



DEPARTMENT OF VETERANS AFFAIRS
INSPECTOR GENERAL
WASHINGTON DC 20420

SEP 17 2018

The Honorable Tammy Duckworth
U.S. Senate
Washington, DC 20510

Dear Senator Duckworth:

I am writing in response to the letter from you and Senator Maggie Wood Hassan dated August 16, 2018, regarding the potential influence of nongovernmental individuals on policymaking at the Department of Veterans Affairs. We have considered this matter and the following reflects our current analysis.

Our office is aware of reports that certain individuals who are personal acquaintances of the President have been acting as informal advisers, on behalf of the President, to Department leadership. We believe these are the people outside the administration referred to in your letter.

To the extent your letter raises a question of whether it is appropriate for non-VA employees to consult with Department leadership, we have considered the latitude that the President and members of the Cabinet have in obtaining advice and counsel from individuals both inside and outside of government. We note that this latitude is constrained, in some respects, by the Federal Advisory Committee Act (FACA). While FACA defines the advisory committees that are subject to its procedural requirements broadly, the General Services Administration (GSA) has exercised its authority under FACA to promulgate regulations relating to such advisory committees. Those regulations exclude certain outside advisors from the definition of advisory committee. With respect to the Department, we have considered the applicability of the FACA procedural requirements for advisory committees to the actions of the individuals at issue, as we understand those actions from various reports. There appears to be a reasonable basis to conclude that the exception to the definition of an advisory committee subject to FACA found at 41 C.F.R. § 102-3.40(e) may apply here.

The authorities and remedies available under the Inspector General Act do not provide an efficient means to resolve that question. However, we are aware that a private lawsuit has been filed seeking to have the FACA procedural requirements declared applicable to any consultations by Department leadership with the relevant individuals. We have also communicated with several senior VA staff who had contacts with the outside advisers. Given the pending lawsuit and our understanding of the substance of the contacts that the outside advisers had with senior VA staff, the OIG believes it would be prudent to wait for a decision by the legal system on the applicability of FACA to this group before committing resources to our own investigation.

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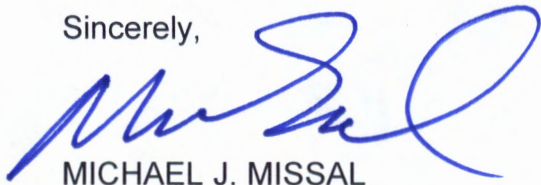
The Honorable Tammy Duckworth

Your letter also raises important questions about the use of private email to conduct government business and the protection of civil service employees from undue political influence. The OIG will evaluate those matters in the course of its ongoing oversight of the Department and we will take action as appropriate based on our findings.

The OIG will continue to review information developed through ongoing work and other sources that may relate to these matters. If we become aware of anything further, including allegations of significant legal or ethical violations by senior Department officials, we will proceed accordingly.

A similar letter has been sent to Senator Hassan. Thank you for raising your concerns with the OIG.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Missal", with a large, stylized loop at the end.

MICHAEL J. MISSAL