

From: Britt, Christopher (OGC) [REDACTED]
Subject: RE: [EXTERNAL] Covered officer or employee per Sec. 3683
Date: June 23, 2022 at 8:16 AM
To: Walter Ochinko walter@vetsedsuccess.org

CB

Walter, all VA employees are subject to 3683(a)(1)(A), meaning that all VA employees, absent a waiver, are subject to corrective or disciplinary action if, while serving as an employee, they "owned any interest in, or received any wage, salary, dividend, profit, or gift from, any educational institution operated for profit." This includes "covered employees."

But only covered employees are subject to the restriction in (a)(1)(B) regarding receiving services from a for-profit.

Because this is under the new version of the statute, it applies to all for-profit connections that began on or after 9/29/18.

For example, any VA employee who received wages or gifts from a for-profit, whether that relationship began before or after 9/29/18, needs a waiver. But if an employee's connection to a for-profit consists of only taking classes and those classes began on or after 9/29/18, that employee needs a waiver only if they are a covered employee. If a VHA RN wants to start taking classes at a for-profit next month, that employee does not need a waiver. If a VBA employee working on chapter 30-36 issues wants to start taking classes at a for-profit starting next month, that employee needs a waiver.

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-----Original Message-----

From: Walter Ochinko <walter@vetsedsuccess.org>
Sent: Wednesday, June 22, 2022 4:13 PM
To: Britt, Christopher (OGC) <[REDACTED]>
Subject: [EXTERNAL] Covered officer or employee per Sec. 3683

I'm sorry to bother you with another question but I want to confirm that covered employee as used in Sec 3683 applies to all prohibited for-profit connections and not just services.

Until recently, I didn't have a copy of Sec. 3683 before the changes were made on Sept. 29, 2018. In revisiting the changes again with the original statutory language in front of me, it struck me that the use of the term covered officer or employee is introduced in Sec. (a)(1)(B) with respect to services. This made me wonder if the prohibition in the prior section (A) on ownership, wage, salary, dividend, profit, or gift applied to all VA employees?

I'm only raising this issue because I had thought that one of the reasons for the Sept. 2018 changes was to reduce the implementation burden on VA and to focus the for-profit connections prohibitions on those most likely to have a potential conflict of interest—those who work on GI Bill issues as defined in Sec. (a)(2)(A).

Is VA's interpretation that all of the prohibited for-profit connections apply to individuals with GI Bill duties (i.e., covered employees) and that Veterans Health Administration staff don't need to apply for a waiver unless their connection was in the past? I know that you told me anyone with a past connection was covered by the original statute before the Sept. 2018 changes and had to apply for a waiver.

Adding to my confusion about which prohibitions apply to covered employees is the fact that 1/3 of the 170 waivers posted on the OGC website for public comment through May 2022 involve individuals with "current" for-profit connections, most of whom work for the Veterans Health Administration.

Thanks in advance for your help in clarifying my understanding of the statute.

Walter Ochinko
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