

[REDACTED]

**Comments Submitted to U.S. Office of Special Counsel Regarding
Investigative Report to Management, Office of Inspector General, U.S.
Department of Energy, November 19, 2020, Case No. 20-0002-I**

December 23, 2020

I am grateful to receive the OIG investigation report, and I am appreciative of the significant effort that OIG clearly put in to this matter.

As of today's date, Mr. William Bryan continues to serve as Acting Undersecretary of Homeland Security, and in that role appears to retain an active security clearance that provides him access to sensitive government secrets. The report's findings raise serious questions about whether he deserves the public's trust.

I am glad that the report confirmed that William Bryan deliberately misled Congress; he most certainly did. Bryan's false statements to Congress arguably justify a criminal referral to the Department of Justice for prosecution under 18 U.S. Code § 1621, perjury, and/or 18 U.S. Code § 1001, false statements to federal officials. His false statements also raise serious questions about whether he should be permitted to retain access to sensitive government secrets in his current role.

However, on other questions, including whether Bryan used his government position to develop his private business interests, the OIG report's factual findings are inconsistent with its conclusions. For that and other reasons I'll address, I do not believe the report is complete or its overall conclusions reasonable.

Bryan Using Official Position to Advance Private Interests

The OIG report did not substantiate that Bryan used his government position to advance his private business interests. But this legal conclusion is odd, given the OIG's factual findings:

1. The OIG report found that Bryan was retired as an FTE on September 15, 2015, was rehired as a SGE on October 26, 2015, and his DOE contract terminated on October 26, 2016 (not June 2016 as he told Congress).
2. The OIG report found that Bryan had affiliated with VBEG as early as February 2015 (not December 2015 as Bryan claimed), was being compensated by VBEG by no later than the 4th quarter of 2015, and his engagement lasted past February 2017 (Bryan told Congress it ended in February 2017).
3. The OIG report found that Bryan misinformed Congress that he stayed in periodic contact with [REDACTED] and [REDACTED] purely a matter of friendship: "Investigators determined this statement did not fully articulate Bryan's post-WAP endeavors relating to [REDACTED] and common business interests held by both men."

4. The OIG report found that in February 2016, [REDACTED] wrote Bryan that he would “love to have dinner with you [Bryan] and Valuebridge guys” on an upcoming visit to the U.S., clearly a business rather than personal request.
5. The OIG report found that in April 2016, a newspaper article reported that VB would build waste recycling plants in the Ukraine. On September 1, 2016, Bryan as VBEG President signed a “protocol of intentions” for a plant in Lviv. The OIG report found: “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.”
6. The OIG report noted that by January 2017, VBEG’s Bryan was actively making requests on behalf of Naftogaz for a State Department meeting with [REDACTED] and [REDACTED] indicating a business relationship. Similarly, a March 7, 2017, VB media alert promoted an event in Houston for business executives to meet representatives of Naftogaz, including Glamazdin.

These facts from the OIG’s report strongly suggest that the reason Bryan misled Congress was to mask the fact that he was serving VBEG while being underwritten by taxpayers. But somehow the OIG report states this obvious inference was “not substantiated.”

Instead, the OIG report puts unfounded weight on the fact that “VBEG never evolved into a sustained independent business enterprise” and that the investigation could not confirm that certain of the above undertakings were actually realized. The fact that Bryan’s efforts apparently failed speaks only to his skills as a businessman (or lack thereof), not his ethics in using his government position to develop private business interests.

Similarly, the OIG report discusses at length how “the [OIG] investigation did not locate a specific [Ukrainian government] domestic policy, program, or directive resulting from either [Winter Action Plan led by Bryan].” But the fact that the Government of Ukraine never adopted Bryan’s recommendations is not relevant for determining whether Bryan’s personal business interests affected the policy recommendations he made to the Government of Ukraine in his official capacity as a U.S. employee.

Misapplication of Ethical Rules

The OIG report misapplies the governing ethical rules, specifically Principle 14, which states that:¹

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in the Standards of Ethical Conduct. Whether particular circumstances create an appearance that the law or these

1 <https://www.energy.gov/hc/services/benefits/new-employee-orientation/ethics-fourteen-principles-ethical-conduct-federal>

standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

According to the OIG report, Bryan disregarded the advice of DOE ethics officials:

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.

But the governing rule states precisely that merely the "appearance" of a violation constitutes a stand-alone violation of the ethics rules. Clearly, given that a number of witnesses and even the ethics lawyers that Bryan consulted stated that his activities created such an appearance, then the applicable legal standard of such "appearance ... from the perspective of a reasonable person with knowledge of the relevant facts" has been met.

Susceptibility to Foreign Influence / Security Matters

The OIG report states:

[T]he 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.

This leads to the troubling question why the DOE Leadership would appoint Bryan to his position and maintain a high level of support for him throughout his tenure. In addition, what led Bryan to inform for the FBI or, perhaps, what information did the FBI have about Bryan that persuaded him to serve as an informant?

It is clear to me that these matters merit further investigation, especially given that Bryan continues to serve in a senior position in the Department of Homeland Security, and apparently maintains access to sensitive national security secrets.

The report did not specifically address the matter of alleged security violations.

Other Problems with the OIG Report

I also disagree with the failure to substantiate that ██████ hindered U.S. interests in a coal deal. The report acknowledges that ██████ provided coal pricing information to ██████ and that this violated Department of Energy policy. U.S. Embassy personnel in Kiev found ██████ release so damaging that the U.S. Ambassador alerted both the DOE leadership and the National Security Council that the ongoing energy negotiations were at risk due to the leakage. Imagine if a U.S. foreign service officer started regularly leaking sensitive but unclassified information to their Ukrainian counterparts so as to undermine the U.S. Ambassador's sensitive negotiations. As the report notes, ██████'s actions violated U.S. policy and arguably constitute a firing offense.

I am also concerned that the OIG finding that ██████ was not a VB employee misses the forest for the trees. ██████ was clearly identified as an associate of VBEG on its corporate website. Whether or not ██████ qualified as an "employee" as a matter of law is less relevant than the fact that he was clearly held out by VBEG as one of its experts.

The report's findings show that Bryan engaged in troubling ethical conduct, misled Congress, and misused his government position to pursue private gain, compromising U.S. government policy. There remain serious unanswered questions about the corruption of the DOE. While this report is a valuable start, it is not yet complete or "reasonable"; in key parts, its conclusions are not supported by its own factual record.

These comments are four pages in total.