

**Department of Veterans Affairs (VA)
Response to Veterans and Community Oversight and
Engagement Board (VCOEB)
March 2021 Recommendations**

Recommendation 1: VCOEB recommends that the Secretary of Veterans Affairs instruct the leadership at VAGLAHS to use all available agencies and resources to increase the pace of placement into permanent supportive housing units for Veterans experiencing homelessness by increasing the average monthly voucher utilization to at least 212 vouchers to successfully utilize all existing HUD-VASH vouchers by May 2022.

VA Response: Concur in Principle.

VA Greater Los Angeles Healthcare System (VAGLAHS) agrees and currently uses all available resources to place Veterans in permanent supportive housing; however, the pace and number of placements is dependent on several different factors. VAGLAHS will continue to use as many vouchers as possible but cannot ensure utilizing all existing vouchers by 2022.

Recommendation 2: VCOEB recommends as of October 1, 2021, the Secretary of Veterans Affairs take immediate steps to implement the new authority outlined in Section 108 of P.L. 116-315 (September 18, 2020; updated December 18, 2020 as Section 4207 of P.L. 116-315) requiring that VAGLAHS contract with eligible entities to provide casework management for HUD-VASH vouchers.

VA Response: Concur in Principle.

As of October 20, 2021, VAGLAHS currently has three contracts for case management of the U.S. Department of Housing and Urban Development-Veterans Affairs Supportive Housing (HUD-VASH) vouchers. Section 108 of P.L. 116-315 (September 18, 2020; updated December 18, 2020 as Section 4207 of P.L. 116-315) requires that [if the medical center]:

- (i) had more than 15 percent of all vouchers allocated to that medical center under the program described in paragraph (1) through the fiscal year preceding such determination go unused due to a lack of case management services provided by the Secretary; and
- (ii) has a case manager position that has been vacant for at least nine consecutive months immediately preceding the date of such determination."

VAGLAHS has not determined that HUD-VASH vouchers are being unused due to lack of case management services. VAGLAHS will comply with P.L. 116-315 should it determine that HUD-VASH vouchers are being unused due to the lack of case management services and has the option to expand existing contracts or add new contracts; however, all contracted staff are still subject to the VA credentialing process.

Recommendation 3: VCOEB recommends that the Secretary of Veterans Affairs create a pilot communications initiative at VAGLAHS to automatically include Veterans upon completion of VA Form 10-10EZ or VA Form 10-10EZR as part of their assigned Medical Center's communications network via GovDelivery; and recommended that the Secretary of Veterans Affairs encourage at least quarterly data information sharing between relevant VA offices to ensure information provided in both past and future VA forms are included in the pilot communications initiative.

VA Response: Non-concur.

Veterans (1) who complete VA Form 10-10EZ or 10-10EZR to register for their health care benefits at VAGLAHS and (2) email contacts contained within GovDelivery are used for separate and very different communications to different groups of constituents. The former action allows Veterans enrolling in their health care benefits to leave their preferred contact information (phone, email or mailing address) with the understanding that this contact information will be used to communicate with them about their personal health information and to make appointments to see their providers. Inclusion in the GovDelivery database, however, is open to the public and signup is available through the VAGLAHS website at <https://www.losangeles.va.gov/>. Individuals signing up for email updates via GovDelivery understand and are choosing to receive communications about VAGLAHS campus events, news, press releases and other information that they opt to be updated on as opposed to their personal health care information.

To engage in "data information sharing" in the manner described in this recommendation, therefore, would be done without the knowledge and consent of the individuals included therein and constitutes a privacy violation. For this reason, VAGLAHS does not concur with the VCOEB's recommendation to create a pilot communications initiative of this nature and believes that it is appropriate for stakeholders to understand and consent to the information they are opting in to receive. Further, enrolling Veterans in GovDelivery without their knowledge or consent who have completed VA Form 10-10EZ or 10-10EZR leaves room for them to opt-out of all or most communications they receive from VAGLAHS, thereby potentially making it more difficult for VAGLAHS to communicate with Veterans about critical appointments and personal health information.

Recommendation 4A: VCOEB recommends that the Secretary of Veterans Affairs instruct leadership at VAGLAHS to include all notices of annual audits on campus as Draft Master Plan public notices for the purpose of distribution through the VAGLAHS GovDelivery e-mail marketing platform.

VA Response: Concur.

This recommendation will provide notices of land use agreement annual audits through the VAGLAHS GovDelivery e-mail marketing platform.

Recommendation 4B: VCOEB recommends that the Secretary of Veterans Affairs instruct leadership at VAGLAHS that future opportunities to participate in annual audits take the form of an online survey reducing barriers to Veteran participation in critical stakeholder feedback regarding performance of various land use agreements on campus.

VA Response: Concur.

This recommendation will generate operational efficiencies and decrease the amount of time required for Veterans to respond to the survey.

Recommendation 5A: VCOEB recommends that the Secretary of Veterans Affairs terminate the University of California Los Angeles (UCLA) "Second Lease Amendment" on the grounds that it is not consistent with the Master Plan; does not sufficiently benefit Veterans and their families; and disproportionately favors UCLA's interests on campus, without proof of any expansion of UCLA's services to the campus to justify enlargement of the Regents' rights. Veterans currently have priority access to two recreational baseball fields located on Veterans Barrington Park per Section C Item 2 of the September 1, 2016, Revocable License agreement with the City of Los Angeles. Veterans currently have access to three additional recreational baseball facilities as part of the November 4, 2016, lease agreement with Brentwood School. The existence of six baseball facilities on campus does not merit the construction of an additional baseball facility on campus.

VA Response: Non-Concur.

This recommendation would require the termination of a December 2020 amendment to the 2016 lease agreement relating to UCLA's Jackie Robinson Stadium complex. It is imperative to review the rights afforded UCLA by the lease amendment as distinct from the original lease. The VA Office of General Counsel (OGC) has advised that VA has no legal basis upon which to terminate either the original lease or the December 2020 lease amendment. For that reason, VAGLAHS must non-concur in this recommendation.

Section 2(c) of the West Los Angeles (WLA) Act specifically authorizes VA to provide UCLA with a lease meeting certain statutory conditions. VA exercised that authority by executing the 2016 lease agreement, which, among other things, authorized UCLA to make capital improvements to its leasehold, subject to VA's design review and approval.¹ The lease also obligated VA to provide 500 overflow parking spaces on the WLA Campus during events for which the parking within UCLA's leasehold was insufficient.²

In June 2020, UCLA requested VA's approval of designs for a synthetic practice field within its existing leasehold property. As noted herein, UCLA had authority to add the practice field under the original 2016 lease agreement. However, VA wished to obtain

¹ Lease Agreement, Article 10, pp. 17-18.

² Lease Agreement, Article 4, p. 9.

greater benefits to Veterans by ridding itself of the overflow parking requirement, which had become unduly onerous as WLA Campus redevelopment efforts repurposed several parking lots for more Veteran-focused uses. VA also wished to formally require UCLA to make the synthetic practice field available for Veteran use, particularly for wheelchair sports, which cannot be carried out on the Campus' existing recreation areas without damaging the grass. VA determined that a lease amendment was appropriate to obtain these benefits and executed the Second Lease Amendment in December 2020.

VA appreciates the VCOEB's concern that adding the synthetic practice field to the existing stadium complex benefits UCLA more than it does Veterans. However, that does not warrant termination of the lease agreement. As noted herein, UCLA was authorized to add the practice field under the original lease agreement, which was reviewed without adverse findings during the VA Office of Inspector General's (OIG) 2018 land use audit. Moreover, the terms of the parties' arrangement that changed under the December 2020 lease amendment—the deletion of the overflow parking requirement and the commitment to allowing Veteran use of the practice field—did work to the benefit of Veterans. OIG will review the lease amendment during its ongoing 2021 land use audit. OIG has the statutory authority to make findings with respect to the legal sufficiency of VA's land use agreements; such findings are not within VCOEB's scope or charge.

Recommendation 5B: VCOEB recommends that before VAGLAHS is authorized to enter into or modify any existing leases with the Regents of the University of California, that VAGLAHS must make a presentation to VCOEB establishing its due diligence to assure itself that the lease is consistent with the Master Plan.

VA Response: Concur in Principle.

This recommendation would require "that before VAGLAHS is authorized to enter into or modify any existing leases with the Regents of the University of California, that VAGLAHS must make a presentation to VCOEB establishing its due diligence to assure itself that the lease is consistent with the Master Plan."

VA understands fully that the VCOEB members did not anticipate VA's execution of the December 2020 UCLA lease amendment without any prior engagement with, or notification to, the VCOEB. VA agrees with the VCOEB that VA should be as forthcoming as possible with the VCOEB and other key stakeholders about high-profile land use lease activities at the WLA Campus, notably for the leases in excess of 3 years with UCLA, the Brentwood School and the Wadsworth Chapel. However, as noted with respect to Recommendation 12-06 and in the February 23, 2021, OGC opinion, VA decision-makers' authority cannot be made dependent on soliciting or obtaining the VCOEB's concurrence before exercising that authority.

To ensure that decisions regarding leases at the WLA Campus are the product of appropriate due diligence, to include Veteran and community outreach, and are consistent with the Master Plan, I will require that decision-makers brief the WLA

Campus Executive Sponsor, a member of the VA Leadership team, prior to entering into a new lease or modifying, amending or terminating an existing lease, notably for the high-profile land use lease activities at the WLA Campus, especially for the leases in excess of 3 years with UCLA, the Brentwood School and the Wadsworth Chapel. The briefing materials will be shared with the VCOEB for information to the extent that such disclosure is not prohibited by law, and the VCOEB will be afforded an opportunity to provide input to the decision-maker or decision-makers through a member of the VA Leadership team. The VCOEB's input, if any, will be considered advisory rather than approbatory in nature.

Recommendation 6: VCOEB recommends that the Secretary of Veterans Affairs instruct OGC to develop a legal process by which the Department can comply with existing contracting laws while allowing VCOEB to fulfill its duties established in the West Los Angeles Leasing Act of 2016 (P.L. 114-226).

VA Response: Concur in Principle.

This recommendation would require VA's OGC "to develop a legal process by which the Department can comply with existing contracting laws while allowing VCOEB to fulfill its duties established in the West Los Angeles Leasing Act of 2016."

By statute,³ VA's OGC "provides legal assistance to the Secretary concerning the programs and policies of the Department." While it is not appropriate to task OGC with developing procedures through which the Department will engage with a Federal Advisory Committee (FAC), it is appropriate for the VA Secretary, VAGLAHS and agency leadership to request OGC's advice on legal issues arising from VA-FAC relations. OGC supports VA's continuing efforts to engage with the VCOEB.

The VCOEB was established by section (2)(i) of the WLA Act to:

- (A) identify the goals of the community and veteran partnerships;
- (B) provide advice and recommendations to the Secretary to improve services and outcomes for veterans, members of the Armed Forces, and the families of such veterans and members; and
- (C) provide advice and recommendations on the implementation of the draft master plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

It must be noted that although the word "oversight" is in the Board's name, both the WLA Act and the Federal Advisory Act, 5 U.S.C. Appendix 2 (FACA), afford the VCOEB advisory rather than oversight functions. Moreover, the VCOEB's scope and charge as provided by the WLA Act does not expressly include review of land use agreements. The VCOEB is free to provide recommendations regarding third-party land use at the WLA Campus within the scope afforded by one or more of section 2(i)'s enumerated subheadings. As Recommendation 12-06 suggests, there is plenty of room for VAGLAHS leadership to solicit, and for the VCOEB to provide, input and insight

³ 38 U.S.C. § 311.

regarding the services that third-party land users provide to Veterans and/or a particular land use's consistency with the Draft Master Plan (DMP). However, that input must be merely advisory.

In early 2021, as part of its ongoing 2021 audit of WLA land use, VA's OIG requested a written OGC opinion regarding the April 2019 VCOEB recommendation. The February 23, 2021, OGC opinion, which was drafted in response to OIG's request, found generally that a "dual-track land use application process," as proposed in the April 2019 VCOEB recommendations would have exceeded the VCOEB's statutory authority and impermissibly interfered with VA officials' decision-making authority.

It is important to clarify that the OGC opinion did not, "claim that the VCOEB could not provide any 'pre-decisional input' on WLA Campus land use matters." Rather, the opinion stated that the April 2019 recommendation would "require VAGLAHS leadership to seek and consider a 'concur or not concur' opinion on all third-party land use agreements, meaning that VAGLAHS leadership could not make land-use decisions without the concurrence of the VCOEB." OGC determined that the proposed arrangement exceeded the VCOEB's authority under the WLA Act and FACA. OGC did not find that VAGLAHS leadership could not solicit, or that the VCOEB could not provide, any pre-decisional input on WLA Campus land use matters.

VAGLAHS leadership has established regular and recurrent information-sharing opportunities for the VCOEB to learn about matters within its statutory charge. This opportunity is for parties to continue sharing information and insights on proposed and existing third-party uses of the WLA Campus, and to work out a process through which the VCOEB may provide input for VA decision-makers to consider. To the extent that OGC's review of that process may be helpful in facilitating a positive VA-VCOEB relationship going forward, VAGLAHS leadership should request such a review.

Recommendation 7: VCOEB recommends that the Secretary of Veterans Affairs appoint a new Special Advisor for the express purpose of executing a successor master plan, overseeing land use agreements on campus, increasing emergency shelter capacity on campus with a special emphasis on female Veterans and redoubling VA's effort to streamline placement of homeless Veterans into permanent supportive housing throughout Los Angeles County.

VA Response: Concur in Principle.

This recommendation would place responsibility for WLA Campus land use and Master Plan implementation in the hands of a Special Advisor appointed by the Secretary "for the express purpose of executing a successor master plan, overseeing land use agreements on campus, increasing emergency shelter capacity on campus with a special emphasis on female veterans and redoubling VA's effort to streamline placement of homeless Veterans into permanent supportive housing throughout Los Angeles County." VA shares VCOEB's interests in updating the WLA Campus Master Plan, ensuring that third-party land uses benefit Veterans and their families, and meeting homeless Veterans' emergency shelter and permanent housing needs, both on

and off the WLA Campus. The Office of Secretary of Veterans Affairs (OSVA) is still considering the assignment of a Special Advisor; however, in the interim VAGLAHS has three permanent Senior Executive Service (SES) leaders, one of whom is specifically responsible for overseeing the WLA Campus Master Plan implementation effort and VAGLAHS' homeless programs.

This recommendation recounts former VA Secretary Robert McDonald's appointment of a Special Advisor to oversee the preliminary DMP outreach process in 2015. A year prior, VA had committed, as a condition of settling the Valentini litigation, to collecting stakeholder outreach regarding the best use of the WLA Campus for homeless and underserved Veterans. VAGLAHS had only a single SES-level leader at that time, and former VA Secretary McDonald determined additional leadership capacity was necessary to oversee the outreach effort and the development of a framework DMP. Former VA Secretary McDonald's appointment of Vince Kane to serve in the Special Advisor role was not, however, intended to be a permanent arrangement or a model to which VA would return during period DMP updates. Rather, in the January 2016 DMP, former VA Secretary McDonald committed to a permanent VAGLAHS leadership model comprised of "three senior executives—specifically the new Medical Center Director; the Director of Land Use Agreement & Community Engagement and Reintegration Services; and [the] Director of Community Based Care, including the Sepulveda campus and Community Based Outpatient Clinics."⁴ Dr. Steven Braverman, Robert McKenrick and Robert Merchant now serve in those SES-level roles. Moreover, the January 2016 DMP states that the three-SES VAGLAHS leadership team will oversee periodic DMP updates: "In addition to the three year reviews of the plan, the new [VAGLAHS] leadership team will continue to engage the Veteran voice through Town Halls, meetings with VSOs and elected officials, and the implementation of a Community Veteran Engagement Board."⁵ Those engagement activities are ongoing under the leadership of Dr. Braverman, Mr. McKenrick and Mr. Merchant at this time.

OSVA agrees the DMP update process requires the attention and the commitment of senior VA leadership. To that end, OSVA has designated a member of the VA Leadership team to serve as Executive Sponsor for the DMP update and implementation process. A member of the VA Leadership team will ensure that those processes are appropriately resourced and supported at the Departmental level; will keep the Secretary of Veteran Affairs informed of the progress being made with respect to updating and implementing the DMP; and will notify the Secretary of Veterans Affairs of any challenges requiring intervention.

⁴ Draft Master Plan Executive Summary, p. 18.

⁵ Id.