



# Department of Veterans Affairs Office of Inspector General

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## **Administrative Investigation Improper Academic Degree Funding, Improper Detail and Failure to Cooperate with an OIG Investigation, OI&T VA Central Office**



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

**TO:** Assistant Secretary for Information & Technology  
Assistant Secretary for Human Resources & Administration

**SUBJECT:** Administrative Investigation – Improper Academic Degree Funding, Improper Detail, and Failure to Cooperate with an OIG Investigation, OI&T, VA Central Office (2009-01123-IQ-0116)

## **Summary**

We substantiated that the former Executive Assistant, who has since retired, to the former Assistant Secretary for Information and Technology (OI&T) improperly authorized academic degree funding of approximately \$75,000 for Mr. John English, the former Special Assistant to the VA Secretary and Deputy Secretary, to obtain an Executive Master of Business Administration (EMBA) degree at The George Washington University (GW); that Mr. English was improperly detailed for an extended period; and that Mr. English failed to cooperate with an Office of Inspector General (OIG) investigation.

## **Introduction**

During another OIG investigation, we found records reflecting that a former Executive Assistant to the then Assistant Secretary for OI&T improperly authorized academic degree funding of approximately \$75,000, between August 2007 and November 2008, for Mr. English to obtain an EMBA at GW. To assess this, we interviewed Mr. English and his supervisor of record, the Deputy Chief Information Officer for Operations in OI&T; reviewed emails, personnel files, academic and purchase card records; and reviewed relevant Federal laws, regulations, and VA policy. During our investigation, we found that Mr. English's VA appointment at the rate above the minimum was improper; he misused his position; his lengthy detail as a Special Assistant was improper; and he failed to cooperate with our investigation. However, we did not expend additional investigative efforts on these matters, as Mr. English, as well as other key players, were no longer employed by VA. Mr. English resigned his VA position 5 months after graduating from GW with an EMBA degree.

## Results

### Issue 1: Whether an OI&T Employee Improperly Funded an Academic Degree

The Homeland Security Act of 2002 amended the Government Employee Training Act of 1958 by expanding an agency's authority to pay or reimburse an employee for the costs of academic degree training. 5 USC § 4107 (2003). VA employee development policy promulgates this authority and allows an employee to obtain an academic degree at VA expense only when such training contributes to: (1) significantly meeting an identified agency, administration, or staff office training need that is consistent with VA's Strategic Plan; (2) solving an identified agency staffing problem; (3) accomplishing goals in VA's Strategic Human Capital Management Plan; and (4) a planned, systemic, and coordinated program of professional development. VA Handbook 5015, Paragraph 7 (May 31, 2006). VA training policy stipulates that this authority shall not be exercised for the sole purpose of providing an employee an academic degree or as a means of qualifying for a position that requires an academic degree. *Id.* at Paragraph 7(c). Policy delegates the authority to pay for academic degrees from the Secretary of Veterans Affairs to the Assistant Secretary for Human Resources and Administration and is further delegated to Under Secretaries, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries or their designees. They in turn may further delegate this authority to the facility level or organizational equivalent. *Id.* at Paragraph 7(d).

VA policy further requires that prior to implementing academic degree training, VA officials in implementing offices are to establish a system of records and develop written plans and procedures for: (1) accounting of funds spent for academic degree training and the number of employees and types of programs enrolled in or completed; (2) ensuring competitive procedures for selecting employees for academic degree training are consistent with the requirements of 5 CFR § 335.103(b)(3) and part 300, subpart A of title 5 of the Code of Federal Regulations; (3) ensuring educational institutions awarding an academic degree are accredited by a nationally recognized body, as recognized by the U.S. Department of Education; and (4) certifying how such training will meet VA training needs, resolve an identified VA staffing problem, or accomplish a VA goal in the VA Strategic Human Capital Management Plan. *Id.* at Paragraph 7(f). Finally, VA policy provides that employees may take training from non-Government sources if the following conditions are met: (1) adequate training is not reasonably available by, in, or through a Government facility; (2) the training is the most practical and least costly to the Government; and (3) the non-government facility does not discriminate based on race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent. *Id.* at Paragraph 12(c).

For a previous OIG investigation (09-01123-196, dated August 18, 2009) concerning improper academic degree funding, the Associate Deputy Assistant Secretary (ADAS) for OI&T HR Career Development, told us that at that time OI&T did not have a "corporate OI&T degree program." Further, in the previous investigation we found no

existing OI&T system of records to account for VA funds spent for academic degree training or for the number of employees and types of programs enrolled in or completed. We found no documentation indicating that OI&T had a Masters Degree Program. We also found no records to reflect that funding was dispersed through a competitive process for selecting employees for academic degree training, ensuring that the educational institutions awarding an academic degree were accredited, or how such training would meet VA training needs, resolve an identified VA staffing problem, or accomplish a VA goal in the VA Strategic Human Capital Management Plan. Finally, we found no records reflecting that OI&T employees, to include Mr. English, sought their training through a Government source or from a source that was the least costly to the Government.

### *Background*

Personnel records reflected that the former VA Secretary, Mr. R. James Nicholson, appointed Mr. English as a consultant in the VA Office of the Deputy Secretary on October 16, 2005. Mr. English told us that the former Deputy Secretary, Mr. Gordon Mansfield, learned of his work through Mr. English's previous boss, a former Oklahoma Governor, and that Mr. Mansfield asked Mr. English to be part of his staff. However, he said that a former Chief of Staff, along with an unrecalled person working in the Office of Human Resources, decided to hire him as a consultant rather than as a VA employee so that they could hire him immediately. He said that he worked as Mr. Mansfield's Special Assistant from October 2005 to May 2007, under contract as a consultant.

Personnel records reflected that on May 3, 2007, the former Executive Assistant to the former Assistant Secretary for OI&T selected Mr. English from a certificate of eligibles for a GS-14 Program Analyst position in OI&T, and on May 15, 2007, she signed "for" the former Assistant Secretary requesting that Mr. English be hired as a GS-14, step 10, or a rate above the minimum, which, at that time, was \$121,967 annually. In her justification, the former Executive Assistant outlined Mr. English's qualifications and stated that a private company offered him a position with an annual salary of \$130,000. However, the offer letter, dated May 1, 2007, attached to the justification, was not signed, and it requested a response date of **May 11, 2004**, or 3 years prior to the 2007 date of the letter. (Emphasis added.) VA policy states that an appointment at a rate above the minimum of a General Schedule grade may be made based on the superior qualifications of a candidate. However, policy also states that justification must include a description of the recruitment efforts, a description of the candidate's superior qualifications and a comparison of the candidate's skills to those of other available applicants; documentation of current pay; explanation of how the proposed rate was determined to be appropriate; and reasons for the rate instead of, or in addition to, a recruitment incentive. VA Handbook 5007, part II, Chapter 3.

Personnel records reflected that Mr. English was appointed as a GS-14, step 10, Program Analyst in OI&T, on May 29, 2007. Mr. English told us that prior to being hired, he had a "very informal interview" with the former Assistant Secretary and that once hired as an

OI&T Program Analyst, he continued working as Mr. Mansfield's Special Assistant. He further said that even though the former Executive Assistant was his supervisor of record, he never worked for her; however, personnel records reflected that she issued his performance plan and gave him his performance evaluation based on position criteria for an OI&T Program Analyst. Mr. English said that he could not recall if the former Executive Assistant ever reviewed his performance plan with him or if he read it. He further said that he knew that "those job duties didn't apply" to the job he did for Mr. Mansfield. Mr. English told us that when the former Executive Assistant rated him as "outstanding," he accepted and signed his performance appraisal without reading it. However, the list of his exceptional accomplishments reflected work that he supposedly did for the Assistant Secretary for OI&T and the Director, Executive Staff, yet it lacked any accomplishments specific to his position as a Special Assistant to Mr. Mansfield, which Mr. English told us he did during that time period. Furthermore, his performance appraisal accomplishments referred to him throughout as "Mr. Wilson."

Email records reflected that on June 21, 2007, about 1 month after the former Executive Assistant selected Mr. English for a Program Analyst position, Mr. English sent an email to the Special Assistant to the VA Inspector General seeking a position within OIG for a family member of the former Executive Assistant. In his email, Mr. English noted that the individual's mother was the Executive Assistant to the Assistant Secretary for OI&T and that the family member "is a good solid guy." He further stated, "Anything you can do would be appreciated," and he signed his email with his title as the Special Assistant to the Deputy Secretary. Attached to the email were the family member's resume and a completed Optional Application for Federal Employment. The OIG did not consider the family member for a position. Standards of Ethical Conduct for Employees of the Executive Branch state that an employee shall not use his public office for private gain and that an employee shall act impartially and not give preferential treatment to any individual. 5 CFR 2635.101(b).

On February 15, 2009, the Deputy Chief Information Officer for Operations promoted Mr. English into a GS-15 Executive Assistant position to be a direct report to the Deputy Chief; however, the Deputy Chief told us that Mr. English never reported to his office. He said that instead, Mr. English told him that the Secretary wanted him to continue working as a Special Assistant. Mr. English told us that he worked as a Special Assistant to either the Secretary or Deputy Secretary from the time he began working for VA as a consultant in October 2005, through his first appointment in May 2007, continuing with his promotion in February 2009, and up until our interview in July 2009. VA policy states that employees may be detailed in 120-day increments to the same or lower grade positions for up to 1 year and that a detail to a higher grade position may be made for up to 1 year during periods of major reorganization. However, policy states that a detail of more than 120 days to a higher graded position or with promotion potential must be made under competitive procedures. VA Handbook 5005, Part 3, Chapter 2, Para. 13 (April 15,

2002). Personnel records reflected only one request to detail Mr. English to the Office of the Deputy Secretary for one 120-day period from August 8 to December 5, 2007.

### *Improper Academic Degree Funding*

The George Washington University (GW) records reflected that Mr. English applied to their Executive Master of Business Administration (EMBA) program on April 24, 2007, or about 2 weeks before the former Executive Assistant selected him for a position within OI&T. In the “Statement of Purpose” included with his application, Mr. English wrote that an EMBA was the next step in his professional and personal development, and his professional objective was to “move to the private sector” to use the skills and lessons developed in his public service career. In a letter dated July 9, 2007, GW notified Mr. English that they accepted him into their EMBA program. GW financial records, to include statements of account and credit card billing forms signed by a VA purchase card holder, showed that the total amount VA paid for Mr. English’s GW graduate education was \$74,921.78, including finance charges, late payment fees, and voluntary library gifts. Mr. English told us that VA not only paid for his GW tuition but that VA also paid for the books required for the program; however, we were unable to identify specific payments associated with book purchases, which would increase the total amount paid.

VA financial records contained numerous Request, Authorization, Agreement, and Certification of Training forms dated from August 2, 2007 to November 18, 2008, authorizing payment for Mr. English’s GW graduate classes. These forms required five signatures to authorize payment: the first and second-line supervisors and a training, an authorizing, and a certifying official. The forms associated with Mr. English reflected that the former Executive Assistant signed them as Mr. English’s first and/or second-line supervisor, and on some, she also signed as the authorizing official. Further, the forms contained no other supervisory signatures, and none contained a signature certifying that Mr. English successfully completed the courses for which VA paid. However, GW records reflected that they conferred upon him an EMBA on May 27, 2009.

Mr. English told us that around the time he was hired as a GS-14 he told the former Assistant Secretary for OI&T that he was interested in pursuing a graduate degree, and the former Assistant Secretary told him “that’s fine.” He said that he then “just mentioned” to the former Executive Assistant that he was interested in pursuing a graduate degree, and she told him that several other employees were taking advantage of their “training fund” and that he could take advantage of it as well. He said that he only applied to one school, GW, and that he did not have to compete for the opportunity to receive academic degree funding. He further said that although he reported to Mr. Mansfield, he submitted his forms to receive funding to the former Executive Assistant. He said that he began taking GW classes in August 2007 and that he graduated with an EMBA in May 2009.

Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall satisfy in good faith all just financial obligations, such as Federal, State, or local taxes that are imposed by law. 5 CFR § 2635.101(b)(12). Internal Revenue Service (IRS) Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, states that any fringe benefit provided is taxable and must be included in the recipient's pay unless the law specifically excludes it. IRS Publication 970, *Tax Benefits for Education*, and Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, said that employees can only exclude up to \$5,250 of employer provided educational assistance, if employees receive them under an educational assistance program. These publications also state that if there is no educational assistance program or an employee receives assistance exceeding \$5,250, it can only be excluded from wages if the assistance is a working condition benefits, which is property and services provided to an employee so that the employee can perform his or her job.

Two senior officials with Treasury Inspector General for Tax Administration told us that it was more than likely that the money improperly paid for Mr. English's academic degree was taxable income. An IRS criminal tax attorney opined that for an exclusion it appeared that it must be a formal educational program set up in accordance with Internal Revenue Code Section 127 and the associated Code of Federal Regulations Section 1.127-1. Federal regulations state that any amount received under an educational assistance program that is not a "qualified program" will not be excluded from gross income and that all or some may be excluded from a nonqualified program only if specific requirements of other sections are satisfied. 26 CFR § 1.127-1. However, the above IRS Publications and Federal Regulations do not address whether the educational assistance is considered taxable as income or if any portion can be excluded if the funds were provided improperly and contrary to VA policy. For tax years 2007 and 2008, Mr. English received about \$75,000 in improper academic degree funding in violation of VA policy. We planned to ask Mr. English if he claimed this benefit on his income tax returns; however, he failed to cooperate with our requests for a follow up interview.

The VA Office of General Counsel (OGC) opined that there was no evidence that the former Executive Assistant to the former Assistant Secretary for OI&T had the authority to authorize this training for Mr. English or evidence that Mr. English violated VA policy. OGC said that payment for Mr. English's academic degree "was the result of a failure of his supervisors to follow VA policy." OGC further said that they found no support in Comptroller General opinions to support a proposition that Mr. English owed a debt in this situation; that VA did not have the authority to collect this money from him; and that they could not endorse sending a bill of collection to Mr. English, due to an absence of "applicable case law, statutes, regulations, or any other guidance that clearly establishes a debt owed by Mr. English." However, OGC concluded that "Mr. English's education qualified him to perform tasks and activities significantly different from those he performed as a Special Assistant;" that there was "no evidence that Mr. English performed any tasks that are reasonably related to business-related tasks that he is now

trained to perform due to his MBA education;” and that VA should issue Mr. English 1099s associated with this taxable income.

### *Failure to Cooperate with an Inspector General Investigation*

Federal regulations state that employees will provide information and testify freely and honestly in cases respecting employment and disciplinary matters and that refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation may be grounds for disciplinary action. 38 CFR § 0.735-12. VA Policy states that the penalty for intentional falsification, misstatement, or concealment of material fact in connection with employment or any investigation, inquiry, or proper proceeding or refusal to cooperate in same, ranges from reprimand to removal for a first offense. VA Handbook 5021, Part I, Appendix A

We first interviewed Mr. English on July 23, 2009, to obtain general information and documents relevant to his VA appointments and his VA-funded academic degree. After collecting additional documents from GW and VA, we re-contacted Mr. English on October 7, 2009, to schedule a second interview to obtain more detailed information. Over the course of the next 2 weeks, Mr. English continually delayed setting a meeting date, stating that he needed additional time. In the last email Mr. English sent us, dated October 22, 2009, he said that he was meeting with his legal counsel the following week and that his counsel would contact us. However, we subsequently learned that Mr. English took annual leave for the latter part of that week, and he resigned his VA position effective 2 days later. He did not respond to our request for his email address or telephone number so that we could contact him after he left employment with VA, and neither Mr. English nor his counsel made any attempts to contact us.

## **Conclusion**

We concluded that the former Executive Assistant to the former Assistant Secretary for OI&T improperly authorized the expenditure of VA funds to pay for an academic degree for Mr. English. There was no evidence that the academic degree being funded by VA contributed significantly to meeting an identified agency, administration, or staff office training need consistent with VA’s Strategic Plan; to solving an identified agency staffing program, to accomplishing goals in VA’s Strategic Human Capital Management Plan; or was part of a planned, systemic, and coordinated program of professional development. There was no documentation to connect academic training to Mr. English’s VA position and justify the training. Additionally, OI&T did not require Mr. English to compete for the opportunity to obtain a VA-funded academic degree consistent with merit system principles.

As we noted in a prior OIG report (09-01123-196), Federal regulations allow an agency to pay for training expenses to develop knowledge, skills, and abilities directly related to improved individual performance, and if in the accomplishment of such training, an

employee receives an academic degree, the degree is considered an incidental by-product of the training. However, the scope and magnitude of the education afforded Mr. English far exceeded any normal training offered to the general employee population to improve individual job performance; there was no requirement for him to obtain an EMBA; and it was not a part of any agency sponsored educational program. The funding of this academic degree training not only violated VA policy, but it was provided for the sole purpose of affording Mr. English an EMBA from GW, one of the nation's most expensive and prestigious private universities.

In our draft of this report, we recommended that Mr. English be issued a bill of collection for \$74,921.78 to recover funds improperly expended to pay for his academic degree, but OGC opined that they could not endorse sending a bill of collection, due to an absence of applicable case law, statutes, regulations, or other guidance. However, OGC determined that Mr. English's academic degree funding was taxable as income.

Although initially hired as a Program Analyst and then promoted into an Executive Assistant position, both within OI&T, Mr. English worked as a Special Assistant to either the Secretary or Deputy Secretary from his initial hire date in May 2007 until he resigned his VA position in October 2009. VA policy outlines specific requirements for formal details; however, personnel records contained only one request detailing Mr. English to the Office of the Deputy Secretary for one 120-day period.

**Recommendation 1.** We recommend that the Assistant Secretary for OI&T ensure that Mr. English is issued Forms 1099 in the appropriate amounts for tax years 2007 and 2008 for the total additional earned income of \$74,921.78.

**Recommendation 2.** We recommend that the Assistant Secretary for OI&T ensure that individuals named in OIG Report 2009-01123-196 are issued forms 1099 for appropriate tax years for taxable income related to improper academic degree funding for any educational expenses that qualified the individuals for a new trade or business.

**Recommendation 3.** We recommend that the Assistant Secretary for Human Resources and Administration assess personnel currently detailed to the Offices of the Secretary and Deputy Secretary to ensure that procedural requirements have been met.

## Comments

The Assistant Secretary for Information and Technology and the Assistant Secretary for Human Resources and Administration concurred with our recommendations. Their comments are in Appendix A and Appendix B, respectively. We will follow up to ensure that the recommendations are fully implemented.

*(original signed by:)*

**JAMES J. O'NEILL**  
Assistant Inspector General for  
Investigations

## Assistant Secretary Comments

**Department of  
Veterans Affairs**

**Memorandum**

**Date:** July 16, 2010

**From:** Assistant Secretary for Information & Technology

**Subject:** **Administrative Investigation, Improper Academic Degree Funding, Improper Detail, and Failure to Cooperate with an OIG Investigation, OI&T, VA Central Office**

**To:** Assistant Inspector General for Investigations (51)

1. The VA Office of Information and Technology (OI&T) acknowledges receipt of the Office of Inspector General's draft report. OI&T's response and recommendation next steps are enclosed.
2. Thank you for the opportunity to comment on your recommendations. If you have any questions, please contact Martha Orr, Office of Quality, Performance, and Oversight, at (202) 461-6910.



Roger W. Baker

### **Assistant Secretary's Comments to Office of Inspector General's Report**

The following Assistant Secretary's comments are submitted in response to the recommendations in the Office of Inspector General's Report:

#### **OIG Recommendation(s)**

**Recommendation 1.** We recommend that the Assistant Secretary for OI&T ensure that Mr. English is issued Forms 1099 in the appropriate amounts for tax years 2007 and 2008 for the total additional earned income of \$74,921.78.

Concur      **Target Completion Date:** December 31, 2010

**Recommendation 2.** We recommend that the Assistant Secretary for OI&T ensure that individuals named in OIG Report 2009-01123-196 are issued forms 1099 for appropriate tax years for taxable income related to improper academic degree funding for any educational expenses that qualified the individuals for a new trade or business.

Concur      **Target Completion Date:** December 31, 2010

## Assistant Secretary Comments

**Department of  
Veterans Affairs**

**Memorandum**

**Date:** June 24, 2010  
**From:** Assistant Secretary for Human Resources & Administration  
**Subject:** Response to OIG Draft Report: 2009-01123-IQ-0116  
**To:** Assistant Inspector General for Investigations (51)

1. Recommendation 3. Of the OIG Draft Report: 2009-01123-IQ-0116 recommended that the Assistant Secretary for Human Resources and Administration assess personnel currently detailed to the Offices of the Secretary and Deputy Secretary to ensure that procedural requirements have been met.
2. I concur with the above recommendation and the assessment will be completed no later than July 30, 2010.



John U. Sepulveda

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

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

**OIG Recommendation(s)**

**Recommendation 3.** We recommend that the Assistant Secretary for Human Resources and Administration assess personnel currently detailed to the Offices of the Secretary and Deputy Secretary to ensure that procedural requirements have been met.

Concur

**Target Completion Date:** July 30, 2010

## OIG Contact and Staff Acknowledgments

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OIG Contact	Linda Fournier (202) 461-4500
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Acknowledgments

## Report Distribution

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