S.C. § 207: Restrictions on former officers, employees, and elected officials of the executive and legislative branches; and 5 C.F.R. § 2641.301 – Statutory exceptions and waivers

The primary source of post-employment restrictions for federal employees is stated in 18 U.S.C. § 207. In particular, 18 U.S.C. § 207(a)(1) states that:

Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States . . . , and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any

⁴⁸ 18 U.S.C. § 203(a).

⁴⁹ 18 U.S.C. § 205(a).

officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—

- (A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,
- (B) in which the person participated personally and substantially as such officer or employee, and
- (C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.⁵⁰

In addition, 18 U.S.C. § 207(a)(2) states that:

Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States . . . , knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter—

- (A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,
- (B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and
- (C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.⁵¹

Another important post-employment restriction is set out in 18 U.S.C. § 207(c) for certain senior personnel of the executive branch. Pursuant to 18 U.S.C. § 207(c):

[A]ny person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), . . . who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any

⁵⁰ 18 U.S.C. § 207(a)(1).

⁵¹ 18 U.S.C. § 207(a)(2).

communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.⁵²

Senior personnel under 18 U.S.C. § 207(c) is defined as those who are “paid at a rate of basic pay which is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule.”⁵³ This level is calculated every year by OGE. In 2015, the level was \$158,554.50 and in 2016, the level was \$160,111.50.⁵⁴

Nevertheless, there is a regulatory exception for former employees who engage in any activity on behalf of the U.S. Pursuant to 5 C.F.R. § 2641.301, “[a] former employee is not prohibited by any of the prohibitions of 18 U.S.C. § 207 from engaging in any activity on behalf of the United States.”⁵⁵

4. 18 U.S.C. § 208: Acts Affecting a Personal Financial Interest

18 U.S.C. § 208 states that:

[W]hoever, being an officer or employee of the executive branch of the United States Government . . . including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—[s]hall be subject to the penalties set forth in section 216 of this title.⁵⁶

Implementing regulations explain that federal employees are prohibited under 18 U.S.C. § 208 from participating in particular matters “if the particular matter will have a direct and predictable effect on that [financial] interest.”⁵⁷ Additionally, “[a] particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. . . . A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are

⁵² 18 U.S.C. § 207(c)(1).

⁵³ 18 U.S.C. § 207(c)(2)(A)(ii).

⁵⁴ See OGE LA-15-01: Effect of Pay Adjustments on Ethics Provisions for Calendar Year 2015 (Jan. 6, 2015), p. 2 and OGE LA-16-08: Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees (Sept. 23, 2016), p. 7.

⁵⁵ 5 C.F.R. § 2641.301(a).

⁵⁶ 18 U.S.C. § 208(a).

⁵⁷ 5 C.F.R. § 2635.402(a).

independent of, and unrelated to, the matter.”⁵⁸ In addition, “[a] particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest.”⁵⁹ The term “particular matter” includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.⁶⁰ The term may include matters that do not involve formal parties and may extend to legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons.⁶¹

5. Outside Activities: 5 C.F.R. Part 2635, Subpart H and 5 C.F.R. Part 3301, Supplemental Standards of Ethical Conduct for Employees of the Department of Energy

Federal ethics regulations at 5 C.F.R. Part 2635, Subpart H contain provisions relating to the outside employment or outside activities of federal employees. Pursuant to 5 C.F.R. § 2635.801(b), “[a]n employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of [subpart H], including, when applicable: (1) The prohibition on outside employment or any other outside activity that conflicts with the employee’s official duties; (2) Any agency-specific requirement for prior approval of outside employment or activities”⁶² 5 C.F.R. § 2635.803 states that “[w]hen required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities.”⁶³ DOE’s supplemental ethics regulations are found at 5 C.F.R. Part 3301. Specifically, 5 C.F.R. § 3301.103(a) states that “[b]efore engaging in any outside employment, whether or not for compensation, an employee, other than a special Government employee, must obtain written approval of his immediate supervisor and the Counselor.”⁶⁴ ‘Counselor’ under DOE’s supplemental ethics regulations is the “DOE’s designated agency ethics official or his delegates.”⁶⁵

6. 5 C.F.R. § 2635.702: Use of Public Office for Private Gain

Section 2635.702 of the Standards of Ethical Conduct for Employees of the Executive Branch at title 5 provides that “[a]n employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.”⁶⁶ This includes ensuring that the

⁵⁸ 5 C.F.R. § 2635.402(b)(1)(i).

⁵⁹ 5 C.F.R. § 2635.402(b)(1)(ii).

⁶⁰ See 5 C.F.R. § 2640.102 and Memorandum dated October 4, 2006, from Robert I. Cusick, Director, to Designated Agency Ethics Officials Regarding “Particular Matter Involving Specific Parties,” “Particular Matter,” and “Matter”, 06 x 9, p. 3.

⁶¹ See 5 C.F.R. § 2640.102 and Memorandum dated October 4, 2006, from Robert I. Cusick, Director, to Designated Agency Ethics Officials Regarding “Particular Matter Involving Specific Parties,” “Particular Matter,” and “Matter”, 06 x 9, p. 7.

⁶² 5 C.F.R. § 2635.801(b).

⁶³ 5 C.F.R. § 2635.803.

⁶⁴ 5 C.F.R. § 3301.103(a).

⁶⁵ 5 C.F.R. § 3301.101(b).

⁶⁶ 5 C.F.R. § 2635.702(a).

performance of “official duties does not give rise to an appearance of use of public office for private gain.”⁶⁷ In particular, when a federal employee is speaking in a personal capacity, the employee “may refer to his official title or position only as permitted by § 2635.807(b).”⁶⁸ 5 C.F.R. § 2635.807(b) states that:

An employee who is engaged in . . . speaking . . . as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his . . . speaking . . . activity or to promote any book, seminar, course, program or similar undertaking, except that:

- (1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his . . . speaking . . . , provided that his title or position is given no more prominence than other significant biographical details.⁶⁹

Finally, 5 C.F.R. § 2635.704 states that “[a]n employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.”⁷⁰

ANALYSIS

1. Despite some irregularities regarding Mr. Bryan’s employment status, ethics counsel erroneously treated him as an SGE for the purposes of providing ethics advice.

Pursuant to 18 U.S.C. § 202(a), an SGE is employed to perform temporary duties “not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days.”⁷¹ OGE has advised that if an employee serves more than 130 days during a 365 day time period, the employee will still be an SGE for the remainder of that time period, so long as the agency makes a good faith estimate of the number of days the employee is expected to serve as an SGE.⁷² However, employees are presumed to be regular government employees unless their appointing department is comfortable making an estimate that the employee will only need to serve in the position for 130 days or less.⁷³

According to documentation sent by DOE’s Office of Corporate Executive Management (OCEM), Mr. Bryan worked as an Expert from October 26, 2015 to October 26, 2016.⁷⁴ The justification for Mr. Bryan’s appointment as an Expert notes that this position would “require intensive focus by the [expert] for October [2015] through the next year [2016]. It is anticipated

⁶⁷ 5 C.F.R. § 2635.702(d).

⁶⁸ *See id.*

⁶⁹ 5 C.F.R. § 2635.807(b).

⁷⁰ 5 C.F.R. § 2635.704(a).

⁷¹ 18 U.S.C. § 202(a).

⁷² *See* OGE DO-00-003: Conflict of Interest and the Special Government Employee, A Summary of Ethical Requirements Applicable to SGEs (Feb. 15, 2000), p. 4.

⁷³ *See id. and Restrictions on a Federal Appointee’s Continued Employment by a Private Law Firm*, 7 Op. O.L.C. 123, 126 (1983).

⁷⁴ *See* Employee Service Record from DOE’s Office of the Chief Human Capital Officer for William Bryan, p. 2.

that this appointment would extend to September 30, 201[6], with the possibility of extension, should office needs require such extension.”⁷⁵ Accordingly, at the time of his appointment, it was likely that he would serve more than 130 days during a 365-day time period.

Documentation from OIG did not specify how many days Mr. Bryan served as an Expert. OIG’s Report only mentioned that “Mr. Bryan was rehired by the Department in October 2015 as an SGE, Senior Advisor for International Affairs. He served as such until October 2016.”⁷⁶

At first glance, it appears that the intention may have been for Mr. Bryan to serve more than 130 days, as the justification for Mr. Bryan’s October 2015 appointment as an Expert stated that this appointment would extend through September 2016.⁷⁷ In addition, the 130-day calculation includes all federal service.⁷⁸ As a result, the calculation for Mr. Bryan would have started on January 1, 2015 when he was a full-time DOE employee. However, documentation from DOE’s payroll office shows that Mr. Bryan was paid for less than 130 days in the 365-day time period from October 26, 2015 to September 30, 2016.⁷⁹

Based on email correspondence from [REDACTED] and Mr. Bryan citing Mr. Bryan’s SGE status, it appears that the ethics office advised Mr. Bryan as an SGE.⁸⁰ DOE’s supplementary ethics regulations provide for an exception for SGEs receiving outside activity approval.⁸¹ As there is no email correspondence from our office to Mr. Bryan requiring him to receive outside activity approval for his position as President of VBEG, presumably ethics counsel relied on the DOE exception for SGE outside activity approval.⁸² However, in retrospect, it is apparent that Mr. Bryan was a full-time DOE employee, and as such, required outside activity approval for his work at VBEG pursuant to DOE’s supplemental ethics regulations on outside activities.⁸³ Regardless, this is a regulatory discrepancy and does not arise to the level of a statutory ethics violation.

2. There is no information showing that Mr. Bryan violated 18 U.S.C. § 203 or 18 U.S.C. § 205.

While the ethics office did not require Mr. Bryan to seek outside activity approval for his outside position, even though he was not an SGE, there is no information indicating that Mr. Bryan violated 18 U.S.C. § 203 or 18 U.S.C. § 205. His work at VBEG did not involve communicating

⁷⁵ See Expert/Consultant Justification from DOE’s Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 2.

⁷⁶ See DOE OIG’s Investigative Report to Management, OIG Case No. 20-0020-1 (Nov. 19, 2020), p. 3.

⁷⁷ See Expert/Consultant Justification from DOE’s Office of the Chief Human Capital Officer for William Bryan as an SGE, p. 2.

⁷⁸ See An Ethics Guide For Special Government Employees, Including Consultants and Experts (Such As Advisory Committee Members), U.S. Department of Defense Standards of Conduct Office, p. 1.

⁷⁹ See Bryan William Hours worked spreadsheet from DOE’s Office of the Chief Financial Officer.

⁸⁰ See Email Chain between GC [REDACTED] and William Bryan, 6.8.16 to 9.6.16 and Email between GC [REDACTED] and William Bryan, 4.27.16 (p. 10 and 14 of Request to Inspect of Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records)

⁸¹ See 5 C.F.R. § 3301.103(a).

⁸² See 5 C.F.R. § 3301.103(a) and Email between GC [REDACTED] and William Bryan, 4.27.16 (p. 14 of Request to Inspect of Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records).

⁸³ See 5 C.F.R. § 3301.103(a).

with other federal government agencies or representing VBEG to other federal government agencies. As previously explained, his position at VBEG involved working with developing countries to develop and maintain reliable energy infrastructure, and serving as the CEO of the company's Energy Group.⁸⁴ In addition, even though Mr. Bryan's position also may have involved recruiting others to join VBEG, there is no information showing that he communicated with any federal government employees to join VBEG.

3. The facts do not support that Mr. Bryan violated his post-employment restrictions pursuant to 18 U.S.C. § 207(a)(1), 18 U.S.C. § 207(a)(2), and 18 U.S.C. § 207(c)

While serving as Deputy Assistant Secretary and as Senior Advisor, Mr. Bryan was a senior employee pursuant to 18 U.S.C. § 207(c) because he made more than the salary threshold in 2015 for senior employees.⁸⁵ Consequently, Mr. Bryan could not, within one year after the termination of his employment, knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of DOE on behalf of any other person, in connection with any matter on which he seeks official action by any DOE officer or employee.⁸⁶ During the one year period in which Mr. Bryan was subject to 18 U.S.C. § 207(c), he was working as an Expert for DOE.⁸⁷ As a result, pursuant to 5 C.F.R. § 2641.301, Mr. Bryan was exempt from the prohibitions of 18 U.S.C. § 207 because he was engaging in activities on behalf of the U.S. while serving as an Expert for DOE.⁸⁸ In addition, while serving as an Expert, Mr. Bryan did not make more than the salary threshold to be considered a senior employee.⁸⁹ Therefore, following his service as an Expert, the post-employment restrictions stated in 18 U.S.C. § 207(c) did not apply to him.⁹⁰

Mr. Bryan was also subject to the post-employment restrictions found at 18 U.S.C. § 207(a)(1) and 18 U.S.C. § 207(a)(2) after he served as an Expert for DOE. While there were concerns raised about his relationships with persons in Ukraine after his DOE position as consultant ended, there are no facts to support that he made appearances and communications before the U.S. regarding any particular matter involving specific parties in which he personally and substantially participated in while a Federal employee; or that were pending under his official responsibility during his last year of Federal service that would have violated his post-employment restrictions under 18 U.S.C. § 207(a)(1) and 18 U.S.C. § 207(a)(2).

4. The facts do not support that Mr. Bryan violated 18 U.S.C. § 208

As previously noted, 18 U.S.C. § 208 prohibits federal employees from participating in particular matters that will have a direct and predictable effect on their financial interests.⁹¹ Mr. Bryan's

⁸⁴ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 1.15.15, p. 2.

⁸⁵ See Email Chain between GC [REDACTED] and William Bryan, 6.8.16 to 9.6.16 (p. 10 of Request to Inspect of Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records).

⁸⁶ See 18 U.S.C. § 207(c).

⁸⁷ See Employee Service Record from DOE's Office of the Chief Human Capital Officer for William Bryan, p. 2.

⁸⁸ See 5 C.F.R. § 2641.301(a).

⁸⁹ See Email Chain between GC [REDACTED] and William Bryan, 6.8.16 to 9.6.16 (p. 10 of Request to Inspect of Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records).

⁹⁰ See *id.*

⁹¹ 5 C.F.R. § 2635.402(a).

employment with VBEG was a financial interest within the meaning of 18 U.S.C. § 208.⁹² Therefore, he was prohibited from participating personally and substantially, as a DOE employee, in any particular matter that would have a direct and predictable effect upon VBEG. Mr. Bryan had this financial interest in VBEG as early as January 2015, and continued to have this financial interest while he negotiated for employment and was employed with VBEG.⁹³ As a result, Mr. Bryan could not work on specific party matters effecting VBEG or legislation and policymaking that would affect VBEG as a member of a discrete and identifiable class.⁹⁴

While serving as an Expert for DOE, Mr. Bryan worked on energy security and sustainability in Ukraine, including serving as WAP team lead and working on other special projects in Ukraine that involved analysis and policy research on international clean energy integration, grid stability, and energy security.⁹⁵ However, his major job duties were focused on the WAP, which required that he work with the Ukrainian Ministry of Energy to provide advice and expertise in addressing Ukraine securing adequate reserves of coal and natural gas to carry Ukraine through winter months.⁹⁶ The WAP team prepared two action plans, one for 2014-2015, and then for 2015-2016.⁹⁷

While VBEG provided consulting and other related services in the broad energy sustainability sector, its work specifically involved maintaining and developing energy infrastructure in developing countries; and energy development through its possible work with the EIR Center and USAID.⁹⁸ To trigger a violation of 18 U.S.C. § 208, there must be a close and casual link between an official action or decision by the employee on a particular matter and any expected effect on the financial interest.⁹⁹ The link between the employee's financial interest and his Government actions must be direct and predictable.¹⁰⁰ Where the chain of causation is attenuated or is dependent on the occurrence of events that are speculative or unrelated to the matter, there is no "direct and predictable" effect on a financial interest.¹⁰¹ Herein, the available information shows that the connection between Mr. Bryan's work as an Expert and his financial interest in VBEG was remote and speculative.¹⁰² There are no facts that show Mr. Bryan "manipulated DOE energy policy to further personal business interests."¹⁰³ Accordingly, there are insufficient facts to conclude that he violated 18 U.S.C. § 208.

⁹² See 18 U.S.C. § 208.

⁹³ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 1.15.15, p. 3 and Virginia Employment Commission Wage/Earnings Report for William Bryan, 11.13.19.

⁹⁴ See 5 C.F.R. § 2640.102 and Memorandum dated October 4, 2006, from Robert I. Cusick, Director, to Designated Agency Ethics Officials Regarding "Particular Matter Involving Specific Parties," "Particular Matter," and "Matter", 06 x 9, p. 7.

⁹⁵ See DOE OIG's Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 3 and Justification for SGE, p. 1.

⁹⁶ See DOE OIG's Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 3-4.

⁹⁷ See *id.*

⁹⁸ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 1.15.15, p. 2 and Kenneth P. Vogel, *Trump Nominee Draws Scrutiny for Ties to Ukrainian Energy Interests*, N.Y. TIMES, Oct. 10, 2018, at, p. 4.

⁹⁹ 5 C.F.R. § 2640.103(a) (3).

¹⁰⁰ *United States vs. White Eagle*, 721 F.3d 1108, 1119 (9th Cir. 2013).

¹⁰¹ 5 C.F.R. § 2640.103(a) (3).

¹⁰² *United States vs. White Eagle*, 721 F.3d 1108, 1119 (9th Cir. 2013).

¹⁰³ See DOE OIG's Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 2.

5. There are facts to support an appearance that Mr. Bryan misused his position as a DOE Expert for his private interests as President of VBEG under 5 C.F.R. § 2635.702

As stated above, 5 C.F.R. § 2635.702 states that an employee must ensure “the performance of his official duties does not give rise to an appearance of use of public office for private gain.”¹⁰⁴ This requirement includes not allowing the use of an employee’s official position or title, or any Government resources, other than in the performance of official duties.

Mr. Bryan served as an Expert at DOE starting on October 26, 2015.¹⁰⁵ Documentation from DOE’s payroll office show that Mr. Bryan was paid as an Expert through June 8, 2016.¹⁰⁶ During the time he was serving as an Expert, in March 21-23, 2016, Mr. Bryan attended the Power Grid Resilience Forum as Chairperson.¹⁰⁷ In an advertisement flyer for this Forum, Mr. Bryan listed himself as President of VBEG and Former Deputy Assistant Secretary of Energy, Infrastructure Security & Energy Restoration.¹⁰⁸

When speaking as part of an outside activity, federal ethics regulations state that an employee can include his official title or position so long as it is part of several biographical details about the employee and is given no more prominence than his other significant biographical details.¹⁰⁹

Herein, the flyer for the Power Grid Resilience Forum contains approximately 2 paragraphs about Mr. Bryan’s official DOE position and duties, with only one mention of his VBEG position.¹¹⁰ Thus, it did not meet the above regulatory provision that allows for use of an official position or title, provided it is part of several biographical details about the employee and is given no more prominence than his other significant biographical details.¹¹¹

Accordingly, there is an appearance that he was using his official DOE position to advance his outside interests, i.e. as the Chairman of the Power Grid Resilience Forum and VBEG.

In February 2016, [REDACTED] (of the EIR Center, and who was serving as the Ukrainian government representative to assist the WAP team) contacted Mr. Bryan on his DOE email address regarding an upcoming visit.¹¹² In this email, [REDACTED] said that he would “love to have dinner with [Bryan] and Valuebridge guys.”¹¹³ While Mr. Bryan would be required to use his official DOE email to communicate with [REDACTED] about official DOE matters, e.g., the WAP, any emails using government email systems to advance the interests of an outside business activity, e.g., VBEG, would not comply with the requirement to use government property only for authorized purposes and would be a misuse of position.¹¹⁴

¹⁰⁴ See 5 C.F.R. § 2635.702(d).

¹⁰⁵ Employee Service Record from DOE’s Office of the Chief Human Capital Officer for William Bryan, p. 2.

¹⁰⁶ See Bryan William Hours worked spreadsheet from DOE’s Office of the Chief Financial Officer.

¹⁰⁷ See 2016 Power Grid Resilience Forum Online Flyer.

¹⁰⁸ See *id.*

¹⁰⁹ See 5 C.F.R. § 2635.807(b).

¹¹⁰ See 2016 Power Grid Resilience Forum Online Flyer.

¹¹¹ See 5 C.F.R. § 2635.807(b).

¹¹² See DOE OIG’s Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 8.

¹¹³ See *id.*

¹¹⁴ 5 C.F.R. § 2635.704(a).

However, Mr. Bryan could not control what emails he received at his DOE email address from [REDACTED] and others, and there are no facts to show that Mr. Bryan ever communicated with [REDACTED] or any other persons, about VBEG matters using his DOE email address. Nonetheless, the content of the email suggests that Mr. Bryan had, or was planning to discuss, VBEG matters with [REDACTED] who he was working with on the WAP as part of his official DOE duties.

Notably, the ethics office had previously advised Mr. Bryan that while he was an Expert for DOE on Ukrainian energy issues, he may also not work with ValueBridge on Ukrainian energy issues because “the real and appearance of conflict of interest issues are too great in this area for [him] to wear both hats . . .”¹¹⁵ The ethics office advised Mr. Bryan that if ValueBridge begins to work in Ukraine, it may be “untenable for [him] to be both an SGE working on Ukrainian energy issues on behalf of DOE and also be working on Ukrainian energy issues on behalf of ValueBridge.”¹¹⁶ Following receipt of this advice, Mr. Bryan stated that he would “have no problem recusing [himself] from work in any country that Value Bridge is considering.”¹¹⁷

The aforementioned correspondence from [REDACTED] to Mr. Bryan gives the appearance that Mr. Bryan may have used his public office for his private gain under 5 C.F.R. § 2635.702.

The above facts support that *at most* there was an “appearance” that Mr. Bryan may have misused his position to advance his personal interests and that of VBEG. While the misuse provisions caution employees to avoid even the appearance of a misuse of their position, under the attendant circumstances, it was not unreasonable or legally insufficient for the OIG to find no violations and make no recommendations.¹¹⁸

CONCLUSION

Based on our review of the facts provided as part of the OIG Investigation, our offices conclude the following:

Whether or not Mr. Bryan met the legal definition of an SGE, he was deemed by DOE, and provided advice by our office, as if he were an SGE. There are insufficient facts to conclude that Mr. Bryan violated 18 U.S.C. § 203 or 18 U.S.C. § 205 (regarding representation restrictions); 18 U.S.C. § 207 (regarding post-employment restrictions); or 18 U.S.C. § 208 (regarding financial conflict-of-interest restrictions).

There are some facts to support an appearance that Mr. Bryan may have misused his public office for his private interests as President of VBEG under 5 C.F.R. § 2635.702. However, under

¹¹⁵ See Email between GC [REDACTED] and William Bryan, 4.27.16 (p. 14 of Request to Inspect or Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records).

¹¹⁶ See *id.*

¹¹⁷ See Email Chain Between GC [REDACTED] and William Bryan, 1.14.15 to 2.2.15, p. 3.

¹¹⁸ See 5 C.F.R. § 2635.702(d) and DOE OIG’s Investigative Report to Management, OIG Case No. 20-0020-I (Nov. 19, 2020), p. 10: “While investigators fell short of proving a violation of law, Bryan’s private business ventures with [REDACTED] and Naftogaz brought the ethics of his character and behavior into question...”

the attendant circumstances, and based on a preponderance of the evidence, a finding that he did not violate misuse of position provisions is not contrary to law.