



Department of Veterans Affairs Office of Inspector General

Review of the Enhanced Use Lease between the Department of Veterans Affairs and Veterans Development, LLC

To Report Suspected Wrongdoing in VA Programs and Operations

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Executive Summary

Introduction

The Office of Inspector General, Office of Contract Review, initiated a review of the Department of Veterans Affairs' (VA) Enhanced Use Lease (EUL) with Veterans Development, LLC (VetDev). The EUL with VetDev was part of VA's consolidation of the Cleveland campuses located in Brecksville and Wade Park in Ohio (OH). Under the EUL authority, VA leased the entirety of the Brecksville campus to VetDev in exchange for \$2 million in cash and in-kind consideration of not less than \$4 million. Our initial purpose was to review the EUL and associated service agreements and evaluate the risks associated with proceeding with the EUL considering the indictment of VetDev's principal, Michael Forlani in October 2011. We expanded our review to include a determination whether a total consolidation was in VA's best interests, whether the EUL authority was used appropriately, whether including service agreements for space in the EUL was appropriate, whether the EUL was executed appropriately and the terms and conditions adequately protect VA's interests, and whether any privacy act issues arose when Brecksville was vacated.

Results and Conclusions

Our review determined that the decision to completely vacate and close the Brecksville campus and consolidate to the Wade Park campus was not in VA's best interest because: a) there was insufficient space at Wade Park to transfer all services provided at Brecksville; b) the estimated cost savings associated with consolidation were not supported; c) VA is overpaying for space at Wade Park; and, d) there is an increase in security risk to VA employees and patients. While VA may have had a basis for a partial consolidation of services from Brecksville to Wade Park, the facts demonstrate that a total consolidation of the campuses created serious problems, especially regarding the lack of space and domiciliary concerns. VA's EUL authority is a method to lease out property that is not utilized or is underutilized by VA. However, the Brecksville campus was in regular daily use and it is clear that there simply was insufficient space at Wade Park to relocate all of the displaced services and employees. Our review determined that VA inappropriately attached service agreements for administrative office space, parking, and domiciliary services to the Brecksville EUL with VetDev to address the shortage of space created by the EUL of the Brecksville campus. In addition, the service agreements provided the developer with profits that far exceeded what he paid to lease the Brecksville property. While the administrative and parking service agreements have a small monthly credit for the in-kind consideration related to the Brecksville EUL, the service agreements are distinct and separate agreements that VA has negotiated. The service agreements include consideration and terms and conditions that are separate and distinct from those associated with the EUL. By procuring space and services through the Brecksville EUL, VA Management circumvented normal laws and regulations used to

procure space and services. Our review of the rates determined that the administrative and parking rates are significantly above the prevailing market rates for commercial office and parking space. The main reason for incorporating these services agreements into the EUL with VetDev was that the Cleveland VA Medical Center (VAMC) needed the space and services and, by incorporating them into the EUL was able to avoid the normal leasing and procurement process. This resulted in a long term sole-source lucrative lease to VetDev. We found that the data and potential savings used by VA to support and justify the EUL of Brecksville and associated service agreements was unsupported and unreliable and known to be so at the time it was presented.

We also have significant concerns specific to the domiciliary services agreement. This service agreement never should have been executed as part of the EUL because it does not include any in-kind consideration for the Brecksville EUL. VA officials provided no rationale or support as to why this service agreement was incorporated into the EUL with VetDev except for the fact that they needed space for the domiciliary. Furthermore, this service agreement is for healthcare services, not space, because it identifies clinical responsibilities to be performed by VetDev and payment is per resident per day. Furthermore, this service agreement violates VA policy regarding domiciliary care outlined in Veterans Health Administration (VHA) Handbook 1162.02, Mental Health Residential Rehabilitation Treatment Program (MH RRTP). This handbook clearly states that domiciliary care should be established on VA property or in facilities owned, leased, or otherwise acquired by VA and that the beds must be designated as official VA beds in accordance with VHA bed control policy and reported on VA's Gains and Losses statements. The Handbook specifically states that VA may only outsource housing or related support services that are non-clinical in nature. Per VHA policy, VA staff are to be responsible for providing all clinical services in a domiciliary setting. Our review found that VA negotiated an all-inclusive rate with VetDev to provide the comprehensive care to residents in the domiciliary. However, to comply with VHA policy, VA employees are stationed in the domiciliary providing care that VA is already paying VetDev to perform under the terms and conditions of the service agreement.

Our review determined that security is an issue in the administrative building, parking garage, and especially, the domiciliary. Our review of the service agreement found that VetDev is to supply the security at the three properties; however, we found that VetDev had not provided any security services from the time the properties were occupied in May 2011 until early January 2012, when we conducted our first site visit. Instead, at the time of our review, VA Police had been providing security for the three properties in the service agreements. However, because the property where these services are being provided to VA is not property owned or leased by VA, VA's Office of General Counsel (OGC) determined that VA Police have no jurisdiction and, therefore, VA could no longer provide the security and could not charge VetDev for the security that VA had provided. We also found that the service agreements do not clearly articulate the level of security and the requirements of any security guards. After January, VetDev only

provided an unarmed security guard. This puts VA employees and patients at an increased security risk, particularly in the domiciliary, because the level of security now provided by VetDev is not defined and VA Police cannot respond to any incidents nor can they provide routine security such as security patrols or drug searches.

We also concluded that employees of the Wade Park VAMC unintentionally violated the Privacy Act and other confidentiality statutes, regulations, and policies when the employees left human resources (HR) documents containing employees' names and dates of birth, and documents containing veterans' health information, in unsecure locations. We also did not find that the documents left in the Director's office intentionally violated any statutes, regulations, or policies.

Recommendations

We made recommendations to the Under Secretary for Health, the Executive in Charge for the Office of Management and Chief Financial Officer, and VA's General Counsel to determine the appropriateness and legal sufficiency of the EUL and attached service agreements and to develop a long range plan that address VA's space shortages in Wade Park. We recommended that VA determine what services that VA is performing in the domiciliary that VA is already paying for VetDev to perform under the service agreement. We recommended that VA develop a plan and establish security requirements to ensure the security of VA employees and patients and to issue a bill of collection to VetDev for failure to provide security services as demonstrated in our report. We also made recommendations to ensure VAMC Cleveland employees comply with the Privacy Act, The Health Insurance Portability and Accountability Act (HIPAA), and all VA policy regarding the safeguarding of employee Personally Identifiable Information (PII) and patient's Protected Health Information (PHI).

Management Comments

On August 31, 2012, the Department provided a joint response from the Executive in Charge for the Office of Management and Chief Financial Officer, VA's General Counsel, and the Under Secretary for Health, collectively referred to as VA Management herein. VA Management largely disagreed with the results and conclusions contained in our report. We note that during the more than six weeks VA Management took to respond to the draft report, they did not request any documentation in our files that support our findings and conclusions. The most significant areas of disagreement and VA Management's related assertions are:¹

- There was sufficient space at Wade Park for a complete consolidation of the Brecksville campus.

¹ A full discussion and analysis of VA Management's response is in Appendix B of the report.

- The cost justification for the consolidation under the EUL was supported.
- The rates for the service agreements are fair and reasonable.
- There is no increase in security risk for VA employees and veterans.
- Procuring services and space via VA's EUL authority is appropriate.
- The domiciliary services agreement is not a healthcare contract and VA employees are not duplicating any services contained in the service agreement with VetDev.

We conducted an in-depth review of VA Management's response and determined that it was unsupported, inadequate, and showed a lack of understanding regarding the issues. For example:

- With regard to space at Wade Park, VA Management asserted there was plenty of space at Wade Park because they obtained the necessary space via the EUL with VetDev. This was exactly the conclusion we made in our report—that VA had to obtain space because there was no VA space at Wade Park. VA also ignored the fact, as noted in our report, that there was not enough room in the administrative building constructed by VetDev and “leased” to VA through the service agreement for all the administrative staff from Brecksville. As a result, VA employees had to be relocated to several different locations.
- VA Management asserted there was reliable cost justification for the consolidation under the EUL. However, when we requested information supporting VA Management's assertion that the cost savings were realized, we were provided a spreadsheet but no underlying documentation to support the numbers. The spreadsheet appeared to have been created in response to our draft report. We reviewed the numbers and determined that there was no authoritative and supported financial analysis conducted to show true savings and cost of the consolidation. Documents we obtained during our review showed that the estimated cost savings during the consolidation fluctuated. The spreadsheet provided us after the draft report was issued did not show this fluctuation. The largest component of the alleged savings is a reduction in FTE; however, VA Management admits that a significant portion of the FTE savings are employees who were simply moved. To justify the EUL, VA Management used the entire alleged savings of the consolidation which failed to recognize or take into consideration that the majority of the consolidation of healthcare services occurred because of the \$100 million CARES tower. Also, VA Management did not account for all costs of the consolidation such as: 1) leases for space for administrative staff that could not be accommodated at Wade Park, 2) the upfront and leasing costs for the Parma, OH clinic, and 3) the costs of the change orders regarding the Wade Park office building. All of these costs off-set the savings that VA Management asserted were realized.

- VA Management disagreed there was any increase in security risks for VA employees and veterans in the office building, parking garage, and domiciliary. VA noted that they have agreements with police in the City of Cleveland. The basis for our conclusion was that VA Police lack police powers on those properties and the services provided by VetDev were not comparable to those provided by the VA Police. VA employees and patients had the protection of VA Police at Brecksville and now they do not at the Administrative Building, parking garage, and domiciliary owned by VetDev at Wade Park.
- VA Management disagreed that VA is overpaying for office space, parking, and domiciliary services but did not provide any information to support their position. VA Management also did not provide any information to refute the analysis we conducted of rates charged for space and parking in the surrounding area. Our review and analysis clearly showed the rate for office space is nearly double the market rates in the Cleveland, OH area and that the parking rates paid to VetDev are significantly higher than market rates in the Cleveland, OH area. VA Management did agree that the domiciliary costs have increased; however, based on our review of their response, we determined that their reported increase in cost is understated.
- VA Management stated that procuring administrative space and parking using VA's EUL authority was appropriate. The basis for their conclusion is that the statute permits in-kind consideration. However, we determined that the space and services procured via the EUL with VetDev far exceeded the in-kind consideration articulated in the EUL with VetDev and resulted in the elimination of competition to determine fair and reasonable rates. VA Management also refused to obtain an opinion from the procurement executive as to whether these agreements were unauthorized commitments.
- VA Management disagreed with our findings and conclusions that the domiciliary was inappropriately included in the EUL with VetDev and that the domiciliary services agreement is a healthcare services contract. VA Management did confirm our finding that VetDev and Volunteers of America (VOA) are not performing the requirements as outlined in the service agreement and that VA employees are actually performing many of the requirements. To rectify the deficiency VA Management stated that they will simply modify the requirements section of the services agreement with VetDev. However, we do not believe this can be done unilaterally and VA Management did not indicate how this would affect future costs or whether they would seek reimbursement for monies paid for services that were not provided. The response does not address the issue that it is a healthcare services contract and that VA is paying VetDev a daily bed rate that was based on the fact that VetDev would perform all the requirements of the domiciliary.

VA Management non-concurred with two of the nine recommendations and stated their concurrence for the remaining seven recommendations. However, their comments and action plan indicate they do not fully concur with four of those seven recommendations as well.

- VA Management non-concurred with our recommendation to develop a long range plan to address the space shortages at Wade Park. VA Management asserts that VA's Strategic Capital Investment Planning (SCIP) process will address these issues. We disagree. The SCIP process deals with proposed capital projects regarding major construction and leases. First, it is not clear that the SCIP process includes service agreements as it deals with construction and leases. Second, even if VA treats the service agreements as leases for SCIP purposes, the SCIP does not appear to apply to renewal of leases. Therefore, we conclude the SCIP process will not address the significant issues regarding the service agreements and whether those service agreements should continue. The SCIP process would only appear to come into play if VA decides not to renew the service agreement with VetDev.
- VA Management concurred with our recommendation to ensure all Privacy and HIPAA rules are adhered to by VA employees.
- VA Management concurred with our recommendation to ensure VA employees receive training regarding records management and related retention schedules.
- VA Management concurred with our recommendation to convene an independent group to determine the legal sufficiency and appropriateness of the service agreements contained in the EUL with VetDev; however, we have significant concerns with the proposed action plan. VA Management stated they intend to procure the services of an outside group; however, we recommend that VA Management first determine the feasibility of convening an in-house group of VA employees not involved with the EUL program who have expertise in the procurement of services and space.
- VA Management concurred with our recommendation to make a referral to determine if the service agreements constitute unauthorized commitments; however, our review of the action plan indicate they are not making a referral until further review warrants such a referral. We view the action plan as nonresponsive. Because of the seriousness of unauthorized commitments and the fact the VA Management is not making an immediate referral to look at the issue, the OIG has made a referral to VA's Procurement Executive to determine if the service agreements constitute unauthorized commitments.

- VA Management concurred with our recommendation to determine what services VOA is actually performing and which services VA employees are performing in the domiciliary; however, a review of the action plan shows that VA Management does not agree with or does not understand our findings and recommendations regarding this issue. VA Management asserted that there was no duplication of services between VOA and VA. Our report did not state that there was a duplication of services, but that VA employees are performing the services for VOA that are contained in the domiciliary services agreement that VA is paying VOA to perform. Therefore we view the proposed action plan as not responsive.
- VA Management concurred and has issued a Bill of Collection to VetDev regarding the failure to provide security as required by the service agreements. However, we take issue with Management's comments that there was no gap in security services. There was no gap in security services because VA Police stepped in and performed the services VA was paying VetDev to perform; however, there was a gap in VetDev's responsibility to provide security services under the agreement.
- VA Management concurred with our recommendation to identify the security requirements; however, a review of the proposed action plan determined that it does not address the recommendation to clarify the requirements for VetDev in the service agreements such as requirements for the individuals providing security. Therefore, we view VA Management's response and action plan regarding security as inadequate.
- VA Management concurred with an independent review of any modification of the current EUL or service agreements. VA Management non-concurred with the recommendation regarding new space requirements in Wade Park. Because of the history of procuring services and space through VA's EUL authority in Cleveland, we believe review by VHA's Chief Procurement Executive is warranted even if the SCIP process is involved to ensure rules and regulations defining processes are not once again circumvented.

In summary, we find that VA Management, during our review and in their official comments and action plan, does not appreciate or understand our findings and conclusions and their significance and made no real attempt to address the issues and determine what options VA has moving forward.

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Introduction

Purpose

The Office of Inspector General, Office of Contract Review, initiated a review of the Department of Veterans Affairs' (VA) Enhanced Use Lease (EUL) with Veterans Development, LLC (VetDev). The EUL with VetDev was part of VA's consolidation of the Cleveland campuses located in Brecksville and Wade Park in Ohio (OH). Under the EUL the entirety of the Brecksville campus is to be leased to VetDev in exchange for cash and in-kind consideration which were set forth in the service agreements. Our initial purpose was to review the EUL and associated service agreements and evaluate the risks associated with proceeding with the EUL considering the indictment of VetDev's principal, Michael Forlani, in October 2011. We expanded our review to include a determination whether the consolidation was in VA's best interests, whether the EUL authority was used appropriately, whether including service agreements for space in the EUL was appropriate, whether the EUL was executed appropriately and the terms and conditions adequately protect VA's interests, and whether any Privacy Act issues arose during the vacating of Brecksville.

Background

In 1961, VA opened a newly constructed hospital in Brecksville, OH. The Brecksville VA Medical Center (VAMC) was located on approximately 100 acres and opened with the primary function of treating psychiatric patients. Over time, VAMC Brecksville added programs to treat alcohol, drug, and gambling addictions; opened outpatient clinics; and began operating a domiciliary and a nursing home. In 1964, VA opened a newly constructed hospital in Wade Park in the City of Cleveland's University Circle area on approximately 17 acres. The Wade Park VAMC is a general medical and surgical hospital. The two hospitals operated independently, each with its own budget and director until 1971. In 1971, the Brecksville and Wade Park VAMCs were merged under a single director and budget. Both facilities became known as VAMC Cleveland and the two hospitals were referred to as the Brecksville Division (Brecksville) and the Wade Park Division (Wade Park). Wade Park was renamed the Louis Stokes Cleveland VA Medical Center in 1999.

In 1993, VHA management in Cleveland completed a Facility Development Plan (Plan) that evaluated the infrastructure at both the Brecksville and Wade Park campuses. The analysis included projected workload at both Divisions and an analysis of issues providing healthcare services to veterans such as space and functional issues. The Plan included a complete analysis of the buildings, equipment, infrastructure systems (electrical, plumbing, heating, cooling, storm water control, etc.) and all other issues such as transportation, code deficiencies, and fire and safety issues. The Plan identified many deficiencies at both the Brecksville Division and Wade Park Division. Most deficiencies

were due to aging facilities and an increasing and changing clinical workload. The Plan ranked the deficiencies from minimal to critical.

In 1999, VAMC Cleveland submitted a proposal to renovate four buildings at Brecksville to bring them to current standards. These buildings were used for nursing home care, spinal cord injury care, psychiatric inpatient care, and homeless and Post Traumatic Stress Disorder residential rehabilitation care (domiciliary care). The focus of the renovation was to bring the space to current environmental and infrastructure standards and correct deficiencies as noted by The Joint Commission regarding privacy and environment of care issues. The estimated cost to renovate these four buildings was \$34 million. The proposal was not approved and no renovations occurred at Brecksville.

After the proposal to renovate parts of Brecksville was not approved, VAMC Cleveland management decided to explore the feasibility of consolidating Brecksville and Wade Park. Based on the documentation and our discussions with the VAMC Director, it appears that the discussions focused on closing Brecksville and consolidating all services at Wade Park rather than identifying and analyzing all potential options. This idea was discussed by the Office of Management's Office of Asset Enterprise Management (OAEM) in Central Office (CO) which then contracted with AEW Capital Management, LP (AEW) in mid 2002 to analyze the consolidation of Brecksville to Wade Park using VA's EUL authority. AEW submitted their report to OAEM on June 19, 2003, which officially discussed using the EUL authority for Brecksville to get the additional land that VA would need in Wade Park. Although the study included the tower (which later became known as the CARES tower), the study focused primarily on parking and barely mentioned the need for additional administrative and clinical space that would be necessary in addition to the CARES tower if Brecksville was consolidated to Wade Park.

In March 2003, before the AEW study was submitted, the Secretary of VA announced the appointment of an independent commission called the Capital Asset Realignment for Enhanced Services (CARES) Commission (Commission). The Commission's purpose was to review VA's capital asset needs and ensure that concerns of veterans and other stakeholders were fully addressed and make recommendations that would result in significant and necessary improvements to VA's health care infrastructure. Veterans Integrated Service Network (VISN) specific initiatives were presented to the Commission and were included as part of the Draft National CARES Plan (DNCP) which was released by the Under Secretary for Health on August 4, 2003. The final CARES report issued in February 2004 agreed with the DNCP recommendation for realignment of Brecksville at Wade Park. The specific recommendations in the CARES report included relocating current psychiatric, nursing home, domiciliary, and residential services from Brecksville to Wade Park, but only if the existing level of services could be maintained. The Commission also agreed with the DNCP proposal to pursue EUL opportunities at Brecksville in exchange for property adjacent to Wade Park. The report included the following quote from the then Director, William Montague, of the Louis Stokes VAMC (Former Director) "With this proposal, every inpatient program or veteran service located

at the current Brecksville campus will be available at the consolidated Wade Park campus.” The Secretary of VA approved the CARES report in October 2004, and it was to be a blueprint for VA. The overall plan included the construction of the new CARES tower on VA property at Wade Park that would accommodate the nursing home and mental health patients from Brecksville. The plan also included the need for the acquisition of additional space to accommodate the domiciliary patients. Justifications were provided to management showing significant cost savings would accrue to VA with the closing of Brecksville.

In 1991, Congress authorized enhanced use leasing authority for VA which is codified at 38 USC § 8164. This legislative authority expired on December 31, 2011. The Secretary was authorized under the legislation to lease VA controlled land for monetary payments or in-kind consideration, if the activity enhances VA’s mission. The Secretary had the authority to determine whether the consideration offered was fair. The term of an EUL cannot exceed 75 years. At the expiration of an EUL term the land and all related improvements reverts back to VA. However, the statute also includes a provision that should the Secretary determine that the leased property is no longer needed by VA, the property can be transferred to the lessee. The EUL authority is managed by OAEM.

In February 2005, OAEM wrote a white paper concerning the proposed EUL for Brecksville. In the white paper the space requirements are listed as 70,000 square feet of office space, a 2,000 space parking garage, and a 120 bed domiciliary. This white paper was used to define the “business opportunity” in VA’s request for proposal (RFP) titled: “Request For Proposals, Louis Stokes Cleveland Department of Veterans Affairs Medical Center, Enhanced-Use Development.” The RFP defined VA’s needs as: 1) domiciliary care services containing approximately 120 to 130 beds; 2) administrative office space for approximately 65,000 net usable square feet; and, 3) parking for 2,000 cars. The RFP was issued in June 2005 and solicited competitive private, public, and/or not-for-profit development offers to lease the entire parcel of land of VA-owned property located on the Brecksville campus. Proposals were due on August 9, 2005. An award was made to VetDev on October 3, 2005.

From the date of award until execution of the EUL on October 1, 2009, OGC and OAEM worked toward defining the terms of the agreement and establishing plans for the new space at Wade Park. The EUL called for a \$2 million cash payment and in-kind consideration in the form of administrative office space, a parking garage, and domiciliary totaling an additional \$4 million to be held in escrow and paid monthly to VA as a credit to the monthly invoice. According to the EUL, the in-kind consideration was proffered in the form of 6,962.48 square feet in the administrative building and 75 parking spaces in the parking garage at no charge. The EUL also contained a Residential Services Agreement for VetDev to provide domiciliary care; however, there was no

consideration for the Brecksville property included in the Residential Services Agreement.²

During the summer of 2008, more than a year prior to executing the EUL, the Federal Bureau of Investigation executed search warrants at Mr. Michael Forlani's offices at Doan Pyramid during which they seized various documents and computers in relation to a City of Cleveland corruption probe. Forlani was the sole member of VetDev and Doan Pyramid was another business owned and operated by Forlani at that time. The investigation and the execution of search warrants were reported by the media. At that time, Forlani issued a statement to Doan Pyramid customers that stated that Doan Pyramid had no equity interest or financial exposure in the Wade Park/Brecksville development project. This letter was provided by VetDev to OAEM as a means of defusing the situation and to move the EUL project along.

The EUL, which was dated October 1, 2009, and executed on October 27, 2009, included the three service agreements as exhibits. In addition to the building space and parking spaces provided as consideration for the EUL, the service agreements included additional building space, parking spaces, and domiciliary services that VA would pay for at negotiated rates in buildings to be constructed by VetDev on property owned by the Cuyahoga County Port Authority that was adjacent to Wade Park. Once the EUL was executed, the services agreement for the administrative building was almost immediately amended to add an additional floor. The addition was to accommodate Employee Education Service (EES) even though their finance department had questioned the rate charged and explained that forcing their employees to move to Wade Park would have a negative effect on morale. Additionally, once construction commenced on the future properties to be leased by VA, change orders were executed in the amount of \$12.4 million. These change orders included upgrading the data center to a tier III+, an extension to the cross-over bridge to connect the existing parking garage to the newly constructed buildings, and additional build out costs (in excess of the per square foot allowances) to the properties. The change orders did not relate to the space given to VA as consideration for the EUL. In May 2011, the move from Brecksville to Wade Park commenced.

On October 20, 2011, Forlani was indicted along with James C. Dimora, Cuyahoga County Commissioner. The various limited liability corporation's that were established by Forlani and were related to the EUL were also identified in the indictment. The indictment alleged that Forlani conspired with public officials by offering bribes to obtain an interest in the land and financing used to construct the administrative office building and parking garage that are subject to the services agreements that VA entered into with VetDev. Prior to his indictment, Forlani placed VetDev into an irrevocable trust with his wife named as the sole beneficiary. Subsequent to the indictment, the matter was referred

² The Residential Services Agreement was initially titled "Domiciliary Services" but was re-named during the initial draft stages.

to VA's suspension/debarment official and Forlani and the companies identified in the indictment were suspended. On May 9, 2012, Dimora was convicted of Federal racketeering and 32 other corruption related charges in a separate indictment and has since been removed as a co-indictee with Forlani on the October 20, 2011, indictment. On August 30, 2012, Forlani changed his plea to "guilty" to all charges against him and is scheduled for sentencing on December 6, 2012. In December 2011, VA's Procurement Executive suspended Forlani and the businesses identified in the indictment. After Forlani's guilty plea, Forlani was debarred.

On November 1, 2011, we briefed OAEM and OGC regarding the Forlani indictment, provided them a copy of the indictment, advised that the EUL properties could be subject to forfeiture if Forlani were to be convicted, and provided them with regular updates and recommendations during the course of our review. We conducted interviews of personnel at Louis Stokes VAMC Wade Park Campus (Director's Office, Engineering, Union Representatives, Privacy Office, Domiciliary, and Finance), OGC, OAEM, Office of Regional Counsel (Region 7), Wade Park Campus VA Police, Veterans Integrated Service Network (VISN) 10 Contracting, EES, General Services Administration, Jones Lang LaSalle, and VetDev. We obtained and reviewed all relevant documents including the EUL, Service Agreements, and related Change Orders thru VA's Electronic Contract Management System database. We conducted site visits to the Brecksville campus, the Wade Park VAMC, and the service agreement properties. We obtained and reviewed voluminous documents from personnel involved in the transaction.

During our review, the Medical Center Director questioned us regarding the reason for conducting our review and if the start of our review was because of Regional Counsel. The Medical Center Director and others, including an individual in OGC, made negative comments regarding Regional Counsel and indicated that they suspected that Regional Counsel was the source of allegations to the OIG. We informed these individuals that information used in our review came from numerous sources and we did not disclose where any of our information came from including the initial information that led to the start of our review. On July 19, 2012, we briefed senior officials in the VHA, Office of Management, and OGC regarding our findings and conclusions. At the meeting we stated that during our review negative comments had been directed to specific individuals and offices because of suspicions that those individuals were the source of the complaint. We advised the participants that they should not try to identify the sources of the information provided to the OIG because this could reflect retaliatory intent. In August 2012, we learned that OGC had initiated an investigation of the Cleveland Office of Regional Counsel. OGC stated that the source of the complaint against the Office of Regional Counsel was the Cleveland Medical Center Director. The initial complaint to OGC was made by the Director in February 2012, shortly after our site visit to the Wade Park Medical Center. The Director had a follow up meeting with OGC regarding her

complaint in April 2012. We did not investigate why OGC decided months after the complaint and shortly after we issued the draft report, to conduct the investigation. We advise that any actions against individuals suspected of disclosing information to the OIG could be considered as retaliation for whistleblowing. We discussed the Medical Center Director's actions with the Assistant Deputy Under Secretary for Health.

Results and Conclusions

I. Complete Consolidation of Cleveland VA Campuses was Not in VA's Best Interests

Our review determined that the consolidation of Brecksville at Wade Park was not in VA's best interest. The decision to consolidate caused VA to completely vacate and lease the Brecksville campus in its entirety under VA's EUL authority and move all services to the Wade Park campus or other locations in the Cleveland and Northeast Ohio area. Deciding to completely close the Brecksville division and attempt to relocate all services to Wade Park was not in VA's best interest because: a) there was insufficient space at Wade Park to transfer all services provided at Brecksville; b) the estimated cost savings associated with consolidation were not supported and not realized; c) VA is overpaying for the required space at Wade Park; and, d) there is an increase in security risk to VA employees and patients. While VA may have had a basis for a partial consolidation of services from Brecksville to Wade Park, the facts demonstrate that a total consolidation of the campuses created serious problems regarding space, funding, and security.

a. There was Insufficient Space at Wade Park to Support the Consolidation.

Although the proposal to consolidate and close Brecksville was included as a recommendation in the CARES report, the proposal to consolidate the two campuses pre-dates the Commission and was first considered as early as 2000 by the Director at Cleveland. In 2002, VA commissioned AEW Capital Management to conduct a formal study to determine the value of the Brecksville campus and the feasibility of consolidating the two campuses at Wade Park. AEW's report, dated June 19, 2003, noted that the Brecksville campus was approximately 100 acres with 25 structures and contained over 883,000 square feet of building space and that the Wade Park campus was only 17 acres and had little remaining land available for expansion. The proposal at that time was to build a six to eight story building (which was completed in 2011 and is known as the CARES tower) on the last remaining space at Wade Park to house clinical and administrative employees who were currently at Brecksville. The proposal also included the expansion of the existing parking garage and the construction of a new parking garage on adjacent property. It is important to note that space was so limited at Wade Park that even to build the CARES tower VA needed to acquire land from the City of Cleveland. The land, including a street, was donated to VA by the City of Cleveland for the construction of the CARES tower. Although some clinical services were addressed, AEW's report primarily focused on the market value of the Brecksville campus and the significant parking shortage that would exist at Wade Park if the campuses were consolidated. The report seemed to assume that *all* services and employees at Brecksville could be housed in the proposed CARES tower. In reality the CARES tower could not accommodate *any* of the administrative support staff or the domiciliary located in Brecksville. Also, it was eventually determined that the existing

parking garage at Wade Park could not be expanded enough to alleviate the parking shortage problem that would result from the consolidation.

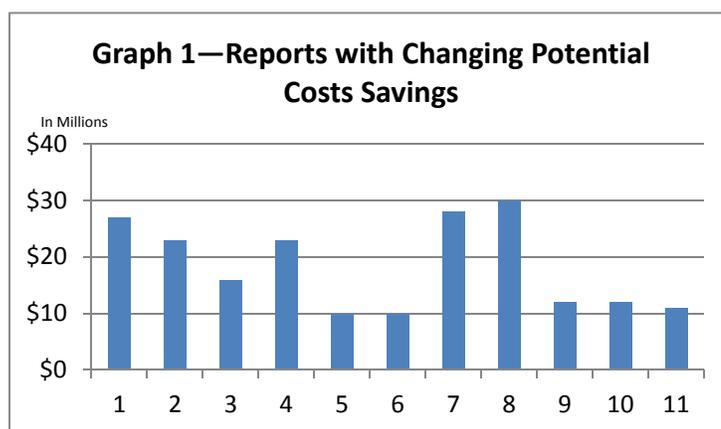
The proposed consolidation of Brecksville and Wade Park was presented to the Commission. The Commission adopted the recommendation *provided* that no services would be negatively affected. The Commission also noted that it had questions concerning VA's ability to provide sufficient domiciliary services to maintain the level that was currently available at Brecksville. The Commission recommended that VA pursue the EUL for Brecksville *in exchange for property* adjacent to Wade Park. The Commission's findings and recommendations demonstrate that there was a real concern that there was not enough space at Wade Park and the consolidation's success was contingent upon acquiring property and constructing additional buildings to be able to provide the same level of services that were being provided at Brecksville. The Commission's recommendation specifically addresses clinical services and does not appear to have taken into consideration the significant number of administrative support personnel at Brecksville. This included engineering, fiscal, laundry, acquisition, EES, Regional Counsel, and various other support functions that were needed to maintain the level of clinical services.

The fundamental reality of completely vacating Brecksville and consolidating all services at Wade Park was there simply was not enough space. The AEW report stated that VA estimated it could reduce its need from about 893,000 square feet in use in Brecksville to about 500,000 square feet of space. Assuming this figure was accurate and there would be no need for additional space, there still was insufficient space available. The CARES tower contains only approximately 268,000 square feet of space which left the need for about 232,000 square feet of space. These figures should have been a red flag questioning the feasibility of a complete consolidation at Wade Park because there simply was not enough space for expansion to ensure that all services could be provided. To address the shortfall, VA had to acquire additional space through lease or service agreements that included the 6-story, 120,000 square foot office building across the street from Wade Park; office space in Independence, OH for VISN contracting; and space for regional counsel in Akron, OH. Closing the Brecksville campus also created a need for a new Community Based Outpatient Clinic (CBOC) that was opened in Parma, OH. Additionally, the consolidation caused the closing of VA's laundry plant in Brecksville because there was no space for laundry service at Wade Park. VA now contracts out laundry service for Wade Park. Costs associated with the leases and contracts needed to accommodate these services were not considered when the decision was made to close Brecksville.

In our review of the documents and interviews of VA officials, we did not find any evidence that VA considered a partial consolidation of Brecksville and Wade Park. VA officials focused on closing the Brecksville campus despite of the fact, or without considering, that VA was going to be forced into numerous leases and service agreements

that will need to continue in perpetuity. Our review of VA’s cost justifications and savings found that they were inaccurate and did not fully consider the costs that would be incurred to obtain space through leases and other agreements for space that would be needed due to closing Brecksville.

b. The Cost Justification for Consolidation was Not Supported. We reviewed numerous presentations that were prepared to show the cost benefit of the consolidation at Wade Park and leasing the Brecksville property. The total amount of estimated savings that would result from the consolidation varied from presentation to presentation. We found no less than 11 different presentations and papers that showed a cost benefit of consolidating Brecksville and Wade Park with estimated cost savings of \$10 million to \$30 million per year. However, neither the current VAMC Director nor OAEM could provide any legitimate support or cost/benefit analysis that demonstrated what the actual savings are, if any. We found no evidence that VA officials questioned the variances between presentations or that they ensured that an accurate and reliable analysis had been conducted. The audience for these presentations included Congress, Office of Management and Budget, and Senior Executives in VA. The presentations were made by William Montague, Sean Nelson, and OAEM Management, including Jim Sullivan and Edward L. Bradley, III. The graph on the right



shows estimated costs saving for the various presentations made between February 2004 and October 2011 in chronological order.

The most detailed account of estimated cost savings was contained in an undated document, believed to have been compiled in late 2008 and authored by Sean Nelson, who was the Chief of External Affairs and Facility Planning for the Cleveland VAMC at that time. He was later appointed as the Associate Director at Wade Park and recently has resigned his position at VA. This document was titled Enhanced Use Lease White Paper—The Cost of Inactivity (White Paper). The White Paper asserted that continuing to operate the two campuses would cost VA nearly \$29 million. The White Paper was an appeal to get the final EUL agreement and related service agreements executed so that VA could begin to realize the savings identified in the White Paper as a result of consolidating at Wade Park. We found the information in the White Paper relating to estimated savings to be inaccurate and incomplete. The following is an extraction from the White Paper reflecting net savings of approximately \$29 million as detailed in the following table:

Table 1—Estimated Cost Savings of Consolidation

Cost Element	Annual Amount
FTEE Savings	\$14,160,000
NRM	13,666,667
Energy	10,000,000
Supplies	2,125,810
Patient Transportation	1,392,134
Laundry	460,038
Total FY09	\$42,085,919
Less EUL Expenses	\$13,305,251
Claimed Net Savings	\$28,780,688

As discussed below, the figures in Table 1 are inaccurate and misleading.

Personnel (FTEE) Savings: The largest component of the estimated savings resulting from the consolidation was \$14.1 million for personnel or Full Time Employee Equivalent (FTEE) costs. We determined that the estimated FTEE savings was unsupported. The consolidation of Brecksville at Wade Park would have no impact on the level of personnel required to perform the services because all services that were provided at Brecksville were going to be provided at Wade Park. We found evidence of discussions surrounding the claimed FTEE savings where management admitted that no positions would be eliminated and that potential FTEE savings would occur simply through attrition. Although OGC and OAEM did question the validity of the FTEE savings, the issue was not addressed further and the estimated savings were never removed from the cost justification supporting the consolidation. Additionally, there was no evidence that VA personnel requested a revised cost analysis that excluded the stated FTEE savings. During our site visit, the current Director (Sue Fuehrer) admitted that they have not realized any cost savings from a reduction of FTEE since the consolidation.

Non-Recurring Maintenance (NRM): The \$13.7 million identified as estimated cost savings for NRM at Brecksville is not reflective of the actual NRM funds spent, or budgeted, at the Brecksville facility. We obtained the actual NRM expenditures from fiscal service for Fiscal Year (FY) 2009 to present which was less than \$200 thousand over that entire timeframe. The Chief of Finance also provided the actual budgeted amount for Wade Park/Brecksville for FY 2009 which was \$8.8 million. The data suggests that the Medical Center management was not spending any significant NRM funds at Brecksville in anticipation of closing the facility. This figure appears to have been misused in an attempt by local management to justify the consolidation by demonstrating a significant cost savings.

Energy: The energy savings found in the documents reviewed was used routinely to address how expensive it was to provide utilities to Brecksville. While there is no doubt that Brecksville was not energy efficient and the heating and cooling systems needed to be updated, we determined that the reported energy costs were significantly overstated.

The Director and former Associate Director, who prepared the White Paper, could not provide supporting documentation for the reported \$10 million in annual energy costs at Brecksville. We received data from the Chief of Finance for FY 06 through FY 11 and found that the average utility expenditures over that period were \$3,459,671 annually rather than the \$10 million represented in the presentation. This inflation of energy costs at Brecksville provided misleading information regarding the cost justification of consolidation. The estimated savings is even lower when adjusted to reflect the utility costs incurred to provide the services at other locations.

Patient Transportation: Numerous documents included patient transportation savings as one of the benefits of consolidation. However, we found no off-set reflecting expenses that would be incurred to transport patients from the new outpatient clinic in Parma which is only 6 miles closer than Brecksville. While some of the patients located in Brecksville were moved to the new CARES tower in Wade Park (Nursing Home and Mental Health), we found no evidence of any meaningful analysis of the actual impact to transportation costs. While there is obviously a savings that would result in the reduction of patient transportation between the two campuses, the savings would be minimal even if this figure was used.

Laundry Service: Our review of the data showed that there was no cost savings associated with shutting down the laundry service. The estimated annual expense for in-house laundry services was \$460,038 annually. Even if the services had been moved to Wade Park, the need and the associated costs still existed. However, because there was no space for laundry services, the medical center had to contract out for the services. The new contract (VA250-12-C-0018), recently awarded for 6 months, is valued at \$358,317 which would be annualized at \$716,634. The consolidation of the campuses and resulting closure of the laundry service actually caused the laundry cost to increase by more than \$250,000.

Supplies: We did not find any support for the savings attributed to supplies. While consolidating everything to Wade Park may have caused some efficiency in the use of supplies, the transfer of all services to Wade Park would have increased the supplies needed at Wade Park. We saw no off-set. Also, they did not take into consideration the costs of supplies for services, such as the CBOC, that moved to leased space not at or near Wade Park.

Service Agreement (EUL) Expenses. We found that the former Associate Director underestimated the EUL costs relating to the service agreements. As discussed in detail below, the cost for the administrative, parking, and domiciliary service agreements is almost \$20 million per year in comparison to the \$13.3 million used in his analysis. Also, not included in this figure are the additional leasing costs that VA is incurring because of the consolidation such as the needed outpatient clinic in Parma, the cost of the

space in Independence, OH for VISN contracting staff, and the costs to obtain space for the Regional Counsel.

It is important to note that the analysis prepared by the former Associate Director is fundamentally flawed because it compared operational cost with the estimated annual lease costs under the service agreement. The appropriate comparison would have been between the costs of other viable options, which included renovating at least a portion of Brecksville to maintain space there versus leasing space elsewhere. This comparison would have clearly demonstrated that the most fiscally responsible decision would have been to invest in the Brecksville property rather than inappropriately deeming the entire campus excess and leasing it under the EUL authority for practically nothing. For example, an analysis provided to management estimated the cost to refurbish five of the buildings at Brecksville to be \$34 million. In comparison, under the service agreements for the administrative building, parking garage, and domiciliary, VA will pay an estimated \$390 million over the next 20 years. Over the next 20 years, VA will also pay an estimated \$58 million for the Parma CBOC, and an estimated \$8 million for VISN space in Independence, OH. Additionally, VA expended \$12.4 million in change orders to make the administrative building ready to occupy, and a lump sum payment of \$4.8 million for the Parma CBOC followed by change orders in the amount of \$2.7 million. These additional one-time payments total \$19.9 million. This brings the 20-year estimated cost of space to \$476 million. Furthermore, this estimate does not include space for regional counsel or any escalation factor. Even if the estimated cost to renovate the needed space at Brecksville was doubled to \$68 million it would have been significantly less than what VA will pay during the next 20 years and beyond to close Brecksville and consolidate services at Wade Park.

Based on our review of the facts, we concluded that the analyses performed to justify cost savings were not accurate or complete. Nonetheless, these unsupported estimated cost savings were used to justify entering into the EUL and the related service agreements to the detriment of VA. Personnel from OAEM and OGC never questioned the estimated cost savings in the presentations with the exception of questioning the estimate savings regarding the reduction in FTEE, and even then the analysis was not amended to reduce the projected cost savings by the \$14 million attributed to FTEE reductions. It is troubling that for a transaction as significant as this that no one did a thorough review or scrutinized the numbers. We found no formal and authoritative cost versus benefit analysis that analyzed VA's options and the costs associated with each of those options. Had such an analysis been conducted, the consolidation and EUL as it currently exists may not have been approved.

During our review we also found that the former Director, the current Director, and the former Associate Director did not consult with subject matter experts within the VAMC when preparing justifications for potential cost savings. The Chief of Finance told us that he was never involved with any reporting of cost savings, compiling supporting

documentation for reported cost savings, or involved in any way. Likewise, the Director of the Domiciliary was excluded from any discussions or decisions regarding the plans to relocate the domiciliary to Wade Park. As discussed below, by excluding domiciliary officials from discussions, local management was able to provide misleading information regarding estimated domiciliary cost savings to justify moving the domiciliary to a non-VA facility in Wade Park and having it managed by a contractor as opposed to VA personnel.

Domiciliary Cost Savings. In 2004, the former Director provided specific data regarding the cost savings to be achieved by moving the domiciliary to a non-VA facility run by a contractor. We found the purported cost savings for domiciliary services to be grossly inaccurate and misleading. The VISN's EUL Concept Paper from September 2004 which is signed by the former Director and Clyde Parkis, former VISN 10 Network Director, includes the following statement to show a cost savings for domiciliary care:

Cost Effective Provision of Domiciliary Services. Currently, the direct cost associated with providing domiciliary care at VAMC Cleveland is \$79.18 per veteran per day. VAMC Cleveland currently has a contract with not-for-profit service provider Volunteers of America to provide 50 domiciliary beds at a cost of \$27.19 per veteran per day. This amount represents a savings of approximately \$52 per veteran per day, and translates into a cost savings to VAMC Cleveland of over \$2.2 million annually.

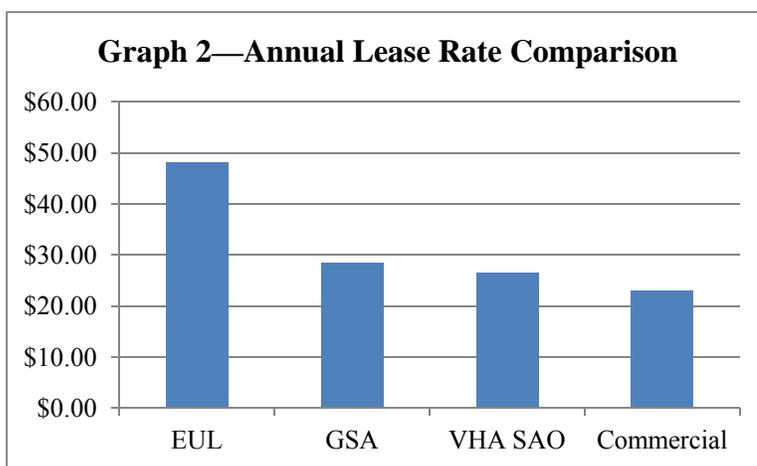
Under the service agreement executed as part of the EUL, VA is paying VetDev, who has subcontracted with Volunteers of America (VOA), \$129.78 per bed per day *plus* utilities and taxes. While the service agreement stipulates that the rate is "all inclusive," we found that VA personnel are on-site providing many of the services that VA is paying for in the per bed day rate which makes cost for the domiciliary even higher. Also, the amounts cited by the former Directors were based on an erroneous comparison of the rate for running a domiciliary in Brecksville to the rate charged by VOA for providing transitional housing which includes significantly less services, namely, bed and food, and no clinical care. The comparison in the statement cited above was invalid, inappropriate, and misleading.

VA officials touted numerous other benefits of the consolidation including job creation, additional revenues for the City of Cleveland, and an intern program for the City of Cleveland Public Schools. The estimated job creation numbers appear to be grossly overstated and consisted of temporary construction jobs, not permanent job creation. Tax revenues will increase for the City of Cleveland because of the VA employees who were required to relocate from Brecksville to Wade Park and other locations in the Cleveland area. The intern program was part of a deal between VA and Cleveland Public Schools to make up for the fact that the increased tax revenue for the land on which the

administrative building and parking garage were constructed was taken away from the Cleveland Public Schools and given to the Port Authority to service the construction bonds.

c. VA is Overpaying for Administrative, Parking And Domiciliary Services. We found that VA officials did not act in the best interest of the VA in agreeing to the rates in the service agreements for space, parking, and domiciliary care. Our analysis shows that VA is overpaying for these services by at least \$10 million annually by paying at least twice the market rate. Although there was ample evidence to support a much lower rate, VA elected to pay well above the market rate for office space and parking spaces so that VetDev would be able recoup the cost of construction on an accelerated schedule. Most of the costs incurred for construction will be recouped during the initial 10-year service agreement term. During the course of our review we questioned why VA entered into the service agreements for the administration building and the parking garage at rates that far exceeded the rates on the commercial market or through General Services Administration (GSA). During our review we interviewed a representative from Jones Lang LaSalle (JLL) who was under contract with OAEM to provide real estate consulting services. The representative from JLL advised us that he “assisted” VetDev in preparing a comparison of the service agreement rates to the market rate for the properties in order to gain VA’s approval. The JLL representative also advised that there is no comparable market for the service agreement properties because no new buildings have been constructed in the Cleveland area within the last 10 years. This same argument was used to justify and convince both EES and the Office of Resolution Management (ORM) into paying rates that were much higher than the market rate for office space the Cleveland metro area.

In an OAEM presentation dated October 24, 2011, the statement is made that “All Service Agreement Charges are within Fair Market Rent ranges for their respective product types.” We found this statement to be unsupported, misleading, and inaccurate. The service agreements for the administrative building and the parking garage include rates that



are exorbitantly high when compared to the Cleveland market (see Graph 2). The only information that VA relied on appears to be JLL’s opinion that the rates are fair because it is a new building. However, as previously noted, JLL provided assistance to VetDev in justifying the rates. As discussed in greater detail below, VA is paying at least twice the current market rate for fully serviced leases.

We also found that the former Associate Director used the exorbitant rates in the EUL service agreement for the administrative building as a benchmark in an attempt to acquire new space from VetDev for Regional Counsel, EES, and ORM. Fortunately, his attempts were not successful. We concluded that VAMC Cleveland, top VHA management, OAEM, and OGC acted irresponsibly by not keeping the best interests of VA, or taxpayers, in mind when agreeing to pay exorbitant rates for the administrative space, parking garage and domiciliary.

Administrative Space. We reviewed current commercial and GSA rates for the Cleveland area and found that the most expensive GSA rate was \$28.51 per square foot on an annual basis. We found the most expensive commercial building available with comparable square footage was \$19 per square foot annually. Generally, commercial rates for the Cleveland area are a high of \$23 per square foot annually (US Bank Centre) and a low in the \$12 range. VA is currently paying \$48.12 per square foot annually for the administrative space and \$65.40 per square foot annually for the data center space on the lower level. The rate that VA is paying for the space under the service agreement for the administration building is not supported and should not have been deemed fair and reasonable by VA. Table 2, below, details the administrative building service agreement rates per square foot:

Table 2—Adminstratve Building Service Agreement Charges

Wade Park Administrative Building Service Agreement	Admin Space Monthly Cost per square foot	Data Center Space Monthly Cost per square foot ³
Monthly Fixed Rate Charge	\$2.91	\$4.17
Adjustable Rate Charge ⁴ (Current)	.49	.49
Minimum Monthly Additional Tax Charge (Current) ⁵	.56	.56
Minimum Monthly Additional Utility Charge (Current) ⁴	.23	.23
Total Charges before in-kind consideration deduction	4.19	5.45
Less In Kind Consideration (6,962.48 @ \$2.91 psf/115,006 sf)	(.18)	
Total Monthly Charge psf (A)	\$4.01	\$5.45
Total Annual Charge psf (B)	\$48.12	\$65.40
Total Square Feet (C)	115,006	19,321
Total Monthly Amount (A times C)	\$461,174.10	\$105,299.45
Total Annual Amount (B times C)	\$5,534,088.72	\$1,263,593.40

³ The difference in the base charge between Administrative Space and Data Center Space represents the increased base construction costs.

⁴ Adjustable annually based on the Consumer Price Index Urban, Cleveland – Akron, Ohio

⁵ Adjusted quarterly based on prior quarter actual expenditures.

Additionally, our document review found a Feasibility Analysis prepared at VA's request by Basile Baumann Prost & Associates dated May 26, 2005. This analysis stated "Currently, Class B office space rents in the market average approximately \$15 per square foot, while Class A rents average over \$21 per square foot." The documentation also contained a draft letter dated March 20, 2006, by JLL for the purpose of helping VetDev obtain preferential tax treatment from the City of Cleveland that showed the market rate for Class A office space to be \$23 per square foot. However, by the time the deal was finalized in 2009, JLL advised the final rate of \$48.12 per square foot was a fair price. There is no evidence to support JLL's determination regarding the reasonableness of the price and when we interviewed the JLL employee he stated that the basis for the statements was that it was new building. It is not clear to us why VA's consultant, JLL, was allowed to assist VetDev in the EUL process as it appears to be a conflict of interest. The Cleveland Plain Dealer reported that the Mayor of Brecksville stated at the decommissioning ceremony for the Brecksville campus that VetDev had hired JLL to market the property for them.

In May 2010, Cleveland officials pushed to get a firm commitment from EES to move to Wade Park. EES is not a part of VHA. Although there was ample evidence presented that the move would be costly and would affect morale, the VHA Chief Learning Officer approved the action and signed a letter of intent with the Wade Park VAMC. Additionally, in August, 2010, Edward L. Bradley, III presented the justification for the amendment to the EUL in a presentation titled: Amendment to the Enhanced-Use Lease (EUL) at the Louis Stokes Medical Center, Cleveland, OH to the then Acting Assistant Secretary for Management. This presentation included several significant inaccurate statements including the total square footage to be acquired (18,000 versus 19,321), and that the addition would be less costly than acquiring similar space for EES elsewhere. As a result of this commitment by EES, the EUL was amended in October, 2010 to add a sixth floor to the administration building to accommodate the service. In addition, EES spent another \$764,000 on build out costs.

We found no evidence in the file to suggest that EES ever considered market rates in the area prior to committing to occupy space in the Administrative Building. All analyses of the rates and locations we found were done after the commitment by EES.

In addition to our findings regarding costs and the fact that the additional space was acquired without complying with applicable laws and regulations for acquiring space, other facts surrounding this decision that we find disturbing include:

- EES employees expressed their concerns about additional costs, employee morale (due to location) and restroom limitations. These concerns were discussed at a meeting on September 24, 2010, but the Acting Deputy Director, EES Field Operations stated that "it may be too late to consider other options" because of the commitment made by the Chief Learning Officer.

- Concerns regarding costs and other matters were ignored even though there was ample time for EES to find space elsewhere.
- EES is billed by Wade Park for 20,752 SF, even though Wade Park only pays VetDev for 19,321 SF.
- EES is billed at a rate of \$4.18 per square foot, per month or \$50.16 annually for the administrative space, but Wade Park pays \$4.01 per square foot, per month or \$48.12 annually.

The agreement between EES and Wade Park was memorialized in an undated Memorandum of Understanding (MOU). According to the document, the term of the agreement is 10 years and the effective date is “upon approval and signature” but it is undated. We question whether the MOU is valid since the document is undated. If EES can cancel the agreement and secure alternate facilities using the proper procurement channels, EES could save as much as \$695,000 annually.

A similar agreement was reached with Office of Resolution Management (ORM) for 4,749 rentable square feet and 19 parking spaces. Their MOU is structured the same as the one for EES. The total annual obligation under the agreement is \$307,000 and we estimate they could have saved as much as \$153,000 annually if they could procure property elsewhere using proper procurement channels.

Parking Garage. The Wade Park Parking Services Agreement requires VetDev to provide 2,000 parking spaces in its newly constructed 2,080 space parking garage adjacent to the medical center. The majority of the 2,000 parking spaces are designated for VA employees and both VA patients and visitors have access to the parking garage. The remaining 80 spaces are available to residents of a nearby apartment building and for customers at planned retail establishments located at the administrative building. As in the case of the domiciliary and administrative service agreements, the term of the parking services agreement is for 10 years with an option to extend an additional 10 years. An additional parking garage owned and operated by VA is located on the medical center premises and is primarily used for VA patients and visitors.

The parking services agreement requires VA to pay a monthly charge per parking space based on a Fixed Charge Rate and Adjustable Charge Rate for the parking garage’s maintenance and operating expenses along with additional charges for taxes and utilities. The Adjustable Charge Rate is subject to change annually based the change in the Consumer Price Index Urban, Cleveland – Akron, Ohio. The additional charges for taxes and utilities are subject to change based on actual costs incurred by VetDev. The following table summarizes the current monthly and annual parking rates charged to VA.

Table 3—Parking Service Agreement Charges

Wade Park Parking Services Agreement Charges	Monthly Rate Per Parking Space	Total Monthly Costs	Total Annual Costs
Fixed Charge Rate	\$227.52	\$455,040.00	\$5,460,480.00
Adjustable Charge Rate (Current)	29.67	59,340.00	\$712,080.00
Total Fixed and Adjustable Charges	\$257.19	\$514,380.00	\$6,172,560.00
Minimum Monthly Additional Tax Charge (Current)	42.60	85,203.00	\$1,022,436.00
Additional Monthly Utility Charges (Current)	10.21	20,416.66	\$244,999.92
Total Charges before In-Kind Consideration Deduction	\$310.00	\$619,999.66	\$7,439,995.92
Less In-Kind Consideration - 75 Spaces @ \$227.52 Fixed Charge Rate	(8.53)	(17,064.00)	(\$204,768.00)
Total Current Parking Costs - New Parking Garage	301.47	\$602,935.66	\$7,235,227.92

As summarized on Table 3, VA's current monthly parking rate is \$301.47 per space. VA is incurring over \$7.2 million annually in parking expenses under the Parking Services Agreement.

Based on our review of VA's parking service agreement with VetDev, we determined that: 1) VA is paying a higher monthly parking rate than offered by Cleveland area parking garages and a previous parking lease agreement; 2) the EUL's in-kind consideration is not being realized; and, 3) according to OGC, VA is prevented from charging employees for parking provided under the service agreement.

1) VA's Monthly Parking Rate Is Higher than Cleveland Commercial Monthly Parking Rates and Previous Parking Lease Agreement. We found that there were no commercially operated parking garages within close proximity to the Wade Park VAMC; therefore, we used rates for commercially operated parking garages with the City of Cleveland for comparison. We analyzed a sample of monthly rates charged by commercially operated parking garages. We found that the \$301.47 monthly parking rate charged VA by VetDev to be substantially higher than the parking rates charged by the commercially operated parking garages. We found that that average monthly commercial rate was \$200 per parking space. Therefore, the parking rate charged to the VA by VetDev is approximately 50 percent greater than the average commercial parking space rate. Records show that VA and its consultant knew that the agreed upon rate of \$301.47 was significantly above market rates. In a letter dated March 20, 2006 to VetDev, JLL estimated the market rate at \$165 per space per month. As another comparison, we found that VetDev was able to lease 432 spaces in the University Circle for \$7 per day inclusive of any shuttle cost.

Also, for the period of FY 2004 through FY 2011, VA was leasing parking spaces in a parking garage and adjacent space surface parking lot that were owned by Case Western Reserve University (CWRU). Both are in close proximity of VA. For FY 2010 and FY 2011, VA leased 860 spaces from CWRU. Our review of expenses revealed that during FY 2011 VA's annual expense was \$541,872.96 which equals \$52.51 per space per month at CWRU's parking facility. The VA is now paying VetDev close to 6 times that amount per space under the Parking Services Agreement.

2) The EUL's In-Kind Consideration for Parking Is Not Being Realized. As in-kind consideration for the EUL, for the initial 10 year commitment, VetDev is exempting 75 of the 2,000 parking spaces provided VA from the \$227.19 Fixed Charge Rate monthly fee. Over the 10 years, the present value of the in-kind consideration for parking is approximately \$1.83 million. Although VetDev is deducting \$17,064 as the monthly Fixed Charge Rate exemption from their invoices to VA, VA is not benefiting from the in-kind consideration. During our site visit to Wade Park, we observed an average of 125 vacant parking spaces out of the 2,000 parking spaces assigned to the VA. A VA Police official told us that police officers' recent counts yielded an even higher number of vacant parking spaces at the parking garage. Free spaces are of no value when VA is paying for spaces that are unused and at exorbitant rates.

3) Per OGC, Because the Spaces are Acquired Under a Service Agreement, Not a Lease, VA is Prohibited from Charging Employees for Parking. VA employees are receiving free parking because the VA is absorbing all parking costs associated with the Parking Service Agreement. Under 38 USC § 8109, the Secretary has authority to collect parking fees from employees for a parking garage constructed or acquired by VA at a cost exceeding \$500,000 or \$100,000 for annual lease payments. Since the annual cost of the parking service agreement is over \$7.2 million, the parking garage exceeds the \$100,000 annual lease payment threshold. As such, VA could charge employees for parking; however, VA OGC determined that the Service Agreement for the garage is not a lease. Therefore, 38 USC § 8109 did not apply and VA had no authority to collect parking fees from employees.

During our site visit, we discussed the parking issue with Union representatives who told us that the former Director promised that employees would not have to pay for parking. The current Director told us that if the employees were forced to pay for parking she would have to find another job because the deal was free parking for VA employees.

VetDev will recoup almost all of their costs during the 10-year term of the agreement. As previously stated, JLL's argument for determining the properties to be reasonably priced is that they are new construction and include all the efficiencies that accompany a new building. Based on our research, we determined that the more important factors that determine real estate rates are typically location and condition of

the property, not the date of original construction. It appears that the main driver for the high rates is to ensure that VetDev recoups its costs during the initial 10-year term of the service agreement even though, according to the Internal Revenue Service, buildings of this nature are typically depreciated over a 39 year period. If it is determined that it is the best interest of the Government to continue with the service agreements for the administration building and parking garage, VA should renegotiate the base rate to allocate the cost of construction over a 20-year period because it is reasonable and, as demonstrated in Table 4, would save VA \$4 million annually. Although, this approach still yields rates that are above the current market rates, any attempt to renegotiate the rates would at least save VA funds that could be put to better use. Specific recommendations regarding the domiciliary are discussed later in this report because the payment under that agreement was inappropriately based on bed days of care rather than obtaining space on a square foot basis.

Table 4—Potential Savings Using 20-Year Cost Recoupment Period

Description		Administrative Space	Data Center	Parking Garage	Total Monthly Overpayments	Total Annual Overpayments
Cost of Development Divided by 20 years ⁶	A	\$48,119,764.00	\$12,898,855.00	\$67,287,109.00		
Square Feet/Spaces	B	A/20=B	\$2,405,988.20	\$644,942.75	\$3,364,355.45	
Annual Base Cost	C		115,006	19,321	2,080	
Monthly Base Cost	D	B/C=D	\$20.92	\$33.38	\$1,617.48	
Current Monthly Base Rate	E	D/12=E	\$1.74	\$2.78	\$134.79	
Questioned Rate Monthly Overpayment	F		\$2.91	\$4.17	\$227.52	
Annual Overpayment	G	F-E=G	\$1.17	\$1.39	\$92.73	
	H	G*C=H	\$126,045.87	\$26,823.34	\$178,505.48	\$331,374.68
	I	H*12=I	\$1,512,550.39	\$321,880.09	\$2,142,065.73	\$3,976,496.21

Domiciliary Potential Savings. The current estimated annual base cost for the Residential Services Agreement is \$5,779,363. We calculated potential 20 year cost savings that could be achieved simply by acquiring the domiciliary space through a lease for space. The domiciliary services agreement is an all inclusive agreement where VetDev provides everything including clinical care. We determined that contracting for clinical care in a domiciliary is a violation of VA policy and that VA clinicians are actually performing the clinical care in the domiciliary even though VA is paying for the same care under the service agreement. These findings are detailed in a later section of this report. We used the same cost as the administrative space detailed in Table 2. Using this methodology and the square footage for the domiciliary (73,275), we estimated annual base savings to be \$4,702,686 (73,275 x \$14.69 = \$1,076,677⁷) (\$5,779,363 –

⁷Cost of development \$21,533,533 divided by 20 years = \$1,076,676.65.

\$1,076,677 = \$4,702,686). From these additional funds, the services now performed by VOA (food service, non clinical counseling, and receptionist) would have to be obtained directly through other contractual arrangements; however, VA would still realize significant savings.

We concluded that if not for the VA, the buildings owned by VetDev would not be leased or would be leased at lower rates because the rates VA are being charged are not commercially viable in the Cleveland market. In summary, if the administrative building, parking, and domiciliary agreements had been reasonably structured, VA could have saved approximately \$8.7 million annually (\$4 million for the administrative building and parking garage + \$4.7 million for the domiciliary= \$8.7 million).

d. Increased Security Risks Exist. In November 2011, it came to light that VetDev was not providing security at the administrative, parking, and domiciliary buildings as required by the service agreements. Instead, security was provided by the Wade Park VA Police which means that VA was incurring significant costs to perform services that VA was paying a vendor to perform. The former Assistant Director solicited advice from OAEM and OGC regarding how Wade Park could be reimbursed for the security services billed by VetDev but performed by VA Police. In response, OGC determined that: 1) the agreements require VetDev to provide the security, not VA Police; and, 2) because the property on which the administrative building, parking garage, and domiciliary are covered by the service agreements, not owned or leased by VA, the provisions of 38 USC § 901 do not apply and that the local VA Police do not have legal authority to provide security for the properties covered by the service agreements. VetDev is the only entity that can provide security on the three properties and is required to provide the security under the terms of the service agreements.

We determined that VetDev failed to provide *any* level of security until after our first site visit on January 9, 2012. On or about that date, VetDev contracted with a security firm for a single unarmed security officer to patrol all three properties. We noted that the security provisions in the service agreements do not specify the level of security or the qualifications for personnel providing the security. While on site at a later date, we were never challenged by the security officer nor did we observe the security officer actively monitoring people coming into the administrative building. We also found that the parking garage had no controlled access, and that the gates were open all day. We found that the domiciliary was locked and staffed by a receptionist during the day and that visitor logs were maintained. Our discussions with the union representatives and the domiciliary director revealed that there was confusion and concern regarding the security on the three properties covered by the service agreements. Employees were concerned when it was determined that VA Police had no jurisdiction on the property and they had no faith in a single unarmed security guard that VetDev had just recently started to provide. The employees were concerned that in the event of a real emergency that the first responders would have to be the Cleveland Police Department, not VA Police, even

though the properties were occupied by VA employees and VA Police are located across the street. In short, VA employees located in these buildings did not have the same police presence and protection as the employees located in the Wade Park medical center. While all the properties are at risk, this situation has had the most serious implications for the domiciliary because of the patient population and the property is located in a high risk neighborhood. Domiciliary employees expressed concern that they did not have the same level of protection that they had in Brecksville where VA Police had full jurisdiction and could exercise their police powers. In Brecksville, VA Police could immediately respond to situations where patients became violent and could routinely conduct drug searches in the domiciliary. Now, VA Police are prohibited from providing any level of security to VA employees and patients in the domiciliary.

Security Overbillings. At the time the security issue was discovered, Wade Park management asked OGC and OAEM as to whether VA could bill VetDev for the security services provided by VA Police. OGC, through OAEM, made a determination that VA cannot provide the services in return for payment from VetDev, nor can VA seek a refund of security services it provided because: “VA lacked authority to provide the VA security services on non-VA property.” This decision was vetted through several staff attorneys at OGC and all concurred. However, based on a conversation between an attorney in OGC and the Counselor to the Inspector General, the guidance was amended to recommend issuing a bill of collection to VetDev for the security services paid for under the service agreements but never received. Vet Dev stated that the amount of the overbillings was \$450,000.

We asked OAEM, VISN Contracting, and Wade Park Fiscal about the disposition of the \$450,000 overpayment. OAEM explained it was Wade Park’s responsibility. VISN Contracting informed us that they were told not to inquire about the action and Wade Park Fiscal Services believed that OAEM is handling the overcharges. We found that the lack of management and accountability for the service agreement resulted in VetDev receiving funds for services that were not provided and no action was been taken by VA to recoup these overcharges because no one accepted responsibility for issuing a bill of collection or recouping the overpayments through off-sets on future payments.

II. VA Misused Enhanced Use Lease Authority to Obtain Space at Wade Park

VA's EUL authority applied to properties that are not utilized or underutilized. Code of Federal Regulations Title 41 Subpart 101-47.8 defines "not utilized" property as an entire property or portion of a property that is not occupied for program purposes by the accountable agency. Underutilized property is defined as an entire property or portion of a property that is used only at irregular periods or intermittently by the accountable agency for program purposes. VA can lease property to third parties that is not utilized or underutilized for cash or in-kind consideration. The EUL with VetDev for Brecksville was for the entire 100 acre campus. However, two facts were sufficiently clear. First, the Brecksville property was in regular daily use and could not (at least in its entirety) be considered as underutilized. Second, the Wade Park Division could not accommodate all the services and employees that were located at Brecksville. Fundamentally, under the EUL, VA was leasing property in which services and employees had to be re-located and VA had no property or space available to re-locate them. The Brecksville EUL was not to lease property that was underutilized but was being used in a creative manner to get newly constructed facilities for VA to lease in another location, without going through the required processes for leasing space. It is difficult for VA to make the case that the property in Brecksville was not needed when the mere fact that entering into the EUL to lease the Brecksville campus in its entirety to VetDev created a desperate need for space to accommodate the services and personnel located at Brecksville. The need for space for the displaced employees at Brecksville was not limited to space for administrative services but also clinical space needed to provide domiciliary and outpatient care. Although the consolidation was approved by the Commission, this was based on the condition that VA could accomplish the consolidation without jeopardizing the level of services that VA was able to provide at Brecksville. The significant need for space created by the EUL set the stage for VA to ultimately enter into service agreements where VA is and will continue to overpay for space and services and the interests of the taxpayer and veterans are not protected.

a. The EUL Inappropriately Included Service Agreements for Office Space and Parking that were Not Limited to In-Kind Consideration. The consideration VA was to receive for the 75 year lease of the 100 acre Brecksville property to VetDev was a \$2 million cash payment and at least \$4 million of in-kind consideration. The in-kind consideration to VA was 6,962.48 square feet of office space for a period of 240 months⁸ (20 years) and 75 parking spaces for a period of 240 months (20 years). This in-kind consideration was to be provided to VA *at no cost* to VA.

Although the agreements should have been limited to in-kind consideration, they were not. In negotiating the EUL, VA agreed that it would not receive any of the in-kind consideration unless it entered into two service agreements with VetDev for additional

⁸ While the initial lease period is for 10 years, VA agreed to recoup the in-kind consideration over a 20 year period.

office space and services and the other for parking services. The EUL gives the false impression that the service agreements themselves are also part of VetDev's consideration for the EUL. The service agreements are technically separate agreements with their own consideration distinct from the EUL for the Brecksville property. Although the in-kind consideration for the EUL is included in the Service Agreements, it is only a minor portion and when evaluated in total, VA is not receiving any in-kind consideration. As previously discussed, VA is paying at least twice market rates for the office agreement and 50 percent over market for the parking service agreement. The EUL did not require VetDev to provide office and parking space for VA in Wade Park, but VA's promise of full lease payments for office space and parking resulted in VetDev building the administrative building and parking garage to lease back to VA. As stated above, the Brecksville EUL did not solve the shortage of space in Cleveland, but rather caused the shortage of space.

Entering into the service agreements for office and parking space as part of the EUL, gave the appearance that VA was going to receive more consideration than is actually received. Documentation shows that OAEM and OGC officials repeatedly referred to the administrative building, parking garage, and domiciliary as "consideration" from VetDev for the EUL. In fact, under the EUL, the only consideration VA is to receive for the 100 acre Brecksville property was \$2 million cash, 6,962 square feet of office space for 20 years, and 75 parking spaces for 20 years. The inclusion of the service agreements for space and parking as consideration to VA is both confusing and misleading because the square footage and parking spaces that VA is supposed to be receiving at no charge is minimal in comparison to the actual square footage and parking spaces that VA agreed to pay for and at above market rates. In essence, VA is not receiving any consideration through the service agreements.

Any agreement for space at Wade Park should have been conducted separately and competitively through GSA. Had this been done, it would have been more apparent that the Brecksville campus was not unutilized or underutilized and the estimated cost savings used to support the decision to consolidate the two campuses were highly questionable. It would have been very clear to senior VA leadership that vacating Brecksville created a significant need for space and it would cost VA more in the long term to obtain that space than to renovate at least portions of Brecksville. The reality is that the EUL did not create or provide the space that VA needed, but rather the EUL *caused* the need for VA to obtain additional space in Wade Park and elsewhere. By including the Service Agreements in the EUL, VA agreed to let VetDev provide the space to VA through a sole-source agreement that provided VA with little or no chance of negotiating fair and reasonable rates or the flexibility to find space elsewhere for at least 10 years.

b. OGC and OAEM Used the Service Agreements to Circumvent Laws and Regulations. OAEM and OGC determined that the provisions of Federal Acquisition Regulations (FAR) do not apply to the service agreements executed as amendments to the

Brecksville EUL even though the agreements included significant long term payments by VA to obtain space and services, not the payment of in-kind consideration by VetDev for the EUL. Our review determined that OAEM did not include the normally required FAR clauses and that the agreements were executed by Mr. Edward L. Bradley, III a non-warranted official at OAEM. As discussed in the next section, this is of particular concern with the Domiciliary Services Agreement which involves a requirement to provide medical and mental health care. VA's EUL authority does not appear to include the types of service agreements that were executed as part of the Brecksville EUL. During our review, we asked OAEM and OGC whether the service agreements were considered leases or contracts. The consistent answer to our question was that they were neither because they were service agreements incorporated as amendments to the EUL; therefore, the normal rules regarding leases or contracts did not apply. As already stated, the service agreements are stand alone contracts with consideration that is separate and distinct from the consideration for the Brecksville EUL. We found no statutory or regulatory authority that allowed VA to incorporate additional agreements for space and other services in an EUL and thus avoid competition and other requirements set forth in law or GSA regulations for the lease of space and acquiring services. Although neither OAEM nor OGC views the service agreements as contracts or leases, OAEM, with OGC's concurrence, has delegated the administration of the service agreements, including the payment of invoices, to warranted contracting officers in the VISN. This has created a number of issues, as well as confusion, because the contracting officers are now expected to administer the service agreements in the same manner as they would a contract, but without an agreement that includes terms and conditions required by Federal acquisition laws and regulations and were executed by a non-warranted official in OAEM. Also, although OGC has determined that the service agreements are not contracts or leases, the agreements include language indicating that any disputes will be resolved through the Contract Disputes Act.

As we have demonstrated throughout this report, the fact that OGC has determined that neither contracting nor leasing laws and regulations apply to the service agreements has put VA in a vulnerable position. Based on the findings of this review, VA should take appropriate action to ensure the agreements are legal and in full compliance with all Government rules and that VA's interests are protected.

c. **The EUL Inappropriately Included a Service Agreement for Domiciliary Services.** The Domiciliary Care Program is VA's oldest healthcare program. Established by legislation in the late 1860's, domiciliary care was established to provide services to economically disadvantaged veterans and has evolved from a "soldier's home" to become an active clinical rehabilitation and treatment program for both male and female veterans. Domiciliary care is an integral component of VA's mental health continuum of care. In 2005, the Domiciliary Residential Rehabilitation Treatment Program became fully integrated with VA's other residential rehabilitation and treatment programs of the Office of Mental Health Services. For the reasons stated below, it was improper and a violation

of law to include the Domiciliary Services Agreement as part of the EUL. The Agreement did not include any in-kind consideration; the Agreement required the contractor to provide healthcare related services but did not include mandatory terms and conditions; and it violated VA policy regarding the provision of domiciliary care and, as a result, VA is paying twice for services.

1) The Domiciliary Services Agreement did not Include Any In-Kind Consideration for the Brecksville Property. In consideration for the Brecksville campus, the EUL agreement provides that VetDev make a cash payment and provide in-kind consideration. As previously noted, VA and VetDev agreed to \$6 million as the value of the Brecksville campus and the EUL stated VetDev would pay \$2 million cash to VA and provide \$4 million in in-kind consideration in the form of reduction in the monthly cost under the Service Agreements for the administration building and the parking garage. However, there was no consideration relating to the domiciliary services agreement in the EUL or in the Agreement. Based on interview with VA personnel, it was originally intended that VA would also receive a reduction in the monthly charges for the Domiciliary Services Agreement; however, due to unexplained financing factors it was determined that all in-kind consideration would come from the Administration and Parking Services Agreements. Since the in-kind consideration was not included in the Domiciliary Services Agreement, there was no reason to include this Agreement as part of the EUL. Even if VA were receiving some kind of consideration related to domiciliary care, it would be still be inappropriate to include the service agreement in the EUL for the reasons discussed in Section II a. regarding the administrative and parking service agreements. More importantly, VA policy prohibits the contracting out of clinical services in a domiciliary setting.

2) The Domiciliary Services Agreement Did Not Contain the Required Provisions for a Healthcare Resource Contract. The domiciliary services agreement, also referred to as the residential services agreement, includes clinical service requirements and payment based on an agreed upon all-inclusive rate per resident per day for domiciliary care, plus utilities and taxes. There was no evidence that VetDev had any experience in providing domiciliary or residential care. Exhibit D to the Agreement references psychosocial rehabilitative care, treatment plans, and mental health services. Exhibit D also requires at least one clinical staff person to be present in the domiciliary 24 hours per day. In addition, the Agreement does not require VetDev or its subcontractor to provide any medical malpractice insurance or other personal liability insurance as required for Healthcare Resource contracts awarded under 38 U.S.C. Section 8153 and enforced via Veterans Affairs Acquisition Regulation (VAAR) 852.237-7. In fact, the agreement does not state that VetDev or its subcontractors are not VA employees for the purposes of liability which may make the Government responsible under the Federal Tort Claims Act. Also, the Agreement does not identify specific standards of care except in a checklist contained in Exhibit C which states generally that care should meet "the standards

prescribed by industry standards and applicable laws." The checklist does have the following two requirements:

- i. Meets all Joint Commission Behavioral Health Standards
- ii. Meets all Commission on Accreditation of Rehabilitation Facilities (CARF) Standards

In addition, there are no performance standards or measures for payment.

3) The Domiciliary Services Agreement Violated VA Policy. The Agreement does not cite, incorporate or comply with VHA Handbook 1162.02, Mental Health Residential Rehabilitation Treatment Program (MH RRTP). VHA Handbook 1162.02, MH RRTP states in section 13 that all MH RRTPs should be established on VA property or in facilities owned, leased, or otherwise acquired by VA and that the beds must be designated as official VA beds in accordance with VHA bed control policy and reported on VA's Gains and Losses statements. The Handbook specifically states that VA may only outsource housing or related support services that are non-clinical in nature. VA staff is responsible for providing all clinical services in a domiciliary setting. Our review of the domiciliary services agreement and its exhibits makes it very clear that VA has contracted with VetDev and its sub-contractor VOA for clinical services in violation of VA policy.

Officials with OAEM and OGC told us that they were unaware that clinical care was being provided in the domiciliary. However, OAEM internal e-mails in early 2006 show that there was concern that VOA (VetDev's subcontractor for the domiciliary) was qualified to perform the "comprehensive clinical services doms require." The e-mails describe VOA as a "human services organization" that has only provided transitional housing services. The e-mail discussions also stated that the VOA director for Ohio was "quite put off by the requirements" for domiciliary care. Based on these emails we concluded that OAEM and OGC officials were aware of that clinical care was to be provided. Our conclusion is further supported by the fact that the Agreement defines clinical care and uses the word "clinical" throughout the agreement. The Agreement is an all inclusive agreement for complete domiciliary care including mental health. It appears that the only thing done to address the issue was to change the title of the service agreement from Domiciliary Services Agreement to Residential Services Agreement.

4) VA Clinicians Are Performing Certain Requirements Contained in the Domiciliary Services Agreement. During our site visit to the domiciliary, we determined that VA clinicians are assigned to and working in the domiciliary just as they were in Brecksville. VA employees are performing the duties that VetDev is required to perform under the Agreement. Based on our discussions with the VA domiciliary Director, VA management did not consult with domiciliary staff when planning to move the domiciliary to Wade Park. Domiciliary staff were not consulted regarding what

requirements would be needed in the new facility and were not informed that the entire domiciliary was going to be contracted out to VetDev and its subcontractor VOA. It wasn't until VA began having meetings to prepare to transfer VA residents from the Brecksville facility to Wade Park, that VA domiciliary officials learned that they would no longer be providing the clinical services they were providing in Brecksville because the new domiciliary would be completely staffed by VOA employees. When she became aware of the plan, the domiciliary Director immediately notified the VAMC Director that the services agreement violated VA Handbook 1162.02 and that VA cannot contract out a domiciliary. In response, local VA management made changes to put VA staff and clinicians in the domiciliary. However, local VA management did not notify VA officials in OAEM or OGC of the policy violation and that they were placing VA staff and clinicians in the domiciliary or that they would be performing the requirements VA was paying for under the Agreement and even though VA was paying twice for the same services, the Agreement was not rescinded or amended.

We verified that VA staff are performing the requirements that the contractor is required to do even though the rate negotiated with VetDev was an all inclusive rate. Our discussions with domiciliary officials found that there has been a significant learning curve due to an unacceptable situation with both VA and contractor staff attempting to run the domiciliary, which could impact the care provided residents. We found VA clinicians are required to share offices which makes it difficult to counsel residents while contractor staff, who do not provide counseling, do not share offices. Because the Agreement was not amended, the combination of VA and VOA staff in the Domiciliary creates an untenable situation because there is no clear separation of duties and responsibilities between VA and VOA personnel. As stated above, Exhibit C to the residential services agreement contains a checklist that requires the domiciliary to meet certain Joint Commission and CARF standards. VOA had no experience running a domiciliary that requires comprehensive clinical services; the only way the domiciliary has continued to meet the mandated standards is the presence of VA clinicians in the domiciliary performing work that VA is paying VetDev and VOA to perform.

We recommend that the Agreement for the domiciliary be immediately terminated because it is an improper contract and appears to be an unauthorized commitment. VA needs to determine whether the location of the domiciliary is appropriate to ensure the provision of services to all eligible veterans and either procure the required space through a properly awarded lease at Wade Park or consider relocating the domiciliary either to Brecksville or another location. If it is determined that there needs to be an agreement with VetDev until a long term solution can be identified and implemented, the agreement with VetDev should be renegotiated to reflect a lease for space, not clinical services. If services are needed to operate the domiciliary, VA should purchase those services through a second competitively awarded contract.

5) Location of the Domiciliary Increases Risk to Residents. During our site visit and discussion with VA domiciliary officials, we found that there were concerns regarding the wisdom of the moving the residents from Brecksville to Wade Park due to the change in environment. The Brecksville campus afforded patients more recreation options such as basketball, swimming, and park setting for walking in a suburban area that was free from distractions and temptations. The environment in Wade Park is dramatically different because of the urban setting. There are little to no recreational options and there are no grounds available to the residents to use that are free from negative environmental factors. Residents are often dealing with substance abuse issues and the Wade Park facility is close to areas that afford the opportunity to obtain drugs and alcohol. VA officials noted a decrease in participation in voluntary support meetings that are available to the residents. Another concern was the Compensated Work Therapy (CWT) is no longer available in the domiciliary. Although the CWT program is available in the hospital at Wade Park, because the domiciliary facility is contracted out, the program is not available for domiciliary residents to earn money, learn skills, and assist in their rehabilitation. Entering into a lease for space, not services would allow the CWT program to be available for domiciliary residents.

d. **VA Inappropriately Attempted to Expand the EUL Service Agreements.** Misuse of VA's EUL authority in Cleveland did not stop at the administrative, parking, and residential service agreements. Medical Center management attempted to use the service agreements to obtain additional space and services after the EUL was executed. This further evidences that VA officials viewed VA's EUL authority to procure space or services outside the normal leasing and contracting regulations. Medical Center management attempted to add space for dialysis services, additional mental health beds, and an outpatient surgery center to the EUL. All these would have been sole-sourced to VetDev under VA's EUL authority without being subject to FAR or GSA leasing rules.

1) Dialysis Services. On August 3, 2010 the Under Secretary for Health issued a memorandum that authorized a free-standing 12-chair chronic dialysis treatment unit in Cleveland, along with three other cities, as a pilot program to determine whether providing hemo-dialysis in-house rather than on a fee basis would result in a cost savings. On July 15, 2010, the former Associate Director at the Wade Park VAMC asked OAEM whether it would be possible to add the required space to the service agreement. When OAEM asked for some additional information including whether the Associate Director had approached the lessee/developer regarding the requirement, the Associate Director stated that "the developer in the past has stated they would have the ability to add space on the site." This statement indicates that local management had discussed obtaining additional space in Wade Park under the services agreement for the administration building.

More than a month passed before the OAEM queried the Associate Director regarding the addition of the space requirements for dialysis. At that time it appears that OAEM

was leaving everything to the station and was not involved at all with the decision process. OGC stated that OAEM needed the requirement in advance of a closing for the addition of the sixth floor to the administration building which was scheduled for September 6, 2010. OGC stated that OAEM wanted to avoid taking two modifying transactions to the Assistant Secretary for Management. This was not done and as time passed the requirement evolved into space for a dialysis center, Psychiatric Residential Rehab Treatment and Surgery Center as separate building(s) on the same parcel of property which was developed for the service agreement structures. On October 15, 2010, it was revealed to OAEM that the station wanted separate buildings for the services and OAEM explained that the EUL could only be used if the services were to be incorporated into the existing EUL space. Later that very same day, the Associate Director called OAEM and asked if they could add 12,000 SF to each floor of the domiciliary building in order to accommodate the required services and he indicated that the VAMC Director had already discussed this option with VetDev which indicated that they could add space to the domiciliary to accommodate the needed space. At the time, the buildings were under construction.

The dialysis pilot program included a timeline for completion that required leasing space by September 2010. The Wade Park VAMC was significantly behind schedule because by mid October they still had not secured space. Once the plan to use the EUL to obtain space fell through, they were forced to use mandatory processes to obtain space through competition.

The geographical boundary requirements initially identified by Medical Center management were so narrowly defined that only the plot of land on which VetDev was constructing the EUL properties would have qualified. Once the EUL was denied, at the insistence of the contracting entity, the geographical boundary was expanded and GSA was queried as to whether they had any buildings available in the area, which they did not. When GSA did not have any space, the geographical boundary was again expanded and a sources sought was published in the newspaper. The geographical restriction was mandated by Wade Park VAMC under the guise that the patients receiving dialysis must be close to a hospital in case something went wrong during the procedure. However, the pilot proposal cited access for Veterans as one of the major objectives and restricting the geographical area only serves to increase potential costs to VA. Demographic studies support that a majority of Northeast Ohio's End Stage Renal Disease patients requiring dialysis are residents of Cuyahoga County. However, Cuyahoga County is 457 square miles and its population is 1.3 million; therefore limiting the geographic area to Wade Park was unreasonably restrictive and did not put our nation's veterans needs over the quest to purchase space from VetDev. Notwithstanding the requirement to obtain space by September 2010, the acquisition plan was not developed until April, 2011.

VetDev submitted a proposal for the requirement along with another vendor. On September 21, 2011 there was a regularly scheduled contract status meeting to brief the

Medical Center Director. During the meeting, the Director received a call from an unknown person informing her that a vendor other than VetDev was the successful bidder. In this meeting she queried the caller about who the successful bidder was, and who was on the source selection committee. Witnesses stated that it was a frantic call and the Director was heard saying something to the effect of “Well how did they get this?” She then excused herself from the meeting and went to an open area in the Director’s suite but was talking loud enough for others in the meeting to hear. The following day, VetDev called the VISN Contracting Office directly to inquire as to whether they could submit a revised proposal for the requirement. They were told no, and the award was made to the other vendor.

2) Mental Health In-Patient Beds and Outpatient Surgery Center. In addition to the Dialysis Center, Wade Park attempted to expand the Service Agreements to add space to accommodate Mental Health In-Patient Beds and an Outpatient Surgery Center. Wade Park was informed on October 15, 2010, by OAEM that expanding the Administration Service Agreement to include these services was not feasible. In response, Wade Park confirmed that they had stopped all processes relating to the expansion of services under the service agreements. However, just 2 hours later the former Associate Director requested that an amendment be executed to the Residential (Domiciliary) Service Agreement to add 12,000 square feet to each floor to accommodate the three services. This conduct further shows Wade Park’s intent to circumvent established laws and regulations regarding the acquisition of space and was willing to pay VetDev non-competitive rates to expand the buildings to accommodate the defined needs.

e. The Service Agreements Included Provisions Giving VetDev Sole-Authority to Obtain Services Needed to Make Modifications to the Properties. The service agreements included a stipulation that any modifications to the properties would be performed by VetDev. This prevents VA from competitively awarding contracts based on the best value to VA. Had the space been leased through GSA or VA, the agreement would have required either VA or the lessor to obtain competitive bids for award. Under the service agreement, VetDev controls the work and the costs and VA merely pays whatever VetDev bills. Change orders to the services agreements totaling \$12.4 million were given to or issued by VetDev without competition. VA issued purchase orders and obligated funds for the work based solely on the prices quoted by VetDev.

The most egregious example is the change order for \$6,367,550 to upgrade the Data Center from Tier II to Tier III+. This change order was issued to VetDev on September 24, 2010, using a purchase order with a not to exceed (NTE) value. We noted that the former Director stated publicly at that time that the new Data Center would be Tier III and that the press release issued by Zeigler Capital Markets (an investment firm providing marketing assistance for the Cuyahoga County Port Authority bonds) at the signing of the EUL also stated that the deal included a Tier III data center. However, the service agreement clearly stated that the data center was Tier II but upgradable. The

approval for the upgrade rested solely with the Region 3 Director, OI&T who approved the recommendation by the Network Chief Information Officer (NCIO), VISN 10. We also found that the National Data Center Program includes an initiative to consolidate all VA enterprise and mission critical systems into National Data Centers. This initiative was addressed in the memorandum from the NCIO but discounts it as not providing the level of services that the station desired. If Tier III was the requirement (and understanding) at the time the EUL was executed, there is no excuse for OAEM to execute the service agreement with only Tier II. Either there was no communication regarding the requirements or the Tier II Center was included with the intent to funnel additional funds to VetDev through a change order. We note that the issues involving the upgrade occurred in the same timeframe as the decision to add an additional floor to the administration building for EES.

During our site visit Dave Sabol, Chief of Engineering provided additional documentation for the change order because we questioned why the independent Government estimate was higher than the amount proposed by VetDev. The documentation he provided shows that the independent Government estimate actually matched a revised proposal by VetDev to upgrade from the Tier III data center to a Tier III “+” data center. The fact that the independent Government estimate matched identically to the revised proposal and final cost for the Tier III+ data center calls into question whether VA actually did any independent analysis of the cost to upgrade the data center to Tier III+. We also questioned Mr. Sabol on whether adjustments would be made to the purchase order if the cost to perform the services was less than the NTE value. He stated that there was supposed to be an accounting and appropriate adjustment. However, we found that payments were based on a percentage of completion and there was no evidence that any adjustments had been performed. Furthermore, with the resignation of the Associate Director, OAEM assigned Sabol as the Local Site Monitor (LSM), an action that we take exception to. During our review we expressed concern to OAEM and OGC regarding interactions between the former Associate Director and VetDev, particularly with regard to the security issue. In response, OAEM appointed him as the LSM. For the reasons discussed above, we have the same reservations about Sabol. VA should assign an appropriate LSM that is not involved in the problems we have identified at Wade Park and has a prior history of performing well in similar roles.

Other purchase orders that were executed included upgrading finishes (in excess of the standard per square foot allowance), extending the pedestrian elevated covered walkway, and additional build out costs associated with EES specifications. All of the purchase orders were awarded without competition and without adequate price reasonableness determinations.

f. Concerns Regarding VA's Involvement in the Financing. VetDev obtained financing to build the administrative building and the parking garage through a bond issued by the Cleveland-Cuyahoga County Port Authority (Port Authority). VA officials were involved in numerous meetings and e-mail discussions regarding financing rates and terms. A few examples that show involvement are:

- On January 25, 2007, VetDev's law firm, Vorys, e-mailed the former Director asking him if VA would accept a less variable rate for financing because it was making it difficult to secure lender commitments.
- On April 21, 2009, VA hosted a meeting and tour of Assured Guaranty (a leading municipal bond insurer) officials at Wade Park and Brecksville to help VetDev in securing their needed financing. This meeting was attended by local VA senior management, OAEM officials, OGC, JLL, and Kutak Rock, the law firm that provided consulting services to OAEM through JLL. In preparation for this meeting, Mr. Bradley expressed concern that the focus was too much on VA and not on VetDev as the developer.
- On June 30, 2009, the former Director sent a letter to the President and Chief Executive Officer of the Port Authority requesting a special meeting on July 10, 2009, for the purpose of reviewing and approving the financing for VetDev's project. The meeting was scheduled for July 10, 2009, and the financing was approved the same day.
- On July 15, 2009, the former Director participated in a telephone call led by Fifth Third Securities who providing assistance in finding investors for VetDev and the Port Authority bonds.

VA officials also reviewed and provided input into the Private Placement Memorandum that was used to solicit potential institutional investors for the Port Authority bonds. Although VA's consultant, JLL, made a disclaimer that VA did not review the underlying documents and was not rendering an opinion, there was still the appearance that VA was involved in the financing.

Also, one of the key components to VetDev's financing for the office and parking structures was to use Tax Incremental Financing (TIF) to help service the Port Authority bond debt in addition to VA's payments under the service agreements. TIF is an economic development tool that allows the City of Cleveland to re-direct the new incremental property taxes on the increased value of a property to help in the financing of a project. The TIF required legislation by the Cleveland City Council. One of the 14 counts in the corruption indictment against Forlani alleges that he conspired to bribe a city council member who then sponsored several pieces of legislation authorizing TIF for VetDev's VA project. The council member involved has pled guilty to charges of bribery. Records show that prior to the city council considering TIF legislation for the VetDev project in Wade Park, the former Director met with the Mayor of Cleveland to discuss the city granting a TIF to VetDev. The mayor expressed concern that a TIF may

not be politically feasible. On June 20, 2006, the former Director met with JLL, VOA, VetDev, and, OAEM officials to brief them of his meeting with the Mayor of Cleveland. In late 2006 and early 2007 the Cleveland City Council approved legislation granting a TIF to the VetDev VA project. The former Director also agreed that VA would provide 50 internships for local juniors and seniors from the Cleveland Metropolitan School District as the school district was losing tax revenue from the TIF from the property used for the VA project.

III. Privacy Act Issues Related To Move From Brecksville

Issue

Whether employees of the Wade Park VAMC violated the Privacy Act and other confidentiality statutes, regulations, and policies when (1) Human Resources (HR) documents containing employees' names and dates of birth were left in an unsecure hallway, (2) documents containing veterans' health information, to include 38 U.S.C. § 7332 information, were left in an unlocked room, and (3) documents were left in the VAMC Director's unlocked office.

Findings

We concluded that employees of the Wade Park VAMC unintentionally violated the Privacy Act and other confidentiality statutes, regulations, and policies when the employees left HR documents containing employees' names and dates of birth, and documents containing veterans' health information, in unsecure locations. We did not find that the documents left in the Director's office violated any statutes, regulations, or policies.

In September 2011, a portion of the Brecksville VAMC facility was closed and services were moved to the Wade Park VAMC. Prior to the move, the Wade Park VAMC director's office sent out notices through the VA Pulse system (a news flash sent to employees) giving instructions to employees on how to move records.

The March 2011 and April 2011 News Flashes instructed employees to (1) contact and work with the office Records Liaison Officer and Records Manager Officer, (2) use Federal Records Center boxes to move records, (3) inventory the records that were being transferred, which would establish a "documentation trail" when records are destroyed or transferred and would protect the privacy and security of information throughout the record life cycle, and (4) if multiple offices were moving boxes simultaneously, use color labels to aid in identification of boxes belonging to specific organizational units. The employees were instructed not to leave sensitive or confidential information unattended on loading docks or other unsupervised areas. The Wade Park VAMC Director told us that the employees were instructed to place any records that were to be shredded in a locked bin and documents that were to be moved to the new facility were to be placed in boxes. After the move, on three separate occasions, a VA employee found VA records that contained veterans' and VA employees' private and confidential information in unsecure areas. These incidents are outlined below.

Human Resources Documents – December 7, 2011

On December 7, 2011, a VA employee who continued to work at the Brecksville VAMC after the move, was walking within the Brecksville VAMC and found documents on the floor next to an open door that leads to the outside of the building. The documents included employee pay stubs, Office of Personnel Management (OPM) Forms SF52s (HR documents), and VA employee service records, all of which belonged to three Wade Park VAMC employees. The records also included leave and earning statements of a Wade Park VAMC employee. The VA employee who found the documents reported the incident and turned over the documents to the Wade Park VAMC Privacy Officer.

The Privacy Act provides requirements for the safekeeping and appropriate disclosure of records that are maintained in a Privacy Act system of records. 5 U.S.C. § 552a. A Privacy Act system of records is a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. 5 U.S.C. § 552a(a)(5). The HR records that were found in an unattended and unsecure location are maintained in the Personnel and Accounting Pay System-VA Privacy Act System of Records (27VA047). The categories of records in this Privacy Act System of Records include earnings and leave statements and personnel action records and basic authorizations, which are the types of records that were found. Therefore, these records are part of a Privacy Act system of records and the safekeeping of these records are governed by the Privacy Act.

The Privacy Act requires that each Federal Agency establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. 5 U.S.C. § 552a(e)(10).

The VHA has established a policy that implements this provision of the Privacy Act. According to VHA Handbook 1605.1(3)(d)(1), VHA, including each health care facility, must ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of individually-identifiable information and records, including protected health information (PHI) and records, and to protect against any anticipated threats or hazards to their security or integrity which would result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. The Wade Park VAMC has also established a policy regarding the safeguarding of records. According to the Wade Park VAMC Privacy Policy (Medical Center Policy 136-049(3)(1)(3)), “[a]ll individuals who have access to sensitive information are responsible for...[a]ppropriately safeguarding printed and electronic [individually identifiable information (III)].”

As the HR records were found in an unsecure location and other individuals, including members of the general public, could have viewed those documents, we find that this incident was a violation of the Privacy Act, VHA Handbook 1605.1, and the Wade Park VAMC Privacy Policy. Since this incident, the Wade Park VAMC Privacy Officer conducted a fact-finding investigation and spoke to the VAMC employee and the service chief of the office that was responsible for leaving the documents in an unsecure area. After reviewing the documents, the VAMC employee who was found responsible for leaving the documents at the Brecksville VAMC also acknowledged ownership of the documents. The employee stated that the documents may have slipped behind the desk or were not seen when the office was vacated during the move. After this interview, the VAMC Privacy Officer determined that the incident was not intentional or malicious in nature. The service chief has stated that corrective action has been taken regarding the employee and credit monitoring services were offered to the individuals whose information was on the documents. Although we found that the incident noted above is a violation of the Privacy Act, VHA Handbook 1605.1, and the Wade Park VAMC Privacy Policy, as the incident was not intentional and corrective action has been taken, we have no further recommendations regarding this incident.

Veterans' Medical Records – January 3, 2012

On January 3, 2012, a VA employee noticed a pile of records on the floor in the prior Quality Management office. The documents included patients' social security numbers, birthdates, addresses, and health treatment information. The VA employee left the documents in the room and reported the incident to the Wade Park VAMC Privacy Officer, who came to retrieve the documents.

The next day, the Privacy Officer entered a Privacy Violation Tracking System (PVTS) ticket and informed Senior Management of the incident. The VA Police Service was sent to the Brecksville VAMC to secure any unsecure areas while they did their rounds. Two individuals were also sent to the facility to conduct a sweep of the hospital to ensure no other records were left.

We reviewed the documents and found that the documents were dated from 1990 to 1995 and included veterans' Personally Identifiable Information (PII) and PHI to include information protected by confidentiality statute 38 U.S.C. § 7332, which prohibits the disclosure of records of the identity, diagnosis, prognosis, or treatment of any patient relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The provisions of this statute are more stringent than other confidentiality statutes and provide for fines if any person violates this statute.

The Cleveland VAMC Privacy Officer determined that there were 702 unique patients whose information was in these records. Below is a table that identifies the type of information that was included in the records.

Table 5—Information Contained in Records

Unique Occurrence	Category	Deviations
14	Patient Name Only	Last Name only or Last name + First Initial
183	Initial and Last 4 of SSN	Only the Last Name initial and last 4 of SSN (X0000) with no other identifiers. Some had admit date or discharge date
363	Full Name and Full SSN	Includes Clinic and appointment date (for 115 of the 363). Data is listed on rosters.
125	Patient Full Name and Last 4	Some include Ward and Date of Admission (all death patients)
17	Full Name, SSN, DOB, Address	Contains full patient name, SSN, DOB, and Home address
702	Total unique patients	

After the documents were found, the Privacy Officer reported the incident to the VA Network Security Operations Center (NSOC). The NSOC found that credit monitoring services were not necessary because there was no evidence of tampering with the documents.

The Privacy Officer then spoke with the Chief, Quality Management (Service Chief) to determine whether the documents belonged to Quality Management. We also spoke with the Service Chief who told us that many of the documents belonged to a nurse who worked in Quality Management years ago who handled Long Term Care. That nurse is no longer employed at the Wade Park VAMC. In addition, the Service Chief stated that the documents did not seem to belong to one specific department. The Service Chief also stated that all of the filing cabinets in the Brecksville VAMC Quality Management office were cleared prior to the move; therefore, it was not certain how the documents could have been found in the Quality Management office. The Service Chief was told that the contractors were using the Quality Management office as a storage area since the door was unlocked. Therefore, it is possible that the documents were stored in another office and were brought into the Quality Management office after the move from the Brecksville VAMC.

Based on the lack of information as to how the documents came to be in the Quality Management office, we cannot determine who was responsible for this incident. However, as the documents were dated from 1990 to 1995, it is apparent that they were no longer being used and should have been destroyed in accordance with the Records Management Retention schedules for Quality Management records for VA. (See SF 115-

109, Job Number N1-15-97-4, dated April 21, 1997, which states Quality Management records must be destroyed after three years, unless they are needed for research studies, legal purposes, or quality assurance purposes.) We found that unknown Wade Park VAMC employees violated the Records Management Retention schedule when they did not comply with the schedules and destroy the records after three years.

We also find that Wade Park VAMC employees violated the Privacy Act, VHA Handbook 1605.1, and the Wade Park VAMC Privacy Policy when they did not adequately secure these records. Although we cannot determine with certainty where the documents were left, it is apparent that they were left in an unsecure location since contractors were apparently able to access the documents after the move from the Brecksville VAMC. As stated previously, we are not able to determine the specific employee who violated the Privacy Act, VHA Handbook 1605.1, and Wade Park VAMC Privacy Policy.

Although we are not able to determine the specific employee or department that was in violation of the Records Management Retention schedule, we do recommend that the Wade Park VAMC Director ensure VAMC employees receive training on proper records management and the provisions of applicable Records Management Retention schedules so documents are maintained or destroyed in a manner consistent with these retention schedules.

Further, although we do not make any specific recommendations regarding any VA employees as it relates to the violation of the Privacy Act and related handbooks and policies, we do make a general recommendation that the Wade Park VAMC Director ensure the VAMC employees comply with the Privacy Act and other confidentiality statutes such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and 38 U.S.C. § 7332, VHA Handbooks, and the Wade Park VAMC privacy policies, by appropriately safeguarding VA employees' PII and veterans' PHI and PII.

Director's Office – January 6, 2012

On January 6, 2012, a VA employee saw documents in the Brecksville VAMC's Director's office and the office door was unlocked. The VA employee reported the incident to the Wade Park VAMC Privacy Officer. After speaking with the Director's office, we determined that individuals from the Director's office were in the Brecksville VAMC office on that day performing work. Therefore, we found that there was no intentional violation of the Privacy Act or other privacy policies as it relates to these records and we will not discuss this incident further.

Conclusions

The closing of the Brecksville property in its entirety and consolidation to Wade Park was not in VA's best interest. There simply was not enough space at Wade Park to accommodate all the services and VA employees. Our review found no legitimate support for the numbers used to show cost savings due to the consolidation. As such, the figure constantly changed in various presentations from a low of \$10 million per year to a high of \$30 million per year. However, we found no support for the numbers and determined that VA had not conducted a comprehensive and authoritative cost analysis of the various options available to the Cleveland VAMC.

Our review also determined that using VA's EUL to procure needed space and services is not appropriate. The Brecksville EUL was used as a mechanism to transfer services and employees to leased space where senior VA managers wanted them to be and the inclusion of the services agreements for office, parking, and the domiciliary was inappropriate. These agreements are independent agreements with their own consideration separate from the Brecksville EUL. VA officials wanted to include them as amendments to the EUL to avoid normal contracting and leasing regulations. This action has caused VA to overpay for all services because it has essentially made the service agreements sole-source awards without adequate competition. This arrangement has also caused an increased security risk to VA employees and patients due to the lack of physical security in the office building, parking garage, and most importantly, the domiciliary.

Our review of the domiciliary services agreement found that it did not contain the necessary contract provisions contained in Healthcare contracting to protect VA's interests. We also determined that the residential services agreement as written violated VHA Handbook 1162.02, Mental Health Residential Rehabilitation Treatment Program (MH RRTP) which prohibits contracting out of domiciliary services. The daily bed rate in the service agreement was negotiated as an all-inclusive rate; however, we found VA clinicians and staff are located in the domiciliary and performing responsibilities contained in the services agreement. Therefore, VA is overpaying for services and appropriate administration of the residential services agreement is no longer feasible since VA has assumed certain responsibilities of the service provider.

Based on the documentation, analysis, and interviews we conclude that neither VA nor its consultant acted in VA's best interests and has caused VA to overpay for space indefinitely and has jeopardized the physical security of VA employees and patients.

Recommendations

We recommend that the **Under Secretary for Health**:

1. develop a long range plan that addresses the significant space shortages at Wade Park caused by the EUL for the Brecksville division;
2. in coordination with the VAMC Cleveland Director, ensure the VAMC employees comply with the Privacy Act and other confidentiality statutes such as HIPAA and 38 U.S.C. § 7332, VHA Handbooks, and the Cleveland VAMC privacy policies, by appropriately safeguarding VA employees' PII and veterans' PHI; and,
3. in coordination with the VAMC Cleveland Director, ensure the VAMC employees receive training on records management and the provisions of applicable Records Management Retention schedules.

We recommend that the **Executive in Charge for the Office of Management and Chief Financial Officer** and VA's **General Counsel**:

4. convene an independent group to determine the appropriateness and the legal sufficiency of the Brecksville EUL and service agreements contained in the EUL, particularly in light of the indictment of Michael Forlani and the suspension of VetDev and other entities identified in the indictment, and take appropriate action to include long and short term plans, including the renegotiation of the terms and conditions of the agreements for the administration building and the parking garage;
5. make a referral to the VA's Procurement Executive for a determination whether any of the service agreements constitute an unauthorized commitment and, if so, take appropriate action to rectify the problem;
6. immediately determine what services VOA is actually performing and which services VA employees are performing and what services, if any, VA needs from VOA. Consideration should be given to simply leasing the existing space, with VA employees providing all the services, or relocating the domiciliary; and,
7. issue a bill of collection to VetDev to recoup the VA determined value of the overbilling relating to the failure to provide security services.

We recommend that the **Executive in Charge for the Office of Management and Chief Financial Officer**:

8. take immediate steps to identify the security requirements for the administration building, parking, and domiciliary space and develop a plan of action to ensure the safety and security of VA employees, veterans, and their families.

We recommend that the **Under Secretary for Health**, the **Executive in Charge for the Office of Management and Chief Financial Officer**, and VA's **General Counsel**:

9. do not execute any amendments to the current EUL or the service agreements to add additional space or services without review and approval by an independent third party. We recommend that any additional requirements for space by the Wade Park VAMC be reviewed and approved in advance by VHA's Chief Procurement Executive to ensure the legitimacy of the requirements, including the area of consideration.

Acronyms

CARES—Capital Asset Realignment for Enhanced Services
CARF—Commission on Accreditation of Rehabilitation Facilities
CBOC—Community Based Outpatient Clinic
CO—Department of Veterans Affairs Central Office
CWRU—Case Western Reserve University
CWT—Compensated Work Therapy
DNCP—Draft National CARES Plan
DOB—Date of Birth
EES—Employee Educational Service
EUL—Enhanced Use Lease
FAR—Federal Acquisition Regulation
FTEE—Full Time Employee Equivalent
FY—Government Fiscal Year
GSA—General Services Administration
HIPAA—Health Insurance Portability and Accountability Act of 1996
HR—Human Resources
JLL—Jones Lang LaSalle
MH RRTP—Mental Health Residential Rehabilitation Treatment Program
MOU—Memorandum of Understanding
NCIO—Network Chief Information Officer
NPV—Net Present Value
NRM—Non Recurring Maintenance
NSOC—Network Security Operations Center
NTE—Not To Exceed
OAEM—Office of Asset Enterprise Management
OPM—Office of Personnel Management
ORM—Office of Resolution Management
OGC—Office of General Counsel
PHI—Protected Health Information

PII—Personally Identifiable Information

PVTS—Privacy Violation Tracking System

RFP—Request for Proposal

SCIP—Strategic Capital Investment Plan

SSN—Social Security Number

TIF—Tax Incremental Funding

VA—Department of Veterans Affairs

VAAR—Veterans Affairs Acquisition Regulations

VAMC—Department of Veterans Affairs Medical Center

VHA—Veterans Health Administration

VISN—Veterans Integrated Service Network

VOA—Volunteers of America

Management Comments

**Department of
Veterans Affairs**

Memorandum

Date: AUG 31 2012

From: Under Secretary for Health (10), Executive in Charge, Office of Management, and Chief Financial Officer (004), and General Counsel (02)

Subject: OIG Draft Report – Review of the Enhanced Use Lease between the Department of Veterans Affairs and Veterans Development, LLC

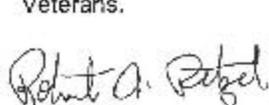
To: Office of the Inspector General (50)

Thank you for the opportunity to review and comment on the subject draft report. The OIG review outlines concerns about the consolidation of the Brecksville campus to the Wade Park campus, how VA's enhanced-use lease (EUL) authority has been used in this location, and security, privacy and other issues.

The Veterans Health Administration, the Office of Management, and Office of General Counsel reviewed the subject report thoroughly. A workgroup comprised of senior Department officials, including leadership from Veterans Integrated Service Network (VISN) 10 and the Cleveland VA Medical Center (VAMC), have identified areas of agreement and disagreement with the content of the draft report. These are noted in the attachment, "Response to OIG Review of the Enhanced Use Lease between the Department of Veterans Affairs and Veterans Development, LLC." This collaborative response document provides background and context, explains differences from what the OIG reports, and includes supporting explanations for VA concerns. The action plan to the OIG recommendations is also attached.

The consolidation of the Wade Park Campus and the Brecksville Campus has allowed VA to improve service delivery and maximize operational efficiencies by consolidating two VAMC campuses that were 22 miles apart into one state-of-the-art facility while continuing to provide safe and high quality care to Veterans. It is important to note that the EUL transaction at Brecksville came well after the consolidation decisions had been made and was just one element of the overall strategy. The EUL was not a driver of the consolidation decisions, but a tool used after the decision to consolidate had been made.

We appreciate your consideration of the comments provided with the goal of publishing a comprehensive final report. We will ensure that future efforts apply the lessons learned and build on what has been a solid foundation for improving services to Veterans.


Robert A. Petzel, M.D.


W. Todd Grams


Will Gunn

Attachments

**RESPONSE TO OIG REVIEW OF THE ENHANCED USE
LEASE (EUL) BETWEEN THE DEPARTMENT OF VETERANS
AFFAIRS AND VETERANS DEVELOPMENT, LLC (VetDev)
August 31, 2012**

Cleveland VA Medical Center (VAMC) Consolidation Background

In 2004, VA was faced with the challenge of modernizing facilities to provide state-of-the-art care to our Veterans in the Cleveland Ohio area, with limited construction funding, and in concert with the CARES REPORT's underlying "mission realignment" decision. The Cleveland VAMC (composed of the Wade Park Campus, Brecksville Campus, and all associated community-based outpatient clinics (CBOCs)) was saddled with outdated facilities at both campuses. The sites contained a multi-divisional set of facilities designed in the 1950's. In addition to outdated facilities, the Veteran population in suburban Brecksville was limited and services provided at Brecksville (e.g., mental health and homeless care) were needed in the significantly greater Veteran population area of Wade Park.

In the succeeding years, health care and Veteran demographics experienced monumental changes nationwide and in the Cleveland area. VA saw these changes and developed a forward looking and dynamic plan. The plan relied on and reflected a mix of traditional and innovative capital funding strategies - to provide platforms for the delivery of cutting-edge health care services in modern, "state-of-the art" facilities.

A hallmark of this approach was to provide flexibility in responding to the changing needs of Veterans by providing polytrauma, comprehensive rehabilitation, long term spinal cord injury and blind rehabilitation services and evolving health care delivery modalities. It was understood that VA, as well as the country, would experience unanticipated health care delivery and demographic changes in the future, and VA had to be ready. VA did not want to retain outdated, costly facilities for the sake of having them, or merely to forgo tough decisions that were in the best interests of the Department, taxpayers, and our nation's Veterans. The circumstances called for VA to find a way to use, repurpose, and adjust core facilities at Wade Park, and augment them with flexible, legal arrangements for office, parking, and residential services, which VA could reduce, increase, or terminate at the end of the pertinent services periods.

The end result was a balanced implementation of the consolidation approach through the execution of major, minor, and EUL projects. As a result of the Cleveland consolidation, VA now has much needed office, parking, and residential services near the Wade Park campus. These facilities are located in close proximity to VA's Wade Park acute care and other facilities that serve the core Cleveland-area Veteran population. The consolidation has facilitated immediate access to acute care services for 344 long term care, mental

health, and residential care inpatients previously located 22 miles away. VA's consolidation to Wade Park has improved Veteran healthcare, including reducing the risk of adverse patient outcomes as evidenced by reduced fall rates and infection rates through new private and semi-private rooms. It has also generated revenue for VA, resulted in certain savings to tax payers, and enabled GSA to redirect and sell excess personal property (e.g. equipment, furniture, etc.)

This consolidation effort was not without some sense of trepidation and challenge. VA anticipated from the start of the process that this process and change would not be convenient for a relatively small number of employees. But ultimately, it was the right thing to do, so VA could provide 21st Century healthcare and services to Veterans, with the flexibility to address future needs, and navigate impending challenges. VA is now well positioned to provide and care for current and future Veterans in the Cleveland area.

Lastly, VA's outleasing of the Brecksville campus through the Cleveland EUL will bring about new development on the campus compatible with local zoning, which will benefit the surrounding community, and stimulate the local economy through the creation of jobs and tax revenues.

Secretary's CARES Decision

In May 2004, the former Secretary of the U.S. Department of Veterans Affairs (VA) signed and published the "Capital Asset Realignment for Enhanced Services (CARES) – CARES DECISION." In the Statement of the Secretary he noted,

*"CARES is a comprehensive, system-wide approach to, and ongoing process for, identifying the demand for VA care and projecting into the future the appropriate function, size and location for VA facilities. CARES is not a simple one-time solution, but the creation of a set of tools and a process for annual capital and strategic planning to enable VA to keep its eyes fixed on the future as it plans for the capital resources it will need to provide quality health care to veterans."*⁹

The Secretary's decisions were based on the recommendations of an independent commission with 16 members named by the Secretary for their, "...firm grounding in, and commitment to, Veterans and Veterans' health care."¹⁰ The Secretary noted that the findings of the CARES Commission Report were "... grounded not only on the collective analyses of the Commissioners, but on the personal experience gained from 81 site visits to VA and DoD medical facilities and State Veterans Homes, 38 formal public hearings at 20 VISNs, monthly public meetings since February 2003, and more than

⁹ Secretary of Veterans Affairs, Office of the Secretary, "Department of Veterans Affairs Capital Asset Realignment for Enhanced Services (CARES), CARES DECISION," May 2004, page I-3.

¹⁰ Ibid, I-4.

212,000 public comments on the Draft National Cares Plan (DNCP).”¹¹ The CARES Commission completed a public hearing on August 12, 2003 as part of their due diligence.

The focus on providing health care to Veterans is central to the theme of the document, and is highlighted in “Mission Change and Campus Realignment, Brecksville and Wade Park Divisions of the Cleveland VAMC”¹² where the Secretary’s Decision stated the following:

“VA will consolidate the Brecksville Division to the Wade Park Division of the Cleveland VAMC. This consolidation will be accomplished through an enhanced use lease and major construction project that will modernize and expand the patient care facilities at the Wade Park campus. Once completed, this will allow VA to provide Cleveland area Veterans with health care at one newly renovated and comprehensive tertiary medical center.

This consolidation will improve services for Cleveland veterans. New construction and renovation will improve the environment of care by replacing aging patient care buildings at Brecksville with new and renovated facilities at the Wade Park VAMC. It will improve coordination of care by collocating all patient treatment and administrative services at one medical center that can comprehensively handle all of the inpatient care needs of Cleveland area Veterans.

*The consolidation also will improve resource use, redirecting patient care resources from maintenance of aging facilities at Brecksville to patient care at the expanded Wade Park VAMC.”*¹³

Charged by the Secretary with implementing this 2004 decision, VA was faced with multiple difficult strategic decisions to make the shift while keeping Veterans’ healthcare the top priority. In making these complex decisions, it was impossible to please everyone, including those VA organizations and personnel who would be affected by the move. The Secretary recognized this potential impact on staff, and potential for short-term increase in staff numbers noting in his decision, “For employees, VA will seek to minimize any impact by reassigning staff to other work areas and providing appropriate retraining if necessary. Should any negative impact in employment occur, VA will manage any changes in employment through natural attrition, transfer, early retirement, retraining or other mechanisms.”¹⁴ However, the heart of the plan was to provide our Nation’s heroes with state-of the-art healthcare, by world-class providers, in an

¹¹ Ibid, I-3.

¹² Ibid, I-3.

¹³ Ibid, 3-69.

¹⁴ Ibid, 3-70.

environment comparable to any other healthcare facility, and located as centrally as possible to where Veterans live.

Complex Implementation Decisions

The plan to implement the Secretary's decision was complex, dynamic and spanned nearly a decade from inception to completion. There were multiple inter-dependent factors to be considered in these decisions including aging/inefficient buildings at the Brecksville campus that were outdated for current Veteran medical and safety needs and shifting Veteran population. The consolidation decision was validated by VA and the CARES commission and independently validated by external contractors. It was concluded that a consolidation was in the best interest of Veterans based on the costs, Veteran access needs, and quality of care. In response to issues recently raised by OIG, the Office of Construction and Facilities Management (OCFM) completed estimates of the costs to renovate or replace the Brecksville Campus. These estimates were completed in 2007 dollars in order to make direct comparisons to the Bed Tower construction funding received in 2007. The results are as follows:

- Replacement of Brecksville campus facilities with new construction at the site (2007 dollars) would have cost \$601 million, including a replacement energy plant and parking structure.
- Renovation of Brecksville campus (in 2007 dollars) would have cost \$406 million.

In comparison, the total cost to acquire new space at Wade Park to facilitate the consolidation was approximately \$226 million, which includes the cost of the new Bed Tower, minor construction projects at Wade Park associated with the consolidation, and the net present value of the office, parking, and residential service agreements at Wade Park. In terms of the capital investment required, consolidation at Wade Park is clearly the best option.

The capital investment analysis shown above does not include the operational cost benefits of a consolidation at Wade Park. As demonstrated in a later section of this response, the operational cost savings realized from the consolidation are:

- Annual Savings from Operations: \$19.4 million
- One-Time Savings: \$156 million

The consolidation decision is a positive investment for VA over the short and long term when considering the annual savings from operations and the annual costs of all service agreements, including amendments. The Net Present Value (NPV) of the consolidation project over the first ten years is a positive \$5.23 million. The 20-year NPV is a positive \$25.47 million. This NPV analysis uses the latest discount and inflation rates per guidance included in OMB Circular A-94, Appendix C.

The goal of consolidating a two-campus medical center located 22 miles apart, each of which provided inpatient services and required many redundant operations, was to: 1) provide safe and high quality care to Veterans, and 2) maximize operational efficiencies.

Ensuring Adequate Health Care Delivery

In the spirit of the VHA Mission, to “Honor America’s Veterans by providing exceptional health care that improves their health and well-being,” as well as the Secretary’s CARES mandate to improve services for Cleveland Veterans, implementation of the consolidation was done with careful consideration of Veterans’ health care needs. A decline in demand for services needed at the large Brecksville Campus, originally designed as a 999-bed psychiatric and rehabilitation facility with extensive, older infrastructure, meant that more effective delivery options needed to be considered. Expanding and/or upgrading the Brecksville Campus would not be aligned with VA’s commitment to Veterans and focus on providing health care to Veterans. Despite the limited Veteran population in the Brecksville area and the decline in demand for inpatient services at Brecksville, from project inception to execution, the number of unique Veterans treated each year at all Cleveland VAMC locations increased by 70% (from 60,940 in 2000 to more than 103,607 in 2011). The huge increase in Veterans treated has been accomplished cost-efficiently. As of April 30, 2012, Cleveland VAMC’s cost per prorated patient is \$5,100.86 (including the Service Agreement costs and costs for Brecksville Campus) compared to the average of \$5,392.35 per prorated patient for all level 1a medical centers (source: VHA Cost and Workload Cube, vhaarcdb11\pcs01 as of April 30, 2012). Cleveland VAMC’s current operating budget exceeds \$800 million and supports more than 4,100 employees, making it one of the largest and most complex in VHA.

In addition to workload factors, VA drive time standards for primary medical and mental health care were not being met at the Brecksville campus. As VA moved to a performance metric system where success was measured by having access points within 30 miles or 30 minutes of the home of 70% of Veterans, decisions were made so VA could continue providing the highest level of health care and reduce the risks associated with splitting services. These decisions included the addition of one CBOC in Parma, Ohio, to complement the 12 existing CBOCs in the Northeast Ohio market, as well as incorporation of the latest health care technologies such as radiology, tele-health and home-based care. Adding the CBOC in the city of Parma, a manufacturing hub significantly affected by the economic recession that has six and a half times the Veteran population of Brecksville, enabled the Cleveland VAMC to exceed that metric by providing primary medical and mental health care within 30 miles or 30 minutes to 95% of Veterans in Northeast Ohio.

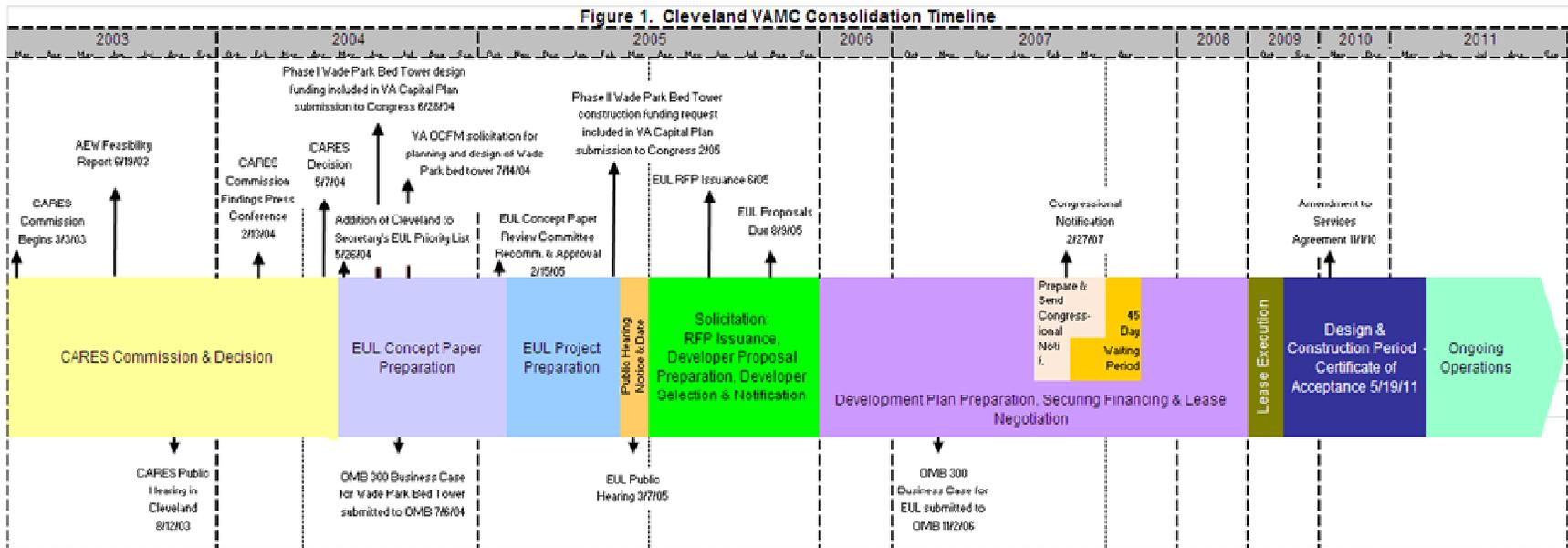
Finally, efficiencies and clinical synergies across services within the Cleveland VAMC drove implementation decisions. One example that has come to light through the Wade

Park consolidation is the documented 39 percent increase in the number of Veterans (from 51 to 71) benefitting from the Compensated Work Therapy Program (CWT). Prior to the consolidation, Veterans were restricted in their CWT assignments because of transportation (either public or VA shuttle). Thus, many worked as housekeepers within the Domiciliary at Brecksville. Now that Veterans reside at Wade Park, there are substantially more CWT “job” opportunities in the community (via public buses) and at the medical center since the Veterans can work nights and weekends without the worry of getting back and forth from Brecksville. By way of example, more than 70 Veterans are working at Wade Park in such areas as engineering, logistics, sterile processing, transitional housing, nursing, environmental management and physical medicine and rehabilitation, in conjunction with their therapeutic and clinical treatment.

Mandate for Transparency

Transparency throughout the process was factored into and present during the decision-making. Stakeholders, including the public, OMB, and Congress were notified of the process and endorsed the plan. As seen in the timeline graphic (Figure 1) on the following page, multiple stakeholders were involved throughout the consolidation process both before and after the Secretary’s CARES decision. Stakeholder direction and interaction included public meetings, Congressional notifications, inclusion in the President’s Budget, and Congressional authorization and appropriation of VA funding for a new bed tower at Wade Park.

As also seen in the timeline, the EUL transaction at Brecksville came well after the consolidation decisions had been made and was just one element of the overall strategy. It was not a driver of the consolidation decisions, but a tool used after the decision to consolidate had been made. That decision was communicated and endorsed by stakeholders as part of the execution of a larger vision to deliver state-of-the-art health care to Veterans. The timeline also showed that the stakeholders were all notified prior to award of the enhanced-use lease. The EUL public hearing was held in Cleveland on March 7, 2005, and the Congressional notification of VA’s intent to enter into the EUL was submitted on February 27, 2007.



I. VA RESPONSE TO FACTUAL DISCREPANCIES IN THE “INTRODUCTION” AND “RESULTS AND CONCLUSIONS” PORTION OF OIG REPORT

A. VA Response to Introduction Section of OIG Report

For general background information, please refer to the section at the beginning of this document titled ‘Cleveland VAMC Consolidation Background’.

The following statement appears on page 4 of the OIG report - *“The indictment alleged that Forlani conspired with public officials by offering bribes to obtain an interest in the land and financing used to construct the administrative office building and parking structure that are subject to the Services Agreements that VA entered into with VetDev”.*

As drafted, this section of the report could lead a reader to believe that VA went forward with the EUL project in either ignorance or disregard of the possible indictment. VA became aware of Forlani’s possible indictment prior to executing the EUL, and checked multiple times with pertinent agencies, i.e. the FBI, the Department of Justice, the U.S. Attorney’s Office, and the OIG Criminal Division, to see if the indictment issue was a matter that should cause VA to not execute the EUL. It was never suggested to VA that it not execute the EUL due to the risk of Forlani’s indictment.

Moreover, the OIG report may lead a reader to misunderstand that Forlani and the EUL transaction were the focus of the investigation, when that was not the case. The investigation represents perhaps the most widespread public corruption probe in Ohio history; has implicated half a dozen businesses and more than 50 people; and focused on other non-VA-related projects including the Cuyahoga County Juvenile Justice Center and the Cleveland Regional Transit Authority.

B. VA Response to Section I of OIG Report titled “Complete Consolidation of Cleveland VA Campuses Was Not In VA’s Best Interests”

OIG Report Section I.a: *“There Was Insufficient Space At Wade Park to Support The Consolidation”*

VA Response: The decision to consolidate the Brecksville Campus and the Wade Park Campus was made to provide our Nation’s heroes with state-of-the-art healthcare, by world-class providers, in an environment comparable to any other healthcare facility. Moreover, the Enhanced-Use Lease transaction at Brecksville came well after the consolidation decisions had been made, and was just one element of the overall strategy. It was not a driver of the consolidation decision, but a tool used after the decision to consolidate had been made. The consolidation was a balanced implementation approach consisting of the execution of major, minor and EUL projects. The consolidation

decision was communicated, including a Public Hearing on March 7, 2005, and endorsed by stakeholders as part of the execution of a larger vision to deliver state-of-the-art health care to Veterans. Please reference the section of this response titled ‘Cleveland VAMC Consolidation Background’ for additional information and details.

The following table contains VA responses to specific findings and assertions contained in this subsection.

OIG Statement	VA Response
1. (Page 7) <i>“Closing the Brecksville campus also created a need for a new Community Based Outpatient Clinic (CBOC) that was opened in Parma, OH.”</i>	This statement is inaccurate. As described previously, the need for the CBOC to be located in Parma is due to Veteran demographics and the ability to provide services to Veterans, and not the closing of the Brecksville campus.
2. (Page 6) <i>“The proposal at the time was to build a six to eight story building (which was completed in 2011 and is known as the CARES tower)”</i>	The bed tower was originally planned to be ten stories. Two stories were removed by the VA Resident Engineer during the design phase to keep the project within budget.
3. (Page 6 and 7) <i>“In reality the CARES tower could not accommodate any of the administrative support staff or the domiciliary located in Brecksville.”</i>	The CARES Tower was never intended to accommodate the administrative support or a Domiciliary function. As seen in the B&L Exhibit 300 Acquisition Application: Cleveland, Ohio Consolidation at Wade Park, entered on 11/1/04, states in section IA. Project Description, “This project requires the Enhanced Use Lease of 102 acres at the Brecksville VAMC in exchange for property adjacent to the Wade Park VAMC. Under an EUL, a 120 bed Domiciliary, 1800 space parking garage and administrative space would be constructed...” VA was transparent in the application which was approved by Congress. (Note: VA modified the Domiciliary concept in 2006, to change from a Domiciliary to a Residential Facility, based on additional information available since the submission of the B&L Exhibit 300)

OIG Statement	VA Response
4. Page (7) <i>“In our review of the documents and interviews of VA officials, we did not find any evidence that VA considered a partial consolidation of Brecksville and Wade Park.”</i>	B&L Exhibit 300 Acquisition Application: Cleveland, OH Brecksville EUL, entered on 11/2/06 states in section IE. Alternatives Analysis, “This alternative, at an estimated cost of \$51 million would construct renovate building #1 (Administration) and building #4 (Domiciliary); however, the efficiencies realized via consolidation of the Brecksville VAMC at Wade Park will not be realized...” Additionally, the clinical and continuity of care improvements achieved by co-locating the residential program with the other residential program and tertiary care services at Wade Park could not be achieved.
5. (Page 8) <i>“Our review of VA’s cost justifications and savings found that they were inaccurate and did not fully consider the costs that would be incurred to obtain space...”</i>	VA’s forecasted cost savings estimates were accurate based on the information available at the time, and VA compared the costs to obtain space against the projected cost savings. Additional detail supporting VA’s cost savings is included in the following section.

OIG Report Section I.b *The Cost Justification for Consolidation Was Not Supported*

VA Response: As mentioned previously, the plan to consolidate the Brecksville and Wade Park Campuses was complex and dynamic. In order to implement the consolidation and bring state-of-the-art healthcare to our nation’s Veterans, numerous financial analyses were prepared and analyzed. Certainly, as the consolidation plan evolved from an idea to a concept to an actual implementation plan, the financial analyses were adjusted and updated to reflect the additional information known. It is not surprising, and in fact expected, that forecasted cost savings would change over an 11-year period. However, we disagree with the OIG that fluctuations in projected cost savings over an 11-year period is an indication that VA officials did not ensure that the numbers were accurate and reliable. In fact, these cost savings were as accurate as possible based on the information available at the time of the analysis.

VA disagrees with OIG’s assertion that the forecasted numbers were misleading – *the consolidation generated significant savings that have been and are being realized.*

The *actual* savings from operations shown below are preliminary actualized savings, and VA expects additional savings to be realized once the Brecksville Campus is completely vacated.

Annual Savings from Operations

	Realized	Pending	Total
Personnel and Staff Redeployment	\$11,719,583	\$2,893,109	\$14,612, 692
Patient Transportation and Non-VA Care	\$1,116,438	\$0	\$1,116,438
Laundry ¹	TBD	TBD	TBD
Energy ²	\$475,229	\$924,771	\$1,400,000
Supplies ²	\$166,406	\$10,000	\$176,406
Office Equipment	\$283,271	\$0	\$283,271
Phone Service	\$0	\$622,800	\$622,800
Contracts ²	\$162,824	\$72,376	\$235,200
Grounds Maintenance ²	\$58,080	\$246,384	\$304,464
GSA Vehicles	\$69,784	\$11,704	\$81,488
Mt. Sinai Parking	\$541,873	\$0	\$541,873
Security for Mt. Sinai Parking	\$66,293	\$0	\$66,293
TOTAL	\$14,659,781	\$4,781,144	\$19,440,925

Notes: (Further information regarding the above savings from operations is provided in Attachment B).

1. Permanent laundry contract has not been awarded so cost impact cannot be determined.

2. Cost savings estimates are conservative and may actually be higher when FCPs pre and post closure are compared.

In addition to the annual savings shown above, the one-time savings through cost avoidance shown below are real costs that VA has avoided by implementing the consolidation. It is important to note that the costs below reflect only the capital investment required to maintain the status quo. In other words, these costs are required to keep all buildings up to code, repair roofs that leak, maintain utility infrastructure to support current operations, etc. The costs do not include any costs for renovation of the facilities that would be required to comply with the Secretary's decision to modernize and expand the patient care facilities and improve services for Cleveland Veterans. As noted by the OIG, the Medical Center management has already captured significant savings by not spending budgeted non-recurring maintenance funds in anticipation of closing the facility.

As stated previously, the consolidaton [sic] decision is a positive investment for VA over the sorth [sic] and log [sic] term when considering the annual savings from operations and the annual costs of all service agreements, including all amendments. The Net Present Value (NPV) of the consolidation project over the first ten years is a positive \$5.23 million. The 20-year NPV is a positive \$25.47 million. This NPV analysis uses the latest discount and inflation rates per guidance included in OMB Circular A-94.

One-Time Savings

Description	Cost Avoidance / Savings	Source of Estimate
Estimated cost to correct deficiencies in existing capital infrastructure	\$76,159,440	2007 Facilities Condition Assessment (FCA) Report
Boiler Plant Replacement	\$9,489,763	2007 Facilities Condition Assessment (FCA) Report
Steam and Water Feeds required replacement	\$5,500,000	VAMC Facilities Maintenance Estimate
Laundry Plant Correction & Equipment	\$4,825,080	2007 Facilities Condition Assessment (FCA) Report
Chiller Plant addition required for year-round cooling and humidity control	\$12,000,000	VAMC Facilities Maintenance Estimate
Energy Program Requirements	\$45,250,000	Energy Engineer Estimate (See Attachment B)
Excess of Personal Property ¹	\$2,777,782	See note #1 below
	<u>\$156,002,065</u>	

Notes:

1. Regarding the sale and donation of the Cleveland VAMC's excessed government equipment, the amount sold to date is \$795,037.85 and the amount donated to date is \$1,982,744.34. An anticipated final sale through GSA was scheduled for August 24-27, 2012

Personnel Savings:

Significant changes occurred within the healthcare industry and specifically at the Cleveland VAMC between 2002 and 2011. Throughout the process of consolidating the two campuses, at least 200 positions have been eliminated, will be eliminated, or have been repurposed to meet changing demands for patient care or quality. Approximately \$9.7 million in annual personnel savings have and will be realized as a result of the consolidation and, at a minimum, approximately \$4.9 million in annual personnel savings have been redeployed to other positions to support new and expanded services.

During the time period of the consolidation, the Cleveland VAMC has more than doubled the number of Veterans seen since 2000 by expanding its service area through 13 CBOCs and adding new services such as a regional blind rehabilitation program, a comprehensive rehabilitation program, a polytrauma center, women's health, home-based primary care and extensive mental health services. Many of these services have been designed to care for the needs of our returning OIF, OEF and OND Veterans. In response to increasing workload demand, new industry standards and VA strategic initiatives, some positions originally identified to be lost have been redeployed and account for approximately 70 to positions with an approximate salary cost of \$4.9 million. The redeployment of these staff has enabled the Cleveland VAMC to excel at quality, access, efficiency, staff and Veteran satisfaction performance metrics within its Veterans Equitable Resource Allocation budget.

Service Agreement Expenses: The total amount of the service agreement expenses did change from the original estimate, which as mentioned previously is quite normal as a project evolves from a concept to actual implementation. Some factors that influenced the change were internal, such as refined analyses that indicated the need for additional space. Other factors were external and beyond VA's control, such as the 2007 global financial crisis, which had a significant impact on the service agreement rates.

OIG Cost Comparison: The OIG incorrectly asserts, based on a document that is almost 15 years old, that renovating five buildings on the Brecksville Campus would eliminate the need for 115,000 SF of office space supporting the new Bed Tower and Wade Park Campus, 2000 parking spaces supporting the Wade Park Campus, a Residential Facility, a CBOC in Parma, and VISN office space in Independence. We question all of the dollar figures used by the OIG in its analysis, and assert that the OIG's assertion here is entirely flawed, particularly given the following facts:

- The VISN does not have any space in Independence, Ohio
- Office space at the Brecksville Campus cannot provide support functions for the new Bed Tower in Wade Park
- Parking spaces at Brecksville, no matter how many might be available, cannot be used to meet parking demand 22 miles away at the Wade Park campus
- Counselors and clinicians working at Wade Park supporting the residential rehabilitative care unit in the new Bed Tower cannot support the Veterans in a Residential facility located in Brecksville
- The Parma CBOC is located in Parma, Ohio, where the Veteran population is six and half times larger than Brecksville
- Given VA's annual Strategic Capital Investment Planning (SCIP) process, which is used to identify, rank, and prioritize VA's capital infrastructure needs nationwide, it is remiss to infer, assert, or conclude that VA should or could allocate and commit all of the upfront dollars needed to concurrently renovate five buildings at the Brecksville campus.

Domiciliary Cost Savings: VA disagrees with the OIG's interpretation of the cost savings provided through the Residential Services Agreement. Specifically, it is inappropriate for the OIG to use estimates from a consolidation concept in 2004, and apply them to the implementation of the consolidation *5 years later*. Per VA Decision Support (dSs) [sic] costs, the cost per bed day of care for the Domiciliary Care at Brecksville was \$426.92 in FY 2009, \$416.99 in FY 2010, and \$478.96 in FY 2011. In FY 2012, the total cost per bed day of Domiciliary Care (including the Residential Services Agreement and clinical care provided by VA) is \$522.15 through May 31, 2012 (source: Decision Support System.)

The minor increase of \$43.19 per bed day of care provides Veterans with services and amenities that were not available in Brecksville. The Wade Park residential facility

offers a new environment that includes semi-private rooms and baths and a separate floor for women Veterans. At the Brecksville Domiciliary, Veterans were mainly in four-bed rooms with one conjugate bath shared by many residents. Additionally, the unit designated for women did not provide the security or privacy now afforded in the Wade Park Residential Services Agreement facility. It should be noted that the cost per bed day of care at the Brecksville campus is without many capital infrastructure deficiencies being completed; had capital infrastructure deficiencies been addressed at the Brecksville Campus, the cost per bed day of care would have likely been significantly higher.

Moreover, the statement that VA is paying \$129.78 per bed day plus utilities and taxes is misleading. It is correct that the \$129.78 per bed day excludes utilities and taxes, and this calculation is transparent in the service agreement. The all-in rate per bed day is \$144.84, which is the amount used in all VA analyses for the residential service agreement.

OIG Report Section I.c: *“VA Is Overpaying For Administrative, Parking and Domiciliary Services”*

VA Response: VA disagrees with the OIG analysis and conclusion that VA is overpaying for the office, parking, and residential space. All of the OIG’s financial analyses fail to consider sound financial principles such as the time value of money, interest rates, and amortization schedules. Additionally, the OIG’s analysis of the office space fails to consider all of the factors used in determining fair market rents for commercial office space; the parking garage analysis demonstrates a fundamental lack of understanding of the parking industry; and the analysis of the residential facility is based solely on a fundamentally-flawed financial analysis that contradicts sound real estate financial principles.

Office Space:

VA disagrees with the OIG’s analysis of the office space because it fails to consider all of the factors used in determining fair market rents for commercial office space. The single lease used by the OIG in its analysis is not a valid comparable as it is not of similar size or space type, and the market studies cited are not applicable to the Wade Park administrative space. Finally, as demonstrated in the following section, the rate that VA is paying for administrative space under the service agreement is fully supported and considered to be a fair market rent.

There is a difference between ‘average market rent’ and ‘fair market rent’. An ‘average market rent’ takes all rents of various sites located within a defined area and subset, and calculates a mathematical average for that area. In contrast, a ‘fair market rent’ uses multiple factors and inputs (e.g., location, supply of space available, demand for space available, quality of space, building amenities) to determine a fair market rent for a particular asset. Using only ‘average market rent’ to determine a supposed ‘fair market

rent' is improper, and analogous to using the average rent for all one-bedroom apartments in an entire city -- to determine the appropriate rent for one particular apartment. Doing so fails to factor in key criteria, such as the location and condition of the comparable, relevant apartments, the type and condition of the pertinent neighborhoods, and other amenities that influence rent. The OIG's methodology simply is not a methodology generally recognized or used in the real estate industry.

The office building where VA has a service agreement for space is located in the University Circle market. The University Circle market is occupied by three internationally renowned institutions: the Cleveland Clinic, the Cleveland Museum of Art and the Cleveland Orchestra. Additionally, it is occupied by several nationally recognized institutions including Case Western Reserve University, University Hospitals, The Cleveland Institute of Art, the Cleveland Natural History Museum, and the Crawford Auto Museum. All of these entities either own their own space or are single-tenant occupants in buildings where rental rates are not published. Moreover, there has not been a building of similar size constructed in Cleveland since 1991. Therefore, there is no data to draw any conclusions about 'average market rent' in this particular market. Since there is no direct comparable market, it is inappropriate to base 'fair market rent' in the Wade Park area solely on the entire Cleveland 'average market rent'. Average market rent is certainly one of the inputs to be used, but it is not the only input. Other inputs to consider would be government leases of similar size, similar newly constructed buildings in other markets with similar market characteristics, and the cost of constructing a new state-of-the-art office building.

The OIG report uses only one comparable – a GSA lease for 34,000 SF (compared to the VA administrative space of 115,000 SF). The OIG inaccurately states that this comparable is the most expensive GSA rent in Cleveland at \$28.51/RSF, but this lease rate is only the eighth highest GSA lease in Cleveland. The most expensive GSA lease is located at 1501 Lakeside Avenue and has a rate of \$42.64/RSF for 121,912 of rentable square feet. This lease at 1501 Lakeside Avenue was signed in 2002, so when accounting for inflation at 1.75% and the Federal Protective Service charge that is not included in the reported GSA rate, the 2009 equivalent would be \$48.89 – more expensive than the rate in the VA Office Services Agreement.

There are a number of examples where GSA has recognized that the space demands for a particular agency must be met through a built-to-suit project with rents well above the surrounding 'average market rents'. One particular example relevant to evaluating the fair market rent for the Office Services Agreement is the US Citizenship and Immigration Services Building located in Detroit, Michigan. Cleveland and Detroit are similar in many aspects when comparing the office market. Both cities have populations that are in a slight decline, and neither city has shown a growth in industries that require new office space. As a result, there has been little to no new construction of office space in either city. Both cities are considered secondary office markets with average market rents in

the range of \$20-\$25/SF. GSA signed a lease for use by the US Citizenship and Immigration Services for 56,000 SF in 2009. The rent for this lease is \$39.27/SF, which is comparable to the VA Office Service Agreement when considering that the quality of space in the VA Office Service Agreement is superior to the space in the GSA Detroit lease.

Finally, when determining the fair market rent for a newly constructed building, it is important to understand the costs to construct that building. As part of the due diligence of determining the fair market rent, Turner Construction Company, a nationally recognized construction firm, reviewed VetDev's total construction estimate for the office building and concluded that the estimates are consistent with the Cleveland market.

All tenants at the Brecksville Campus were offered the option to relocate to Wade Park with space in the administrative building. Two tenants, specifically components of VA's Employee Education Service (EES) and VA's Office of Resolution Management (ORM), elected to move to Wade Park. The VAMC does not charge EES or ORM a different rate than it pays to Veterans Development. The difference in square footage and associated costs per square foot, as stated by the OIG, is the need to account for common space to include stair wells, elevators, bathrooms, etc. The rent charged to all tenants occupying space through the Office Services Agreement is identical – including the rent charged to EES and ORM.

The following table contains VA responses to specific findings and assertions contained in this subsection.

OIG Statement	VA Response
<p>1. (Page 15) <i>“The documentation also contained a draft letter dated March 20, 2006, by JLL...that showed the market rate for Class A office space to be \$23 per square foot.”</i></p>	<p>This statement is incorrect. The OIG is misinterpreting a letter that VA's contractor (JLL) issued during the early stages of lengthy negotiations between VA and VetDev. The letter was in no way unilaterally-determinative of market rents. The letter merely represented one piece of information in an ongoing process, where JLL's goal was to help VA obtain the most favorable deal and rates.</p>

OIG Statement	VA Response
<p>2. (Page 15) <i>“It is not clear to us why VA’s consultant, JLL, was allowed to assist VetDev in the EUL process as it appears to be a conflict of interest. The Cleveland Plain Dealer reported that the Mayor of Brecksville stated at the decommissioning ceremony for the Brecksville campus that VetDev had hired JLL to market the property for them.”</i></p>	<p>This statement is inaccurate. JLL provided a letter to VA on August 2, 2012, that states there was no conflict of interest violation - “Jones Lang LaSalle has never been engaged by Veterans Development to market the decommissioned Brecksville VA hospital property, nor has Jones Lang LaSalle been retained by Veterans Development for any other engagement.”</p> <p>Jones Lang LaSalle never assisted VetDev. Jones Lang LaSalle was a contractor hired to advise VA. As such, Jones Lang LaSalle interacted with VetDev, but never assisted VetDev, and at no time violated any actual or apparent conflict of interest laws or rules.</p>

Parking Garage:

VA disagrees with the OIG’s analysis of the Parking Garage as it demonstrates a lack of understanding of the parking industry. By definition, a parking space should be within walking distance of the driver’s destination. Parking is a truly elastic commodity, meaning that there is a direct correlation between parking demand, parking supply, and parking cost (i.e. an increase in demand for parking without an equal increase in supply will drive parking rates up). Moreover, parking should be viewed as a required component of the destination project, and not as an independent component to be evaluated separately.

In this case, the parking garage serves the Wade Park campus, and satisfies demand generated from the new Bed Tower. Without such parking, Veterans, VA staff, and visitors would have less convenient access to the new Bed Tower and Wade Park Campus. This would adversely impact the VAMC’s ability to provide state-of-the-art healthcare and services at the campus.

When determining fair market rates for the parking garage, the question that should be asked is ‘What is the cost per space to provide an adequate supply of parking in the immediate vicinity of the Wade Park campus?’ According to the OIG, there are “*no commercially operated parking garages within close proximity to the Wade Park VAMC.*” As described previously, this lack of supply, combined with the demand created by the consolidation decision, is the primary determinant of parking rates.

Given the lack of a commercial market for an adequate supply of parking spaces, VA used the cost of acquiring parking spaces in a newly-acquired parking facility, and

benchmarked this cost against the cost for parking spaces in the Cleveland area. Such costs were published in a parking rate survey prepared by Colliers International, a nationally recognized real estate research firm. According to Colliers, the high-end range of a parking space comparable to the spaces included in the service agreement was \$295 per month, which is 2% lower than the price per space in the Parking Service Agreement. The 2% variance is more than justified as a result of the severe shortage of supply in the vicinity combined with the additional demand of 2000 spaces that puts upwards pressure on price.

Additionally, Turner Construction Company, a nationally recognized construction firm, reviewed VetDev's total construction estimate for the parking facility and concluded that the estimates are consistent with the Cleveland market.

The OIG's assertion that VA is not receiving the in-kind consideration does not reflect the actual dynamics of the parking industry. The OIG observed 125 vacant parking spaces, and therefore concludes that VA is paying for spaces that are unused. The 125 vacant spaces translate into a vacancy rate of 6.25%, which is far below industry standards. A comparable private sector facility would strive to achieve a vacancy rate of approximately 10% in order to ensure an adequate parking supply for peak demand, seasonal demand changes, and employee shift changes. It is important that VA closely monitor that the vacancy rate in the parking facility, as a vacancy rate too low will negatively impact the operations of the medical center. VA's priority is Veterans and focus on providing health care to Veterans, and having a parking facility that can meet parking demand during peak times is a tool to provide those services. No Veteran should be turned away or have to 'come back later' because they were unable to find a parking space. VA is not only receiving 100% of the negotiated in-kind parking consideration, but is also utilizing the parking garage at a maximum occupancy rate compared to private sector facilities.

VA also notes that, contrary to any potential OIG implication, VA is not using the Parking Services Agreement to avoid charging employees for parking. 38 U.S.C. 8109, initially codified in June 1979, and subsequently amended in 1986, 1991, 1993, 1996, 1998, and 2004, sets forth the parameters for when VA is authorized or obligated to charge VA employees for the use of VA-related parking facilities. Under Section 8109, a "Parking Garage Revolving Fund" (PGRF) was created to serve as the primary source of funding to construct, alter, operate, and maintain certain VA-related parking facilities. It provided that fees generated from VA charging employees to use certain VA-related parking facilities were to be deposited into the PGRF. Hence, the intent of the PGRF was for it to function as a revolving fund. However, in 2005, the VA portion of Congress' Consolidated Appropriations Act at Division I, Section 115, permanently redirected funds that would otherwise be credited to the PGRF, to VA's Medical Care Collections Fund codified at 38 U.S.C. §1729a. As a result, under 38 U.S.C. §8109, VA can only charge and collect fees from its employees for parking at VA-related parking facilities costing

greater than \$500K under the following conditions: (1) if a medical facility only has one parking facility out of many that was built or renovated using funds from the PGRF, fees must be charged for parking at all facilities on the premises; (2) if a facility was originally built or renovated with PGRF funds and is later renovated using funds that are not from the PGRF, parking fees must be charged; and (3) VA has discretion regarding whether to charge parking fees if the expenditures to build or renovate a parking facility are not from the PGRF and there is no other parking facility on the premises where that is the case. None of the three conditions above apply to the Parking Service Agreement facility stemming from the Cleveland EUL. The Parking Services Agreement facility was not constructed via PGRFs, thus conditions 1 and 2 are inapplicable. Condition 3 is inapplicable because VA funds were not used to construct or renovate the Parking Services Agreement facility. VA funds paid to use the facility are funds remitted in the capacity of VA using the facility as a tenant, where VetDev constructed the facility through the use of its third party financing. Thus, VA neither had the authority or discretion to charge VA employees to use the Parking Services Agreement facility. Nonetheless, VA is of the view that enabling its employees the ability to use the facility is a key component of VA remaining a preferred employer of choice, and being able to attract the most qualified medical and other personnel to provide care and services to Cleveland-area Veterans.

The following table contains VA responses to specific findings and assertions contained in this subsection.

OIG Statement	VA Response
3. (Page 17) <i>“We found that the average commercial rate was \$200 per parking space.”</i>	VA cannot comment on the source of the OIG’s information, but it conflicts with the nationally-published parking rate survey prepared by Colliers International.
4. (Page 17) <i>“Records show that VA and its consultant knew that the agreed upon rate of \$301.47 was significantly above market rates. In a letter dated March 20, 2006 to VetDev, JLL estimated the market rate at \$165 per space per month.”</i>	This statement is incorrect. The OIG is misinterpreting a letter that VA’s contractor (JLL) issued during the early stages of lengthy negotiations between VA and VetDev. The letter was in no way unilaterally-determinative of market rents. The letter merely represented one piece of information in an ongoing process, where JLL’s goal was to help VA obtain the most favorable deal and rates.

OIG Statement	VA Response
5. (Page 17) <i>“As another comparison, we found that VetDev was able to lease 432 spaces in the University Circle for \$7 per day inclusive of any shuttle cost”</i>	This statement is misleading as the referenced spaces were temporary spaces, and not available long-term to either VetDev or VA. Long-term spaces plus a shuttle system would be significantly higher than the cost per space in the Parking Services Agreement.
6. (Page 18) <i>“VA was leasing parking spaces in a parking garage and adjacent space surface parking lot that were owned by Case Western Reserve University... Our review of expenses revealed that [the spaces] cost \$52.51 per space per month.”</i>	These spaces were available on a short-term basis only. Case Western’s future plans call for Case Western to fully utilize the garage and eliminate the surface parking lot, so it is inappropriate to use the price for these spaces as a benchmark comparison.
7. (Page 18) <i>“Over the 10 years, the present value of the in-kind consideration for parking is approximately \$1.83 million.”</i>	VA concurs with the 10-year present value calculation for the parking in-kind consideration, and notes that the 20-year present value of this in-kind consideration is \$3.27 million. When combined with the office in-kind consideration to VA under the EUL, the total in-kind consideration far exceeds the \$4 million total in-kind consideration (please see ‘Background of OIG report, page 3) that exists on a present value basis.

Real Estate Fundamentals:

The OIG’s conclusion that VetDev will recoup almost all of their costs during the 10-year term of the agreement is fundamentally flawed. The OIG’s analysis assumes that the Service Agreement payments should be determined by starting with total development costs and dividing those costs by 20 years to determine an annual payment. This approach is unrealistic as it does not account for the role and mechanisms of third party financing; the interest rates and amortization schedules associated with such lending; the financing calculations that are implicated when payments are made towards it; and the time value of money. In simplest terms, the OIG methodology is equivalent to purchasing a house with no down payment and obtaining a loan from the bank at an interest rate of 0%. This is not how conventional real estate financing works. Third party financing does not involve the issuance of loans at a 0% interest rate, so the payments involved towards third party loans are more complex, and do not reflect a 0% interest rate, even on the best financed deals.

For illustration purposes, the following table compares the OIG’s methodology (that again, assumes a 0% interest rate) to conventional real estate finance for purposes of calculating mortgage payments. The table contains an example of how mortgage payments for a \$300,000 home purchase would be calculated using these two different

methodologies. The distinction between the two methodologies is evidenced by Footnote #3 below the table, because it accounts for a reasonable third party loan (mortgage) interest rate of 5%. When that 5% interest rate is taken into account, the third column of the table shows how the mortgage payments are higher than if the loan was unrealistically issued at a 0% interest rate. Thus, to assert or infer as the OIG does, that VA's payments under the Service Agreements are unduly high, based on a premise or notion that the third party financing involved would have in any scenario, yielded a 0% interest rate to VetDev (and by virtue thereof, VA), is a significantly-flawed, and misleading financing model.

	Parking Garage (OIG Methodology)	Home Purchase Example (OIG Methodology)	Home Purchase Example (Conventional Loan)
Cost of Development	\$ 67,287,109	\$ 300,000	\$ 300,000
Amortization Period	20	20	20
Annual Payment	\$ 3,364,355	\$ 15,000	\$ 24,180
Monthly Mortgage	\$ 280,363	\$ 1,250	\$ 2,015

Notes:

1. Parking Garage (OIG Methodology) ties directly to Table 4 in the OIG report.
2. Home Purchase (OIG Methodology) ties directly to OIG methodology used in Table 4 of the OIG report.
3. Home Purchase (Conventional Real Estate Finance Methodology) assumes typical bank loan with a 5.5% annual interest rate

VA disagrees with any OIG conclusions that are based on this flawed methodology.

Residential Potential Savings:

The OIG's analysis of the Residential potential savings is incorrect, as it uses the same methodology described in the previous section and demonstrated in the table above. Again, that methodology is based on a flawed methodology that contradicts conventional real estate financing, as it does not account for the role and mechanisms of third party financing; the interest rates and amortization schedules associated with such lending; the financing calculations that are implicated when payments are made towards it; and the time value of money. Therefore, the OIG's conclusion about potential savings from the Residential Services Agreement is invalid. Moreover, all of the OIG's conclusions about potential savings that are based on that flawed methodology are incorrect.

As demonstrated in the previous sections, a careful analysis of the charges included in the Office, Parking, and Residential Services Agreements shows that they are all fair and reasonable. VA's analysis uses sound financial principles, combined with an understanding of the factors used in determining fair market rents for commercial office space, an understanding of parking industry dynamics, and an understanding of how residential facilities should reflect not only conventional real estate principles but also the level of care to be provided to Veterans.

OIG Report Section I.d “Increased Security Risk Exists”

VA disagrees with the OIG’s conclusion that there is an increase in security risk to VA employees and patients. There is no evidence to support this conclusion.

There has been no increase in reported safety violations by staff or actual incidents reported to VAMC, Cleveland or University Circle police; conversely, there has been less reported vandalism, burglary and assaults in the EUL parking garage compared to the previous off-site parking garage (Mt. Sinai). Additionally, review of the Cleveland VAMC ‘VA Police Uniform Crime Report’ for the past three years does not identify any significant change as the result of the consolidation. The 2012 All Employee Survey (AES), completed by 2,639 employees, did not identify any issues with safety or security. The 2012 results compared to the 2011 and 2010 results (prior to the consolidation) are without change. Also, AES results for 2012 indicate that employees at the Cleveland VAMC are more satisfied with their working conditions and they rate “safety climate priority with management” higher than the National VHA average.

The OIG asserts the parking garage has no controlled access, and that gates are open all day. This is contrary to local findings. The gates do remain open during the morning hours to facilitate traffic flow given the large volume of vehicles entering the garage and rarely, during special events; however, they are down at all other times. Additionally, VAMC police have the ability to control the gates and can open the gates remotely for special events or as appropriate.

VA does not concur with the OIG that “VA Police are prohibited from having a role or providing any type or level of security to VA employees and patients in the domiciliary.” Although VA Police do not have arrest or law enforcement authority at the three Service Agreement facilities, VA Police can for general safety purposes, escort VA personnel to and from the facility, or to and from their vehicles on an as-needed basis. Additionally, state-of-the-art security camera systems exist throughout the Wade Park campus and the three Service Agreement facilities. VA Police and VetDev security monitor these respective camera systems and, until the VA-wide suspension of the VA Police Canine Program on July 3, 2012, VA Police performed training exercises throughout the Wade Park Campus, the Residential Services Agreement facility and CBOCs.

Along with these measures, VA Police routinely execute formal Memorandums of Understanding (MOUs) with State and/or local policing agencies to allow for State and/or local police response on Federal property to back up VA Police in the event of large scale security/public safety issues. At the Cleveland VAMC, VA Police, University Circle police, and the Cleveland police have an existing MOU, and have a long history of cooperation and working together to maintain a secure and safe environment for everyone in the Cleveland University Circle area. VetDev also has developed a close working relationship with the VA Police and local policing agencies to support ongoing security

and public safety in the area. Moreover, the VA Police work with community law enforcement officials at all 13 CBOCs that are part of the Cleveland VAMC to maintain a safe and secure environment where VA Police do not have a first-responder presence.

After execution of the Cleveland EUL and three Service Agreements, the VAMC and VetDev discussed formally altering how security services were being provided at the three Services Agreement facilities to ensure consistency of operations. The discussion resulted in VA temporarily providing security services at the three Service Agreement facilities since VA staff were accustomed to VA Police providing security, with the understanding VetDev would be paid only for security services VA did not render. However, in discussion with VACO (i.e., OAEM, OGC, VACO police and OIG Criminal Division) to determine how the new arrangement could be memorialized in the three Services Agreement documents, it was determined that VA Police did not have arrest and law enforcement authority at the three Service Agreement facilities. Based thereon, VetDev began providing its security services as required under the three Services Agreements. In addition, VA issued [sic] a Bill of Collection on August 30, 2012, to recoup the cost of the security services that VA incurred for the period that the VA Police provided security services at the three Services Agreement facilities.

Veterans Development, LLC now has a security contractor to provide the following security services at the Service Agreement facilities.

Contracted Security Company (Tenable Security) Staff:

- One Guard: Full Time, 24/7 located on second floor of Admin Building
- One Guard: Monday through Friday 6:00am to 10:30am EST and 2:30pm to 6:30pm EST stationed at the entry to the Parking Garage

Vet Dev Security Staff:

- One Guard: Monday through Friday 8:00am to 4:30pm EST, floating on site between Residential/ Garage/ Admin Building
- One Guard: Monday through Friday 5:00pm to 8:00pm EST, floating on site between Residential/ Garage/ Admin Building
- One Guard: Saturday/ Sunday/ and all Holidays, 12pm to 8:00pm EST, floating on site between Residential/ Garage/ Admin Building

The Office, Parking, and Residential Service Agreements required and stipulated that VetDev would be responsible for providing security at the underlying office, parking, and residential facilities. Prior to activation of those facilities, VetDev and the Cleveland VAMC engaged in discussions contemplating that VA Police would provide the security. After the commencement of VA Police providing such security services, the arrangement was brought to the attention of VA's Office of Asset Enterprise Management and VA's Office of General Counsel. Those two VA offices concluded that VA Police should not be providing any services at the Office, Parking, and Residential Service Agreement

facilities because VA Police lack law enforcement and arrest powers at such facilities, and because the Services Agreements required VetDev to procure security services at no cost to VA. Accordingly, upon the determination that VA Police could and should not provide security services at the Service Agreement facilities, VA notified VetDev, and VetDev hired a company to perform the security services as of January 3, 2012. Additionally, VA issued [sic] a Bill of Collection to VetDev on August 30, 2012, seeking a reimbursement in the amount of approximately \$310,690. This amount represents the cost of the security services that the VA Police provided to the Office, Parking, and Residential Service Agreement facilities prior to receiving instructions that they should not be performing those functions at those facilities. Additionally, under the terms of the EUL and Office, Parking, and Residential Services Agreements and applicable law, VA, if necessary, has the right to offset its future payments under those three Services Agreements to recoup the aforementioned \$310,690 for the security services provided.

Finally, VA also notes that a key reason why VA opted for the Office, Parking, and Residential "Services Agreements" versus "leases" is that leases would have given VA recordable land interests in the facilities, whereas the Service Agreements did not. Recordable land interests would have given outside parties and reviewers of the transaction (e.g., OMB, CBO, and OIG) an incorrect impression that VA was to some extent legally tied to the facilities and VetDev's third party financing for the Office, Parking, and Residential facilities -- versus VA having the mechanisms of Services Agreements to serve as appropriate contracts and constructs for VA to receive its negotiated in-kind consideration from VetDev. Services agreements were the preferred route for that reason, particularly given the close scrutiny that occurred as to VA's decision to consolidate to Wade Park and VA's supportive Cleveland EUL transaction, and given VA's desire and need for the Cleveland EUL and service agreements to comport with OMB's A-11 Circular.

C. VA Response to Section II of OIG Report titled “VA Misused Enhanced Use Lease Authority To Obtain Space At Wade Park”

VA Response: The OIG's report may leave readers with the misimpression that VA's use of EUL for this purpose was contrary to law. VA did not misuse the EUL authority. VA's EUL statute (codified at 38 U.S.C. §8161-8169) does not limit the program to properties that are “not utilized,” “underutilized” or “vacant.” The pertinent provisions that authorized VA to enter into EULs were codified at 38 U.S.C. §8162(a)(2) and state:

(2) The Secretary may enter into an enhanced-use lease only if—

(A) the Secretary determines that—

(i) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

- (ii) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and
 - (iii) the lease will enhance the use of the property; or
- (B) *the Secretary determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located.***
(emphasis added)

Thus, VA was authorized to enter into any EUL, including the Cleveland EUL, when the criteria set forth in Section 8162(a)(2) were met. These criteria were met for the Cleveland EUL. Specifically, on March 7, 2007, VA published a Federal Register Notice as required under 38 U.S.C. §8163(c)(1), advising the public of VA's intent to enter into the Cleveland EUL. Such intent was made based upon and after VA determined that the EUL would, consistent with the requirements of 38 U.S.C. §8162(a)(2), be a project whereby "the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located." Thus, the decision to outlease properties through VA's EUL authority, including the Cleveland EUL, is one that VA can make without needing first to determine that the underlying VA property is not utilized, underutilized, or vacant.

Congress authorized the EUL legislation in August 1991. Through certain of the congressional amendments affecting the statute up through to the time that VA and VetDev executed the Cleveland EUL, VA's EUL authority gave VA the ability to outlease Departmental land and improvements to third parties for terms of up to 75 years, in return for negotiated monetary and/or in-kind consideration. VA uses such consideration to support the Department's mission of serving and caring for Veterans. The authority is a key tool that VA uses to manage its vast real property inventory. It helps enable VA to optimize the location of its medical facilities and operations nationwide, taking into account relevant criteria such as Veteran demographics and Veteran travel times to and from VA facilities. It also helps enable VA in its ongoing shift from an inpatient to an outpatient model of medical care, where VA can provide care and services, and function in updated facilities compatible with and possessing the latest innovations in medical technology.

Additionally, the EUL program helps VA meet Executive Branch real property goals set by Executive Order 13327 dated February 4, 2004, and a June 2010 Presidential Memorandum (entitled "Disposing of Unneeded Real Estate") regarding the need for Federal agencies to dispose of unneeded Federal real estate, better utilize the real property in their respective inventories, and do so in a manner that saves taxpayer dollars,

reduces utility consumption, and emits less greenhouse gases. It also is a tool whereby VA has outleased certain properties nationwide to third parties, to provide varied forms of housing to Veterans who are homeless, or are at the risk of becoming homeless, on a priority basis. This is helping VA achieve one of Secretary Shinseki's primary Departmental initiatives of working conjunctively with Federal, State, and local governments and communities to end Veteran homelessness by 2015. Lastly, since 1991, VA's EUL program has resulted in the following notable accomplishments regarding VA's real property portfolio:

- VA's space/footprint reduction: approximately 5.6 million square feet
- VA's building reduction (no longer operated): 190 buildings
- VA's acres no longer maintained: approximately 819 acres
- VA's annual recurring operating savings: approximately \$11.2 million

OIG Report Section II.a: *“The EUL Inappropriately Included Service Agreements for Office Space and Parking that were Not Limited to In-Kind Consideration”.*

VA Response: As part of entering into the Cleveland EUL, VA negotiated certain monetary and in-kind consideration that VA would receive from the EU Lessee, as permitted under 38 U.S.C. § (b)(3)(A). Specifically, VA received \$2 million in monetary consideration from the EU lessee under the transaction. VA also negotiated the right to receive in-kind consideration. Such in-kind consideration consisted of certain office and parking space from the developer and the right to refer Veterans on a priority basis to a residential facility of the developer at certain office, parking, and residential facilities located on non-VA property, sited in close physical proximity to VA's Wade Park campus. This in-kind consideration that VA was to receive was identified within the consideration section of the Cleveland EUL and the terms and conditions of how the parking, office, and residential services were to be provided to VA were more fully discussed in the Office, Parking, and Residential Services agreements. Under the Cleveland EUL transaction, the Service Agreements were explicitly and legally tied to the Cleveland EUL and VA's rights contained therein, and would not have occurred but for the EUL. Thus, the Service Agreements are not separate agreements. Instead, they constitute legally-permissible agreements under the EUL statute, as 38 U.S.C. §8163(b)(3) authorizes VA's Secretary to negotiate EULs in return for fair consideration as he deems appropriate. Such consideration can consist of monetary and/or in-kind consideration, including but not limited to, VA's right to use and receive “office, storage, or other useable space.”

The following table contains VA responses to specific findings and assertions contained in this subsection.

OIG Statement	VA Response
1. (Page 22) <i>“VA agreed that it would not receive any of the in-kind consideration unless it entered into two service agreements with VetDev”</i>	This statement is incorrect. The consideration to be provided to by VA is contained and defined in, and stems from the EUL agreement. Such in-kind consideration is permissible under 38 U.S.C. § 8162(b)(3)(A), which states: Each enhanced-use lease shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in whole or in part through consideration in-kind.
2. (Page 23) <i>“VA is not receiving any in-kind consideration”</i>	This statement is incorrect. Under the EUL, VA is receiving \$4 million in in-kind consideration as defined by the Net Present Value of the free office space and free parking spaces in the Wade Park Facilities. VA’s in-kind consideration also consists of the right to occupy and use the non-free office space and parking spaces at the negotiated rates contained in the Office and Parking Service Agreements, and the right to have Veterans receive priority placement and services at the Residential Service Agreement facility. In-kind consideration need not be free in order to be valid and legal.
3. (Page 23) <i>“Brecksville EUL did not solve the shortage of space in Cleveland, but rather caused the shortage of space”</i>	As stated previously, the EUL was a tool used to implement the consolidation decision to move to Wade Park, not the cause of the consolidation.
4. (Page 23) <i>“VA is not receiving any consideration through the service agreements”</i>	As stated previously, VA is receiving \$4 million in in-kind consideration as defined by the Net Present Value of the free office space and free parking spaces in the Wade Park Facilities. VA’s in-kind consideration also consists of the right to occupy and use the non-free office space and parking spaces at the negotiated rates contained in the Office and Parking Service Agreements, and the right to have Veterans receive priority placement and services at the Residential Service Agreement facility. In-kind consideration need not be free in order to be valid and legal.
5. (Page 23) <i>“the EUL caused the need for VA to obtain additional space in Wade Park and elsewhere”</i>	As stated previously, the EUL was a tool used to implement the consolidation decision to move to Wade Park, not the cause of the consolidation.

OIG Report Section II.b: *“OGC And OAEM Used The Service Agreements To Circumvent Laws And Regulations.”*

VA Response: VA firmly disagrees with this assertion. As stated previously, the Office, Parking, and Residential Service Agreements were valid legal agreements under VA’s EUL statute. And, VA’s EUL statute is a separate and distinct authority from the Federal Acquisition Regulation (FAR). Whereas VA’s EUL authority is codified at 38 U.S.C. §8161-8169, the FAR is codified at Title 48 of the Code of Federal Regulations. VA’s EUL authority is not legally tied to the FAR, and there are no references in either the EUL statute or the FAR, which explicitly tie the two authorities together. This is evidenced by Title 38 U.S.C. §8162(b)(1)(A) of the EUL statute, which states:

(A) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

(B) In the case of a property that the Secretary determines is appropriate for use as a facility to furnish services to homeless veterans under chapter 20 of this title, the Secretary may enter into an enhanced-use lease with a provider of homeless services without regard to the selection procedures required under subparagraph (A).

Additionally, VA’s Office of Asset Enterprise Management, the office that administers VA’s EUL program, uses the FAR as a guide in some instances, but the FAR is not controlling as to the process for competing, negotiating or entering into VA EULs, or the terms and conditions that must be contained in, VA’s EULs. In that regard, VA’s Enhanced-Use Leasing Handbook 7415, states the following in Section 9.e:

“e. Use of FAR and VAAR. It is important to note that neither VA’s EU lease authority nor solicitations issued are bound by the FAR or VAAR. These regulations, however, are normally used as guidelines for the content, format and evaluation of EU lease solicitations. . . .”

Thus, VA asserts that it is incorrect to assert or conclude that VA was legally bound by FAR processes; or was required to insert FAR provisions into the Cleveland EUL or its related Service Agreements; or that VA intentionally tried to circumvent the FAR process and requirements. Under VA’s EUL statute, VA was authorized to negotiate the Cleveland EUL under such terms as VA’s Secretary deemed appropriate, in accordance with 38 U.S.C. §8162 (b)(3)(A). There is no basis for the OIG’s conclusion that by taking advantage of the flexibilities in the EUL statute, VA had evaded applicable FAR processes or requirements. And, each of the three Service Agreements contains language explicitly requiring Veterans Development to comply with applicable Federal, State, and

local law. Thus, if VA determines that Veterans Development is failing to comply with any applicable laws, VA can pursue appropriate remedial actions individually and with Veterans Development.

OIG Report Section II.c: *“The EUL Inappropriately Included A Service Agreement For Domiciliary Services.”*

VA Response: VA did not inappropriately use the EUL authority for the domiciliary service agreements with Volunteers of America (VOA). The relationship between the Cleveland VAMC and VOA to provide vocational and residential support for Veterans is not unique within VA and offers Veterans the benefits of the expertise of the VOA and the VA. The services provided by VOA are not duplicative to VA services and are very much justified.

VOA, as a subcontractor, was included in the Residential Services Agreement (RSA) to help provide care to 122 Veteran units. VA is not paying for services that are not rendered by VOA. Nor is there an issue with Healthcare Resource Contract since VOA is not providing clinical care. VA agrees the RSA should better define the roles and responsibilities between the VA and VOA. VHA, OAEM, and OGC will work together to clarify those aspects of the RSA.

The following table contains VA responses to specific findings and assertions contained in this subsection.

OIG Statement	VA Response
<p>1. (Page 25) <i>“The Domiciliary Services Agreement did not Include Any In-Kind Consideration for the Brecksville Property”</i></p>	<p>VA disagrees with VA OIG’s assertion that the Residential Services Agreement (RSA) did not include any in-kind consideration in exchange for VA outleasing the Brecksville campus to Veterans Development. From a legal standpoint, the RSA itself represents negotiated in-kind consideration between VA and Veterans Development. This is because as a condition of VA entering into the Cleveland EUL, VA required Veterans Development to in part, and as lease consideration to VA, obtain land and establish a new residential facility on non-VA property, located in close physical proximity to VA. And, under the Cleveland EUL and the RSA, VA has a right to refer Veterans to that residential facility on a priority basis, so they can receive care and services as stipulated in the RSA. The legal concept of in-kind consideration does not require that consideration be provided to a recipient party at no cost or for free. In fact, in-kind consideration may consist of non-monetary consideration, or a combination of monetary and non-monetary consideration (e.g., space or services) bargained for and provided to the recipient party. And, such non-monetary consideration can be provided according to negotiated terms and conditions, and can have a monetary cost associated with it. The Cleveland EUL and RSA were negotiated between VA and Veterans Development through good faith, arms’ length negotiations, whereby and but for the Cleveland EUL, the RSA</p>

OIG Statement	VA Response
	<p>would not have been provided to VA as valid in-kind lease consideration. The RSA not only provided valid in-kind consideration to VA in return for VA outleasing the Brecksville campus to Veterans Development, and VA agreeing to comply with its obligations under the RSA, the RSA agreement itself constitutes valid in-kind consideration to VA -- just like the Office and Parking Service Agreements that VA and Veterans Development negotiated and consummated.</p>
<p>2. (Page 25) <i>“The Domiciliary Services Agreement Did Not Contain the Required Provisions for a Healthcare Resource Contract”</i></p>	<p>VOA is not providing clinical services and VA is not paying for clinical services. Thus, the RSA does not require provisions for a Healthcare Resource Contract.</p>
<p>3. (Page 26) <i>“The Domiciliary Services Agreement Violated VA Policy”</i></p>	<p>VA disagrees with the OIG’s allegations of VA’s non-compliance with VHA Handbook 1162.02, VHA’s Mental Health Residential rehabilitation Treatment Program (MH RRTP). The Cleveland VAMC is currently meeting all requirements of VHA Handbook 1162.02. The 122 beds (20 more than were available at Brecksville) are designated as official VA beds in accordance with VHA bed control policy and reported on VA’s Gains and Losses statements. VA staff is providing all clinical care, and Volunteers of America (VOA) is providing housing and food, non-clinical residential monitoring, vocational assistance, and recreation therapies.</p> <p>VA recognizes that Exhibit D of the RSA references clinical care; however, it is noted the Proposed Budget for the VOA, finalized by OAEM and VOA in October 2009, does not include any clinical positions. VOA is providing the services required as outlined in the Proposed Budget.</p> <p>To the extent that VA prospectively believes that operation of the Residential Service Agreement facility is not adhering to certain laws or regulations, VA can consider its options (whether unilateral, or bi-lateral with VetDev) under the EUL and Residential Service Agreement, to remedy the perceived deficiency. This is true since the EUL and Residential Service Agreement require that the facility be operated in accordance with applicable Federal, State, and local laws. That provision does not implicate the Federal Acquisition Regulation, since VA’s EUL authority is not bound by the FAR, as is noted in Section 9.e of VA’s EUL Handbook 7415.</p>

OIG Statement	VA Response
4. (Page 27) <i>“VA Clinicians Are Performing Certain Requirements Contained in the Domiciliary Services Agreement”</i>	<p>VA agrees the RSA does not accurately reflect current practice and the services the VOA is providing versus the services VA is providing. However, VA and VOA have disparate duties and VA is not paying VetDev or VOA for services VA staff perform. VA and OAEM will revise the RSA to ensure it accurately delineates responsibilities and services required of VOA.</p> <p>Statements that the Domiciliary staff were not consulted or involved in the planning of the care at Wade Park are not accurate. Numerous staff, from multiple disciplines, attended regularly scheduled planning meetings, and minutes are available reflecting that such coordination and discussions occurred and included the VA Domiciliary Director.</p>
5. (Page 28) <i>“Location of the Domiciliary Increases Risk to Residents”</i>	<p>There have been no demonstrable changes in program compliance or clinical outcomes subsequent to the move from Brecksville to Wade Park as evidenced by two external reviews. Additionally, there have been no increased incidents of criminal activity perpetrated against Veterans or staff, and any and all safety concerns have been addressed promptly. The postulation that the Brecksville Campus offered an environment free from distractions and temptations is inconsistent with actual experiences. For example, Criminal OIG investigators were involved with surveillance and sting operations on the Brecksville Campus targeting illegal drug activity; and, as recently at 2011 successfully executed undercover operations resulting in arrests and criminal convictions.</p> <p>In addition, there is a clinical component to treatment that attempts to help Veterans deal with distractions and temptations they will face when re-entering their community and to teach them how to effectively deal with those distractions and temptations. Educating, counseling and providing assistance to Veterans is critical to help develop coping mechanisms to promote long-term success and reduce recidivism rates. Many Veterans come from an urban environment and will return to an urban environment and need to be able to manage distractions and temptations.</p> <p>VA strongly disagrees with the OIG that the Compensated Work Therapy (CWT) Program has been negatively impacted by the move to Wade Park. The relocation has significantly increased the number of CWT opportunities for Veterans at the Wade Park Campus, as evidenced by a 39% increase, as well as non-VA opportunities as a result of the availability of improved access to public transportation.</p>

OIG Report Section II.d: *“VA Inappropriately Attempted To Expand The EUL Service Agreements.”*

VA Response: The Cleveland VAMC is one of four VAMCs participating in a pilot, approved by the VA Secretary, to reduce VA fee basis expenditures for chronic dialysis. VA considered and evaluated the possibility of using the Cleveland EUL as a tool for construction of the chronic dialysis unit. However, after concluding through consultation with VA’s Office of Asset Enterprise Management and VA’s Office of General Counsel that a dialysis unit was outside of the scope of the Cleveland EUL project, VHA alternatively sought a competitive procurement for chronic dialysis as well as ambulatory surgery and residential care services.

During the competitive bid process, the geographic boundary identified for the chronic dialysis unit was based on careful analysis of the optimal location in order to provide the highest level of service to Veterans. Not only did it consider Veteran demographics, but it included input and recommendations from clinicians providing the service. VA disagrees with the OIG’s implications that any other factor was used in the geographic boundary recommendation.

OIG Report Section II.e: *“The Service Agreements Included Provisions Giving VetDev Sole-Authority to Obtain Services Needed To Make Modifications To The Properties.”*

VA Response: VA disagrees with the OIG's assertion that Veterans Development has sole authority to make all alterations to the Office, Parking, and Residential Service Agreement facilities. To the contrary, each of those service agreements contains provisions specifically allowing VA to make desired non-structural alterations to the facilities, subject to Veterans Development approval. Thus, subject to Veterans Development providing such approval, VA can issue a competitive procurement to select a contractor to perform the work for VA under the best available terms and conditions. In addition, Veterans Development's prior approval requirement for any non-structural alterations VA might propose is a right that is customary and not unreasonable in this scenario since VA is a tenant versus an owner in the Office and Parking Service Agreement facilities, and is not a tenant in the Residential Service Agreement facility. And, for any structural alterations that VA might seek from Veterans Development, VA has the ability to negotiate pricing and terms and conditions with Veterans Development, and such VA negotiations could as, and when VA deems it necessary, be based upon an independent (VA) government estimate, identifying the reasonable costs for the proposed structural alterations. And, we note that VA having to negotiate proposed structural alterations with VetDev is not unreasonable from a legal standpoint, since VA is a tenant versus an owner in the Office and Parking Service Agreement facilities, and is not a tenant in the Residential Service Agreement facility.

Regarding VA's decision to convert from a Tier II to a Tier III Data Center within the Office Service Agreement facility, at the time VA was considering the conversion, internal VA requirements regarding the possible regionalization of information technology operations was not yet finalized. Accordingly, it was unclear when the discussions to create regional data centers would be completed, and if they would be completed in time to provide information that would impact VA's IT-related decisions at the Wade Park campus. What was clear to VA, however, was that the Brecksville Data Center did not meet current standards and the deficiencies are identified in the 2010 Information Technology Oversight & Compliance (ITOC) Report from May 2010 and the follow-up report in October 2010. So, in order to be fully compliant with the Federal Information Security Management Act (FISMA), in particular the National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS) Publication 200, and the associated NIST Special Publication 800-53; the Privacy Act of 1974 (5 U.S.C. §552a, as amended); NARA regulations; and pertinent VA directives, VA upgraded the data center at the Office Services Agreement facility from a Tier II to Tier III level. This decision to upgrade to a Tier III Data Center at the Office Services Agreement facility near Wade Park provided VA with an improved ability to operate and manage critical health and biomed systems, which significantly benefitted the healthcare operations at Wade Park.

Government cost estimates were completed for the additional improvements associated with an intensive technical review of the proposed work presented by Krill Company, Inc. The review included a line by line review of cost to determine if the estimates were

reasonable and fair. Additionally, multiple industry sources were researched in including the Uptime Institute, and other published resources were queried to evaluate the cost estimates and it was determined the cost estimates represented the best value for VA. Additionally, prior to deciding to build the data center, a rigorous analysis was undertaken which concluded that new construction was also the best value for VA compared to four different leasing options. The undeniable best value for VA was to build the data center.

To date, the National Data Center Program for OI&T Region 3 has not activated a regional data center, and when it does, it possibly will only host VistA systems. By contrast, the Cleveland VAMC's data center hosts VistA systems and VISN systems (Outlook/Exchange), Regional Systems (Solarwinds Servers), and the Office of Resolution Management Exchange servers. Nearly 12,000 VA employees rely on and benefit from these resources in performing their jobs. In VA's view, the FISMA, NIST and FIPS regulations and the criticality of these systems for uninterrupted utility and IT availability necessitated a Tier III Data Center.

OIG Report Section II.f: *“Concerns Regarding VA’s Involvement In the Financing”*

VA Response: VA disagrees with the OIG's assertion that during the Cleveland EUL project negotiations, VA personnel became too involved in VetDev's discussions and efforts to obtain third party financing relating to the EUL project. The OIG should recognize that while VA refrains during overall EUL negotiations, from becoming directly involved in a proposed EU Lessee's efforts to negotiate and obtain such third party financing, VA has a significant and legitimate interest of protecting taxpayer dollars as part of EUL transactions.

This meant that during the approximately 3-4-year negotiation phase of the Cleveland EUL, VA, along with its contractors (Jones, Lang, LaSalle and Kutak Rock), had to monitor and stay apprised of VetDev's discussions with potential lenders, and when appropriate, inform those parties of the pertinent laws, rules, and parameters that had to apply to any proposed third party financing. Failure to do so would have risked that VetDev's third party financing would contain terms and conditions improperly aimed at tying into the full faith and credit of the United States (i.e., VA).

VA also had to ensure that the financing would not cause the Cleveland EUL transaction to violate OMB's A-11 Scoring Circular; seek to incorporate excessive and thus untenable Lessee and lender cure rights that would circumvent VA rights to terminate the EUL or Service Agreements following an uncured VetDev event of default; attempt to subordinate the United States' (i.e., VA's) fee title interest in the EUL property (in favor of rights belonging to VetDev and/or its lenders); seek to pass inappropriate costs to VA on a pass-through basis, (e.g., as part of the costs that VA would be paying under the Office, Parking, or Service Agreements); contain any Federal guarantees or language

inconsistent with pertinent Federal laws and regulations, e.g., the Anti-Deficiency Act (31 U.S.C. Sections 1341 and 1501) and the Federal Tort Claims Act (28 U.S.C. §§2671-2680); or seek to impose restrictive covenants on the targeted EUL real property.

Such restrictive covenants would, for example seek to require VA to allow the EUL real property to be used for a prescribed and perhaps limited purpose for a specific duration, if and after VA terminated the Cleveland EUL due to an uncured VetDev event of default. This would prevent VA from using the property for other desired purposes in support of VA's mission and operations.

When taking all of these issues into account, it is clear it would have been wholly imprudent and improper for VA to steer clear and essentially "turn a blind eye" towards VetDev's discussions with its potential lenders -- as doing so would risk that those parties, whether through intent or ignorance, would seek to impose terms and conditions on the Cleveland EUL transaction that would be averse to VA, Veterans, and our Nation's taxpayers, and result in potential disputes amongst VA, VetDev, and its lenders, potentially including litigation.

Based on the foregoing, VA is confident that its role in the EUL negotiations, including those involving VetDev and its potential lenders, was just and proper.

D. VA Response to Section III of OIG Report titled "*Privacy Act Issues Related To Move From Brecksville*"

The OIG identified Privacy Act issues relating to documents found by one VA employee in one closed and locked building at the Brecksville Campus, which could be accessed only by VAMC employees and approximately nine VA Regional Counsel staff who were at that time still working in the building. The VA Network Securitys [sic] Operation Center (NSOC) dismissed one of the two reported violations, which were as follows.

- A December 7, 2011, event involving Human Resources documents that were unintentionally left in a drawer by one VA employee and contained three service cards (two of the three cards were for the same employee). The responsible employee admitted the error, and the two affected employees (Veterans) were provided credit protection.
- A January 3, 2012, event where Veterans' medical records were discovered on the floor. Upon learning of the event, Cleveland VAMC leadership dealt with the matter swiftly and in accordance with established regulation and statute. The VA Network Security Operation Center (NSOC) found no evidence of tampering as the documents were located and discovered in a controlled space.

The OIG identified a third event that they state occurred on January 6, 2012. The Cleveland VAMC has no record of an incident on this date. However, there was an email, sent by the same employee who identified the incidents discussed above, on December 7, 2011, to the Logistics Service Chief stating, “The Director’s old office here in Brecksville is wide open. The reason I bring this up is there is what appears to be a new and large flat screen TV in her office and it is unsecure. If I had a way to lock the door I would have. Do you have anyone out here who can secure the area?” The Logistics Service Chief worked with police to lock the door. It was not until January 4, 2012, when the same employee emailed the Privacy Officer stating, “Per our conversation, the Director’s office was wide open about a month ago. I’m not sure what types of records are in the boxes in the Director’s Office, but you may have another breach of the Privacy Act and/or HIPAA.” The employee also reported this to the OIG pending their visit to the medical center on January 9, 2012. The Privacy Officer did not report this incident to NSOC because: 1) it happened a month prior to his notification, 2) there was never any mention of sensitive data until a month after the fact, and 3) at the time it was reported there was no sensitive data in the Director’s Office. It is noted the OIG reviewed and subsequently dismissed this incident in their Draft Report.

Since the occurrence of these three events, the Cleveland VAMC leadership has implemented and is monitoring employee compliance with mandated Privacy and HIPAA training for over a decade. On no occasion has compliance with any required training been below 93.1%. Leadership has aggressively directed all staff to complete the required training. As of August 3, 2012, the medical center is at 96.79% compliance with all required training.

Lastly, following these three events, the medical center has performed six sweeps of the Brecksville campus to ensure no sensitive documents have been inadvertently disclosed or left behind. An additional sweep is planned to occur after VA’s Cleveland Regional Counsel’s Office vacates the Brecksville Campus. It is important to note that environmental rounds were also conducted at various locations of the Brecksville Campus, to include sweeps for privacy act violations prior to the above reported incidents on at least 15 different occasions.

Attachment A – Oversight and Monitoring of EUL projects

The Office of Management/Office of Asset Enterprise Management (OM/OAEM) issued guidance for the oversight and monitoring of the enhanced-use lease (EUL) portfolio during the post-transaction stage of the EU lease. OM/OAEM recently created a comprehensive methodology for reporting program outcomes to ensure consistency across projects. In addition to the guidance, OM/OAEM is developing a new and improved set of tools to assist in the on-going oversight of EULs, including improved collaboration with on-site resources, model-based payment and program benefits/outcomes, and recurring compliance tracking:

I. POST-TRANSACTION HANDBOOK AND DIRECTIVE

- OM/OAEM wrote and published VA Handbook Directive 7454, titled Enhanced-Use Leasing Post Transaction, to complement existing policies and procedures for VA EULs (as documented in VA Handbook and Directive 7415, Enhanced-Use Leasing Policies and Procedures). VA Handbook and Directive 7454 set forth policies, roles, responsibilities, and tools used for the oversight of VA’s EUL program during the post-transaction stage of a lease, i.e. the steady state and disposal phases of a lease.
- VA Handbook and Directive 7454 augment existing guidance on the steady state phase by setting forth policies for formal assignment of local oversight representatives and by establishing formal reporting processes for all post transaction oversight personnel. VA Handbook 7454 establishes a new web-based oversight tool, the Enhanced-Use Leasing Information System (EULIS), which will be used to collect information at the local level and as a repository for documentation of lessee compliance with the terms of the lease. Additionally, VA Handbook 7454 establishes processes for tracking and assessing payments received from the lessee (rental payments, lease payments), consideration (both financial and/or in-kind), expenses incurred by VA, and other account balances (such as Funded Maintenance Accounts, escrows) and for identifying, tracking, and resolving issues - all of which will be documented in EULIS. Further details are provided in subsequent sections of this response.
- VA Handbook and Directive 7454 were published on June 29, 2012.

II. ROLES AND RESPONSIBILITIES DEFINED

- As part of the new process for oversight and monitoring of the VA EULs, OM/OAEM has formally engaged a post transaction compliance team with an emphasis on local participation. OM/OAEM will now formally work in consultation with the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA) to monitor EUL compliance at a local level by assigning a LSM to each EUL site with oversight provided by a Veterans Integrated Service

Network (VISN) Capital Asset Manager (VISN CAM) or VBA/NCA Representatives. This new post transaction compliance monitoring team is structured to provide checks and balances on the oversight process as a whole as well as multiple levels of oversight monitoring for each EUL site with reviews by the Oversight Monitor and the Designated VA Representative (DVR).

- Under the newly defined process, during the steady state phase, the post transaction compliance team shall be responsible for lease administration and oversight of the EU lease and for identifying and resolving all EU lease compliance (administrative) issues
- The post transaction compliance team comprised of the following VA personnel:
 - a) **Designated VA Representative** - Through a delegation from the Secretary, the Assistant Secretary for Management designated a DVR within OAEM to serve as the EUL administrative officer, and exercise appropriate delegated signatory authority for documents that from time-to-time require VA execution in relation to an existing, previously-executed EUL.
 - The DVR provides oversight for the non-delegated EU lease projects before and after lease execution. The DVR maintains post transaction responsibility for all non-delegated EU lease projects, and provides support and guidance on re-delegated EU lease projects when requested.
 - b) **Oversight Monitor** - The DVR assigned an Oversight Monitor to coordinate all post transaction compliance activities related to the EU leasing program portfolio. The Oversight Monitor reports directly to the DVR and his/her performance is monitored by the DVR. While ultimately the DVR maintains the authority for all compliance issues, the Oversight Monitor will be held accountable through performance reports and annual reviews by the DVR. The DVR will appoint a new Oversight Monitor if his/her performance standards do not meet the Department's strategic goals. The Oversight Monitor serves as the single point of contact for all EU lease-related communication with the DVR.

The Oversight Monitor creates and implements performance management tools that align with OAEM's monitoring strategy in order to track EU lease performance.

- The Oversight Monitor is responsible for overseeing the compliance monitoring performed by the LSMs, the VISN CAMs and VBA/NCA representatives, and the PMs (during the execution phase) and for overseeing and facilitating the compliance issue resolution process.

- The Oversight Monitor is responsible for facilitating all communication between the DVR and the PMs, the LSMs, the VISN CAMs and VBA/NCA representatives, and the lessee including forwarding all requests and approvals of the DVR (e.g., requests for VA expenditures, potential development issues).
 - The Oversight Monitor produces portfolio management reports.
- c) **Capital Asset Managers and Veterans Benefits Administration or National Cemetery Administration Representatives** - The VISN CAM or VBA/NCA representative (as applicable) serves as a level of oversight over the EU lease project, and is responsible for liaising with OAEM's Investment and Enterprise Development (IED) Service and/or CAMS and the local facility during any conflicts that may arise with projects or during policy planning, and for assisting with significant asset initiatives or particularly complex EU projects.

During the steady state phase, the VISN CAM or VBA/NCA representative shall monitor the activities of the LSM on a quarterly basis (unless otherwise directed) at a minimum, or more frequently as issues arise.

- The VISN CAM or VBA/NCA representative, in consultation with the local facility director, shall recommend a LSM to the DVR at least 90-days prior to completion of construction.
 - The VISN CAM or VBA/NCA representative is responsible for reviewing all required monitoring data, reports, and project documents as provided by the LSM and ensuring that all required reporting requirements are completed in accordance with established timeframes.
 - The VISN CAM or VBA/NCA representative is responsible for identifying and notifying the Oversight Monitor of issues that arise with his/her assigned EUL, providing recommendations, and resolving the issues as directed.
- d) **Local Site Monitors (LSMs)** - The DVR shall assign an LSM to monitor and manage the EUL on a day-to-day basis during the steady state phase. At the DVR's discretion, an LSM may be identified and required to perform all or a portion of the monitoring and management activities during the execution phase of the EU lease. Through an LSM Assignment Memorandum process, the LSM is notified of his/her responsibilities and is directed to VA Handbook and Directive 7454 for guidance on the policies and procedures for monitoring the EUL leases. Additional guidance is given through comprehensive training.

The duties, tasks, and responsibilities of the LSM are numerous and varied. The following list is not exhaustive, but meant to provide a general overview of the types of oversight and monitoring activities to be performed.

- The LSM is responsible for ensuring successful communication between the lessee and VA.
 - The LSM is responsible for providing all required monitoring data, reports, and project documents on a monthly basis (unless otherwise directed). As necessary, the LSM may request technical experts at the local facility (e.g. engineering or financial staff) to support the reporting process.
 - Additionally, the LSM is responsible for identifying and notifying the VISN CAM or VBA/NCA representative (as applicable) and the Oversight Monitor of issues that arise with their assigned EU lease, providing recommendations, and resolving the issues as directed.
 - Per VA policies described in VA Handbook and Directive 7454, the LSM shall not have the authority to execute any amendments/ modifications to the EUL, to execute any amendments/ modifications to any EUL exhibits, to extend or terminate the EUL, or to approve any VA expenditures on the projects. In addition to VA Handbook and Directive 7454, comprehensive training and training materials are available for all LSMs.
- e) **Portfolio Managers (PMs)** - The DVR shall assign a PM to provide day-to-day support during the formulation phase and throughout the execution phase. During the execution phase, the PM shall monitor and manage the EUL on a day-to-day basis.
- During the steady state, the PM shall be responsible for resolving issues that arise with his/her assigned EUL upon request of the Oversight Monitor. Additionally, if out-year renovation/construction causes the EUL to revert to the execution phase, the PM will be responsible for day-to-day support of the EUL.
 - During the steady state, the PM is responsible for providing recommendations and resolving EUL issues as directed.

III. ENHANCED-USE LEASING INFORMATION SYSTEM

- A new web-based oversight tool, EULIS, will be used to collect information at the local level and as a repository for documentation of lessee compliance

with the terms of the lease. In accordance with the guidance given in VA Handbook 7454 and training materials, the post transaction compliance team identifies, tracks and documents resolutions of issues.

a) The EULIS tool:

- stores and organizes project documents necessary for ensuring compliance of EUL agreements;
- tracks compliance reporting requirements on both a project and portfolio basis;
- displays for VA's responsible parties upcoming and overdue reporting requirements;
- tracks contacts associated with all projects;
- reviews program outcomes ensuring consistency across projects; and,
- tracks issues, status and resolutions of issues in form of an issue log.

b) The LSM is responsible for maintaining EULIS, which includes the completion of the EULIS Exhibit requirements as they come due, uploading of any required supporting documents to the document repository, logging issues, and maintaining the EUL site calendar for any milestones related to program outcomes.

c) EULIS Key Performance Indicators – EULIS includes performance indicators which must be updated on a monthly, quarterly or annual basis as directed by the DVR and instructed by the Oversight Monitor. On a monthly basis, the LSM documents all project activities and rates the status of the project. On a quarterly basis, or more frequently as determined by the DVR and instructed by the Oversight Monitor, the VISN CAM must review all postings by the LSM. Issues will be coded and will be easily recognized as soon as the site is opened. The Oversight Monitor reviews data continually and keeps apprised of the status of projects through the data posted on the individual project sites.

- Each EUL will be assigned a Project Status (red, yellow, or green) by the LSM on a monthly basis and the VISN CAM on a quarterly basis, unless otherwise directed.
- Color ratings will be calculated off of LSM or VISN CAM input: Review Complete (Y/N) and Issues (None, Minor, Major).

IV. Post Transaction Training Modules

- Additional post-transaction guidance will be provided in training sessions, supported by training materials, video conferencing, and annual meetings.

- a) OM/OAEM has instituted a comprehensive two-phased training program. Individual training modules have been created for each post transaction compliance role. The training has been structured to cover not only use of EULIS but also to provide a comprehensive understanding of the roles, responsibilities, and tasks required of each post-transaction compliance team member. Additionally, asset-specific training modules are in development, which will provide guidance for project types and provide lessons learned based upon the real experiences of other LSMs or post transaction compliance team members. The initial training began in the 3rd quarter FY 2012.
- Phase I training is first provided to the PM. On a date shortly after the PM training, a Phase I training modular is provided to the VISN CAMS and LSMs for VISN 10 projects.
 - Phase II training will incorporate feedback and lessons learned from the Phase I training and will be presented to all remaining CAMS and LSMs. Phase II training will be presented to groups of 10-12 assets organized by geography and schedule.
 - Additional training may be provided for specialized EU Leases.
- b) A formal communications plan was established in January 2012. The plan lays out all communication protocols and provides for a recognition award system to provide incentives for program participants to perform at the highest levels. The communication plan will be available to all compliance team members and will be incorporated into the training sessions.

V. ADDITIONAL INFORMATION

- To ensure accountability, the DVR has instituted a formal process for appointing the LSM. The DVR has issued a memorandum of assignment to the Facility Directors for all EUL projects assigning an LSM to each project with concurrence by the VISN CAMs and the Oversight Monitor. The memorandum provides guidance for responsibilities and attaches the Post Transaction Handbook to provide the specific compliance monitoring requirements.
- OAEM will monitor the performance of the LSM and will hold them to the performance standards outlined in their training. The DVR with concurrence from the VISN CAM and Oversight Monitor will appoint a new LSM if their performance standards do not meet the Department's strategic goals.

Attachment B – Justification and Back-up for Forecasted Cost Savings

VA does not concur with the OIG conclusions about the cost savings as outlined in pages 9-11 of the report, and below is detailed back-up to support the original savings estimates for Personnel, Non-Recurring Maintenance, Energy, Patient Transportation, Laundry Service, Supplies, and Service Agreement Expenses.

Personnel and Staff Redeployment Savings:

Personnel annual savings in the amount of \$6,819,583 have been realized through the elimination of positions as the result of the closure of the Brecksville Campus. These savings are actual positions lost and not duplicated through the activation of any of the other projects. Additional savings in the amount of \$2,893,109 are pending upon the closure of the campus. By the end of 2014, it is anticipated that total annual savings will be \$9,712,692. In addition, staff has been redeployed to other positions for a total of \$4.9 million. Total personnel and redeployment savings total approximately \$14,612,692.

Realized and pending personnel savings do not equal projected estimates based on significant increases in workload, VA directives and healthcare industry standards over the past 10 years. In response, many positions identified to be duplicative or extraneous in the past, have been reassigned to other positions and used to minimize hiring, as appropriate, while providing the highest quality of care to Veterans resulting in more than 70 positions being redeployed for an estimated savings of \$4.9 million. Throughout the process of the consolidation, whenever possible, staff have been redeployed as Cleveland VAMC works to fulfill VA strategic initiatives such as: improving access by adding CBOCs and adding new ancillary services at the CBOCs such as optometry, podiatry and physical medicine in addition to primary medical and mental health; ending homelessness; implementing patient aligned care teams; establishing mental health intensive case management and home-based primary care teams to improve the quality of life for Veterans by keeping them out of the hospital; launching intensive outpatient psychiatric centers creating a home-like, Veteran-centered environment for all Veterans but particularly those in long term care; adding new services such as a long term spinal cord injury unit, a blind rehabilitation unit and a comprehensive rehabilitation unit; increasing oversight and accountability for patient safety, sterile processing, inventory control, environment of care; and, creating an extensive telehealth network that serves Veterans throughout VA by leveraging specialty providers at Cleveland VAMC to train and consult with providers in areas where these specialists may not be readily available.

VA disagrees that the Director ever stated that there would be no personnel savings. Annual service budget briefings have focused on personnel and A/O costs savings as the result of the consolidation for the past three years.

Patient Transportation and Fee Care:

Patient transportation cost savings of \$1,116,438 have been realized since the consolidation of community living center, residential care and domiciliary patients from Brecksville to Wade Park. The cost savings are significant; however, the greatest benefit has been the immediate access to tertiary care services for these Veterans. This is especially important for Veterans with mental health issues who now benefit from having all mental health professional services at the same location, to include the Psychiatric Emergency Room. Additionally, Veterans requiring emergency medical, surgical and/or neurological intervention now have timely access to care by staff that has access to their electronic health record 24 hours a day, 7 days a week. Historically, as inpatients at Brecksville, these Veterans needed to wait for an ambulance and be transferred to Wade Park or the nearest private sector hospital and had to travel between the campuses for patient appointments. Savings also include fee payments for emergency acute and tertiary care at the nearest private-sector hospital to Brecksville for when Veterans were too ill to make the trip from the Brecksville Campus to the Wade Park Campus.

Laundry Service:

The Textile Care Management Report (RCN 10-1032) shows “Total All Operation Costs” of \$773,889 for FY 2011. In addition, \$258,737 was spent on linen per Environmental Management Service Fund Control Point (FCP) 571 for linen and uniforms and \$97,107 was spent on uniforms for various services (FCPs 144). These costs total \$1,129,734 and are included in the new contract (VA250-12-C-0018) for which the OIG has annualized at \$716,634. Using the OIG’s contract cost for (VA250-12-0018) the savings would be estimated to be \$413,100. However, it is noted, Cleveland VAMC does not have a laundry contract in place at this time; a contract is expected to be awarded in 2013 at which time cost savings can be identified.

Moreover, the Brecksville laundry plant operated with 25-year-old, antiquated equipment. The existing Brecksville laundry plant equipment could not continue to meet demand without major renovations and equipment replacement. The 2007 Facility Condition Assessment (FCA) estimate for corrections to the laundry plant and equipment replacement is \$4,825,080.

Energy:

Determining total energy savings as the result of the Brecksville closure is difficult; however, the Energy Engineer estimates total annual savings, by closing Brecksville and accounting for the new Bed Tower and Parma, to be \$1.4 - \$1.6 million. VA acknowledges that this savings number is less than the projected number, but there are a number of additional savings realized through cost avoidance that were not included in the original estimate to include approximately \$45 million to comply with the national energy conservation policy and federal mandates. The expense of these energy improvement projects was avoided due to the ability to relocate all services to the Wade Park Campus.

Several recently passed laws and federal mandates require federal agencies to achieve energy and water efficiency standards and reduce greenhouse gas emissions including the Energy Policy Act of 2005 (EPACT 2005), Executive Orders 13423 and 13514 (EO 13423 and EO 13514) and Energy Independence and Security Act 2007 (EISA 2007). The mandate(s) require compliance to achieve a 30% reduction of Energy Intensity (BTU/SF) and a 20% reduction of water intensity by FY 2015 from the baseline years. Additionally, these mandates require all federal agencies to derive 7.5% of electrical energy through renewable energy sources, including solar, ground source heat pumps, and other green technologies, and at least 15% of each federal agencies' facilities achieve independent third party sustainable facility certification.

The Brecksville campus was one of the most energy intensive VA medical centers in the country. This was due primarily to the age of the facilities, reliance on window air conditioning units and the dispersed layout of the overall campus, requiring long runs of utility systems with the inherent overall inefficiencies of these systems. Consequently, significant capital projects would have been needed to bring the Brecksville VA Medical Center into compliance with these mandates.

The following projects would need to be accomplished to upgrade the Brecksville facilities and utility systems to the degree necessary to comply with the national energy conservation policy and federal mandates. The expense of these energy improvement projects was avoided due to the ability to relocate all services to the Wade Park Campus.

Brecksville Campus Energy Program Project Description	Estimated Cost
Campus-Wide Energy Audit	\$ 500,000
Replace building lighting systems and lighting controls	\$ 2,500,000
Replace street and parking lighting systems and controls with LED	\$ 1,000,000
Install smart electrical and mechanical metering and sub-metering	\$ 2,000,000
Replace all unitary air conditioners with central building air handling unit systems	\$ 7,500,000
Upgrade all HVAC controls systems with a central energy management system	\$ 2,000,000
Retro-Commission all central plant and building HVAC and lighting systems	\$ 2,000,000
Replace all electric motors with high efficiency motors	\$ 750,000
Replace all exterior door and window systems	\$ 2,500,000
Install photovoltaic (PV) and thermal solar systems	\$ 10,000,000
Install ground source heat pump (GSHP) system	\$ 10,000,000
Install water conserving plumbing fixtures	\$ 2,500,000
Install electrical power factor correction system	\$ 2,000,000
Total	\$ 45,250,000

Supplies and Other Savings:

Supplies and other savings are difficult to forecast, and sometimes difficult to quantify, but the following analysis shows that the actual savings realized meet or exceed the projected savings.

Supplies: Supply inventories were reduced as a result of the consolidation since two separate inventories no longer need to be maintained. FY 2012 savings realized total \$166,408 from Pharmacy and Nutrition with an additional \$10,000 expected from services other than Pharmacy and Nutrition and Food Service.

Office Equipment: The consolidation resulted in the termination (without renewal) of 59 copy machine leases at an estimated annual savings of \$164,604. Additionally, 376 non-duplex printers, 393 workstations and 40 fax machines were removed from service since office layouts are considerably more efficient in the CARES Tower, Administration Building, Residential Facility and Parma Outpatient Clinic. Using cost estimates of \$100 per non-duplex printer, \$800 per workstation and \$100 per fax machine totals savings of \$356,000. If a 3-year refresh cycle is used, annual savings are estimated at \$118,667, creating an overall savings of \$283,271.

Phone Service: Phone service savings for circuits and the phone switch at Brecksville will result in a savings of \$622,800 per year as soon as IT staff can remove all inactive switches and circuits once the Brecksville campus is completely vacated.

Contracts: Contracts for services are being eliminated or reduced as quickly as possible in association with the closure of the Brecksville Campus. Some contracts have been reduced for Brecksville but increased for the CARES Tower and/or Parma. The net savings realized for contract costs in Engineering and Environmental Service are \$162,824 for 2012 with an additional savings of \$72,376 expected to be realized in 2013 for a total of \$235,200 per year. Additional savings will be realized upon complete closure of the Brecksville Campus.

Grounds and Maintenance: Elimination of maintenance of the 102 acres of grounds at the Brecksville Campus will result in annual cost savings of \$304,464 when the facility is closed. These savings include: snow maintenance materials and equipment, lawn and garden maintenance materials and equipment, and engineering supplies and equipment. Also, included are annual savings for generator maintenance and pool maintenance and repairs.

GSA Vehicles: GSA vehicles previously used for transportation by Service Chiefs with staff at both campuses as well as staff who traveled between the two campuses have been reduced. Vehicles such as snow plow trucks will be eliminated upon closure of the Brecksville Campus and will result in a savings of \$81,488.

Mt. Sinai Parking: The contract for Mt. Sinai (\$541,873) and the associated expense for security (\$66,293) has been eliminated resulting in a cost savings of \$608,166. Additionally, shuttle service has been reduced as employees are now able to safely walk from the garage to their work location at the Wade Park Campus.

Attachment C – Current State of Capital Planning at VA

The process for capital planning at VA has recently evolved. In that regard, it is worth noting that VA's future capital investment decisions, such as those similar to the accomplished Cleveland consolidation, will be subject to VA's Strategic Capital Investment Planning (SCIP) process. SCIP was established in as part of VA's FY 2012 budget formulation process, to improve VA's overall delivery of service and benefits to Veterans, their families, and survivors, by prioritizing VA's capital infrastructure needs based on pertinent, stipulated criteria.

SCIP serves as a long-range strategic plan, which allows VA to adapt its capital infrastructure (e.g., land and buildings) to changes in demographics, medical and information technology, and health care and benefits delivery. Specifically, SCIP aims to present a future-oriented view of VA's capital needs over a 10-year planning horizon, provide an integrated, comprehensive planning process for capital programs (major construction, minor construction, NRM and leases) across the Department, and produce a data-driven, rational, and defensible strategic capital plan to support VA's annual capital budget request to OMB and Congress.

The ultimate goal of the SCIP process is to identify necessary capital projects to close all departmental infrastructure gaps to support the delivery of benefits and services to Veterans. There are five main components of the SCIP Process:

- 1) Gap Analysis - In order to achieve the Department's strategic goals, VA must fully understand Veterans' unmet needs and the continuing changes in Veteran demographics, medical and information technology, and health care delivery. In the development of the SCIP process, the three broad criteria of Improving Delivery of Benefits and Services, Investing in the Future, and Improving the Efficiency of Operations were identified as requirements for capital investment across VA's portfolio. This framework includes main deficiency categories (or —gaps) of: Access, utilization/workload, wait times, space, condition, energy, parking deficiencies, IT deficiencies, and other, such as function, privacy, safety, security, and emergency preparedness.

- 2) Strategic Capital Assessment (SCA) - The SCA is an individual VISN/Administration-wide strategic approach to ensure all proposed capital investments are aligned with future Veteran needs. The SCA is a narrative that explains how the performance gaps will be reduced, why certain investments were chosen, and how capital

investments have been prioritized at the Veterans Integrated Service Network (VISN), Memorial Service Network (MSN), Region and Staff Office level.

3) Action Plan/Business Case - Each Administration and Staff Office is required to develop a 10-year plan, known as an Action Plan, to correct identified gaps. The Action Plan is a listing of individual capital projects that close identified performance gaps within the long range planning period. Each Action Plan goes through a multi-stage validation and review process. With each review, results are communicated to the Administrations and Staff Offices so that they have an opportunity to revise their submission. Capital investment projects that are over the asset specific thresholds requesting funding in the current planning year submit business cases using a web-based application in the Capital Asset Management System Tool.

4) Budget Formulation - Each 2013 business case application (BCA) is evaluated by SCIP Panel members who score each project based on its contribution to the goals and missions of each sub-criterion (see next subsection for more detailed discussion of decision criteria). Decision software is used to apply the criteria weights to the Panel scores and generate a list of priority-ranked investments. The prioritized listing of projects is then submitted through VA Governance. Recommendations are made to the VA Strategic Management Council (SMC) on which projects to include in the annual budget request to OMB. The SMC recommends approval of scored proposals to the VA Executive Board (VAEB) who then submits them to the Secretary for final approval. This results in a single integrated list of the highest priority capital investment projects for inclusion in the President's annual Budget Submission.

5) Feedback - One of the strengths of SCIP is that it encourages continual improvement and refinement in response to client and customer needs. VA has engaged and will continue to engage stakeholders in the SCIP process as it evolves. External stakeholders are briefed periodically throughout the SCIP process and on the main decision criteria that are used to prioritize projects. Stakeholders include the Veterans Service Organizations, Congressional Staff, GAO and the Office of Management and Budget. VA considers the feedback provided at these briefings, and as appropriate, incorporates it into the SCIP process and its methodology. Engaging stakeholders allows for transparency and provides valuable input. This input is continually monitored to help VA identify and address changing needs and priorities. Continual dialog with Veterans and stakeholders allows the SCIP process to help VA optimally formulate and structure its capital budget submissions.

**VETERANS HEALTH ADMINISTRATION (VHA), OFFICE OF MANAGEMENT (OM),
AND OFFICE OF GENERAL COUNSEL (OGC)
Joint Action Plan**

OIG Draft Report, Review of the Enhanced Use Lease between the Department of Veterans Affairs and Veterans Development, LLC

Date of Draft Report: July 20, 2012

Recommendations/ Actions	Status	Completion Date
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We recommend that the Under Secretary for Health:

1. Develop a long range plan that addresses the significant space shortages at Wade Park caused by the EUL for the Brecksville division.

Non-Concur. We disagree with the statement that shortages at the Wade Park campus were caused by the enhanced-use lease (EUL) for the Brecksville campus.

A master plan completed during the Department of Veterans Affairs Capital Asset Realignment for Enhanced Services (CARES) planning process identified a need of 608,600 square feet for the consolidation. Minor modifications were made to the initial estimate made approximately six years ago. This resulted in a final total need of 631,620 square feet when the projects were completed.

Subsequent to the consolidation, VA initiated and now uses the Strategic Capital Investment Planning (SCIP) process. SCIP will address existing gaps, including Space/Capacity, Access, Condition, Utilization/Workload, Wait Times, Emergency Preparedness, Functional, and Security. Once the consolidation is completely implemented and included in VA-wide workload estimates, additional space needs (i.e., gaps), based upon new programs and workload, will be addressed through SCIP.

2. In coordination with the VAMC Cleveland Director, ensure the VAMC employees comply with the Privacy Act and other confidentiality statutes such as HIPAA and 38 U.S.C. § 7332, VHA Handbooks, and the Cleveland VAMC privacy policies, by appropriately safeguarding VA employees' PII and Veterans' PHI.

Concur in Principle.

Compliance with the Privacy Act and other confidentiality statutes is a priority for the Cleveland VA Medical Center (VAMC). The Cleveland VAMC has an active and aggressive privacy program in place to safeguard all employee personally identifiable information (PII) and Veteran personally identifiable health information (PHI). Leadership has monitored compliance with mandated Privacy and Health Insurance Portability and Accountability Act (HIPAA) training for over a decade.

All three incidents of potential privacy violations were identified in a locked building (Building 1 of the Brecksville campus) which was closed with access limited only to VA employees. One VA employee, with access to the locked building, identified all the records, and the VAMC Privacy Officer took action as appropriate with the VA Network Security Operations Center. All issues have been resolved.

Bimonthly reports are provided to managers to ensure compliance, and actions such as removing computer access are taken when employees do not complete mandatory training.

A VAMC Privacy Officer has performed six sweeps of the entire Brecksville campus and will perform a final sweep of the entire Brecksville campus after the final VA employees vacate Building 1.

The VAMC Privacy Officers perform routine rounds at all VAMC locations in an effort to safeguard sensitive documents.

Completed

3. In coordination with the VAMC Cleveland Director, ensure the VAMC employees receive training on records management and the provisions of applicable Records Management Retention schedules.

Concur in Principle.

The Cleveland VAMC has established processes to ensure training is completed and has taken appropriate action to ensure employees receive training regarding records management and the provisions of applicable Records Management Retention schedules. All training is documented and action is taken, in accordance with the Douglas Factors, if a violation occurs.

Completed

We recommend that the Executive in Charge for the Office of Management and Chief Financial Officer:

4. Convene an independent group to determine the appropriateness and the legal sufficiency of the Brecksville EUL and service agreements contained in the EUL, particularly in light of the indictment of Michael Forlani and the suspension of VetDev and other entities identified in the indictment, and take appropriate action to include long and short term plans, including the renegotiation of the terms and conditions of the agreements for the administration building and the parking garage.

Concur.

The VA Office of Management, the Office of General Counsel, and VHA welcome the opportunity to procure a qualified independent entity to review the technical and legal aspects of the Cleveland EUL, and the Office, Parking, and Residential Service Agreements.

The procurement will be conducted in conjunction with and subject to applicable laws (e.g., the Federal Acquisition Regulation (FAR) and subject to either VetDev's approval to release the documents in their entirety, or the redaction of certain confidential business terms).

The procurement for this independent entity will require qualifications that include experience in public/private ventures and entities familiar with non-FAR government procurements.

Target Completion Date: The action plan for recommendation four will be developed for issuance 60 days after the final report is issued.

5. Make a referral to the VA's Procurement Executive for a determination whether any of the service agreements constitute an unauthorized commitment and, if so, take appropriate action to rectify the problem.

Concur in Principle.

If VA determines that the results of the independent review of the legal and technical aspects of the Brecksville EUL and services agreements warrant referral, the results of the independent review will be provided to VA's Procurement Executive for review and appropriate action.

Target Completion Date: If a referral to VA's Procurement Executive is warranted, the action plan for recommendation five will be developed for issuance 60 days after the final report is issued.

6. Immediately determine what services VOA is actually performing and which services VA employees are performing and what services, if any, VA needs from VOA. Consideration should be given to simply leasing the existing space, with VA employees providing all the services, or relocating the domiciliary.

Concur in Principle.

VA has verified the services Volunteers of America (VOA) is providing, and is assured there is no duplication of services between VA and VOA.

As recommended, OM, OGC, and VHA will review the service agreement and determine options available to amend the language of the service agreement, if required to more accurately reflect the services that VOA is providing.

Target Completion Date: The action plan for recommendation six will be developed for issuance 60 days after the final report is issued.

7. Issue a bill of collection to VetDev to recoup the VA determined value of the overbilling relating to the failure to provide security services.

Concur in Principle.

VA has confirmed that there was never a gap in security services. Services were provided by VA to ensure continuity of security from May 2011 through December 2011.

OM, with support from OGC, is issuing a formal Bill of Collection to seek reimbursement for the cost of the security services that the VA Police provided to the Office, Parking, and Residential Service Agreement facilities.

Target Completion Date: The bill of collection was issued on 8/30/2012.

8. Take immediate steps to identify the security requirements for the administration building, parking, and domiciliary space and develop a plan of action to ensure the safety and security of VA employees, Veterans, and their families.

Concur in Principle.

Ensuring safety and security of VA employees, Veterans, and their families is a priority for the Cleveland VAMC.

VA Police routinely execute formal Memoranda of Understanding (MOU) with local policing agencies that allow for their response on Federal property to back up VA Police in the event of large scale security/public safety issues. At the Cleveland VAMC, VA Police, University Circle police, and Cleveland police have an existing MOU and have a long history of working together to maintain a secure and safe environment for everyone in Cleveland's University Circle area. Veterans Development, LLC has also developed a close working relationship with VA Police to support ongoing security and public safety in the area. Similarly, VA Police work with community law enforcement officials at all 13 community-based outpatient clinics (CBOC) to maintain a safe and secure environment at other leased locations.

State-of-the-art security cameras exist throughout the entire Wade Park campus and can be monitored by VA Police. Additionally, Veterans Development, LLC has access to and monitors the security cameras at the three Service Agreement facilities. VA has certified that Veterans Development, LLC maintains a contract for security guards, which is consistent with industry standard for security in office buildings and parking structures.

Completed

We recommend that the Under Secretary for Health, Executive in Charge for the Office of Management and Chief Financial Officer, and VA's General Counsel:

9. Do not execute any amendments to the current EUL or the service agreements to add additional space or services without review and approval by an independent third party. We recommend that any additional requirements for space by the Wade Park VAMC be reviewed and approved in advance by VHA's Chief Procurement Executive to ensure the legitimacy of the requirements, including the area of consideration.

Concur in Part and Non-Concur in Part.

Prior to execution of any amendments to the current EUL or services agreements or the addition of additional space or services, VA intends to contract for a review and approval by an independent third party.

VA has modified buildings to provide special accommodations to meet employee needs. These modifications have been procured through a competitive procurement process.

Any new space or service requirements, including space at the Wade Park campus, will be submitted through VA's Strategic Capital Investment Planning (SCIP) process; thus, any actions approved through the SCIP process will be monitored by VA procurement officials.

VHA, OM, and OGC NON-CONCUR with the recommendation to have additional requirements for space be reviewed and approved in advance by the VHA's Chief Procurement Executive. All additional requirements for space will be reviewed through the VA SCIP process. As with all SCIP projects, VA procurement officials will ensure that all contracting actions are in compliance with contracting requirements, laws, and regulations.

OIG Response to VA Management's Comments

On August 31, 2012, the Department provided a joint response from the Executive in Charge, Office of Management and Chief Financial Officer; the General Counsel, and the Under Secretary for Health. It is our understanding the Office of Management and the Office of General Counsel were primarily responsible for the response. The response was provided in two parts: VA Response to Factual Discrepancies in the OIG report and Results and Conclusions Portion of OIG Report and VA Response to OIG Recommendations. The Department disagreed with our findings and conclusions and non-concurred with two of our nine recommendations. While the Department stated their concurrence for the remaining seven recommendations, their comments and stated plan for four of those recommendations indicated they do not fully concur with the recommendations nor is their action plan responsive to the recommendation. We note that during the more than six weeks VA Management took to respond to the draft report, no one asked for any documents or other information supporting our findings. Our response to the pertinent factual issues and to Management's Response and Action Plan to the OIG Recommendations is as follows.

VA Response to Factual Discrepancies in the Introduction and Results and Conclusions Portion of OIG Report

VA Management disagreed with the findings in the Results and Conclusions section of our report. We have reviewed their comments and requested supporting documentation for review. We concluded that their disagreements with certain findings are not supported by the facts and that their responses on other findings demonstrates a complete failure or unwillingness to understand and to address the findings and conclusions.

It is important to note that our review was limited to the aspect of the consolidation that took place under the umbrella of the EUL with VetDev. Our review did not include the validity and appropriateness of the aspects of the consolidation¹⁵ that occurred with the construction of the CARES tower. In their response, VA Management blurred the line between that portion of the consolidation that occurred with the construction of the CARES tower and the portion that occurred using the EUL authority to enter into service agreements with VetDev to lease space, parking, and purchase healthcare and other services in the domiciliary in the buildings constructed by VetDev. There are numerous instances of VA Management allocating all the purported savings against the cost of the service agreements contained in the EUL. This fails to recognize that a significant portion of the alleged savings, if not a majority of those savings, would have been realized by the consolidation that took place because of the CARES tower and not the consolidation that took place because of the service agreements under the EUL. As a

¹⁵ The term consolidation is not really appropriate since the former tenants of Brecksville are now located in no less than four separate locations.

result, the numbered used by VA Management is misleading. VA Management's analysis failed to account for the full cost of closing the Brecksville campus and leasing it out in its entirety to VetDev.

VA Management referenced the CARES decision in their response as the basis for the consolidation of the Cleveland. However, VA failed to recognize, as noted in our report, that the CARES Commission raised concerns that there was not enough space at Wade Park to continue the same level of services that were at Brecksville. The Commission recommended that EUL authority be explored to get property near Wade Park that VA would need to accommodate the consolidation. However, VA did not use the EUL to get in-kind property that VA needed, but rather, to enter into long-term service agreements, which are really two long-term leases for space and a healthcare resource contract. These service agreements are at a significant cost and questionably incorporated into the EUL for the Brecksville property.

Although VA Management admitted that the investigation involving Forlani and other officials was the most widespread public corruption investigation in the history of the State of Ohio, they defended the decision to go forward with the EUL and service agreements by stating that the Federal Bureau of Investigation (FBI), the US Attorney's Office, and an OIG's criminal investigator did not instruct VA not to execute the EUL. VA officials should have been aware that the FBI, US Attorney's Office, or the OIG had no authority to tell program officials not to award the EUL because of an active investigation. VA Management should have known that Forlani was a person of interest in the corruption investigation and that there was a relationship to the property to be leased from VetDev through the service agreements before the EUL was signed because it was public knowledge and widely reported. Yet, VA Management made no effort to change course. Even if VA Management had no knowledge of a direct link to VA interests, as claimed, they still had the responsibility of thoroughly evaluating the risks of executing a significant long-term agreement with an individual who was known to be a person of interest in a large public corruption investigation. There is no evidence that VA Management thoroughly explored the potential worst-case scenarios and the potential ramifications if VA went forward with the EUL with VetDev nor did they explore other options. In short, VA Management had no plan in place in the event that Forlani was indicted and/or convicted.

There was Insufficient Space At Wade Park To Support the Consolidation

VA Management disagreed with our finding that there was insufficient space at Wade Park for a complete consolidation. VA Management did not address our finding; rather, they merely asserted that there was sufficient space because they were able to acquire space using the EUL. Their statement supports our finding that there was not enough space at Wade Park to accommodate a complete consolidation without acquiring additional space. Furthermore, VA Management appears to have ignored the fact that the space acquired through the EUL at Wade Park was not sufficient to accommodate all of

the functions and personnel displaced by the EUL as shown in our report. VA had to lease space in other locations at significant cost to accommodate these services.

The Cost Justification For consolidation Was Not Supported

VA Management disagreed with our conclusion that the cost justification for the consolidation was not supported. In our report, we concluded that there was no authoritative and reliable analysis or study with supporting documentation showing a valid cost/benefit analysis and that the reported cost savings fluctuated significantly during the EUL process and after. During our review, VA was unable to provide a comprehensive and reliable financial feasibility study used during the decision making process. In an effort to justify the “cost” of the EUL, VA Management used the total alleged cost savings that resulted from both the construction of the \$100 million CARES tower and the EUL consolidation. It is misleading to attribute the entire cost savings to just the EUL while a majority of the cost savings were a result of the construction of the CARES tower. Our report also showed that significant costs of the consolidation were not included in VA’s analysis such as the Parma, OH CBOC and space leased in Independence, OH occupied by contracting staff assigned to VISN 10 as well as the change orders to the office building paid for by VA. VA Management asserted that the CBOC in Parma, OH had nothing to do with the consolidation and closing of the Brecksville Outpatient Clinic. VA Management asserted that the decision to open the CBOC in Parma, OH was based solely on the decision to move the outpatient services closer to more veterans. No evidence was provided that supported the assertion and it is not supported by the facts because the distance between the Brecksville Outpatient Clinic and the Parma, OH CBOC is only 12 miles and the overwhelming majority of veterans in the Parma, OH vicinity were already within VA’s 30 minutes or 30 miles standard. It is highly improbable VA could have justified a brand new multi-million dollar clinic within 12 miles of an existing clinic except for the consolidation. No evidence was provided to show that the opening of the Parma, OH CBOC had anything to do with and was completely independent of the consolidation and closing of the Brecksville campus. Additionally, our review of the alleged cost savings included in VA Management’s response indicates that VA Management used the costs associated with the personnel moved from the Brecksville Outpatient Clinic to the Parma, OH CBOC as personnel savings in their cost savings analysis. The transfer of resources from one location to another is not a cost savings.

VA Management denied that there are VA contracting staff assigned to the VISN in Independence, OH. We verified during our site visit that VISN contracting staff did relocate from Brecksville to Independence, OH and we actually visited the Independence, OH space that was leased through GSA. These two examples demonstrate that VA is not concerned with nor willing to fully account for the true cost of the consolidation that occurred via the EUL with VetDev.

VA Management also responded that the Net Present Value (NPV) for the EUL project/consolidation was a positive \$5.23 million and the 20-year NPV is \$25.47 million. The NPV analysis prepared by VA Management includes the questionable cost savings of almost \$20 million. Our review of VA's NPV calculation shows that VA Management used the entire alleged savings to justify the cost of the EUL. However, a significant percentage, if not a majority, of the alleged savings would have been realized by the consolidation that took place because of the construction of the CARES tower. It is inappropriate to allocate *all* of the potential savings of the consolidation to only a part of the cost of consolidation (the EUL portion). If VA Management had calculated the NPV for the entire consolidation, the cost of the CARES tower and all the other lease costs would have to be included in the calculation, in which case the outcome would be more than likely be a negative NPV, or a no-go decision.

VA Is Overpaying For Administrative, Parking, And Domiciliary Services

VA Management disagreed that VA is overpaying for office space, parking, and domiciliary services. The information gathered during our review and presented in the report clearly demonstrate that the rates VA agreed to pay are significantly higher than any rates in the Cleveland market for the space in the Administrative building and for parking spaces. VA Management cites a GSA lease valued at \$42.64 per rentable square foot as support that the rate for the administration building is fair and reasonable. We were aware of, but did not use this lease in our analysis because we determined that it was not comparable. The lease expired in January 2012 and included both surface and garage parking. In fact, we eliminated all GSA leases in our analysis that had parking included in the amenities since there was a separate service agreement for parking. The most expensive GSA lease without parking was \$28.51 per rentable square foot.

VA Management's response that the JLL draft letter articulating the Cleveland market rates for office and parking was simply a negotiation tactic is inaccurate. Our review found that this letter was drafted for the purpose of being presented to the Cleveland City Council in an effort to get the TIF legislation so that VetDev could lower their rates to VA under the service agreements. The rates in the JLL draft letter match the market rates found in our review and are largely in-line with current commercial office rates in the Cleveland market today advertised by JLL on their website of commercial office space available in Cleveland. As stated in our report, the Mayor of Brecksville was quoted as stating that VetDev was working with JLL to help VetDev market the Brecksville property. VA Management provided a letter from JLL stating they had "no engagement" with VetDev concerning the Brecksville property; however, the Mayor of Brecksville confirmed that Forlani stated he was working with JLL in regards to the Brecksville property. The fact that the parties had not entered in an "engagement" does not mean there were no discussions or negotiations. Forlani's indictment may have superseded a formal engagement between VetDev and JLL.

These procurements should not have been sole-sourced to VetDev as part of the Brecksville EUL and should have been conducted as separate actions under full and open competition. Competition would have been the biggest factor in determining that prices were fair and reasonable, but because VA included the service agreements as part of the EUL, competition was eliminated.

Although VA Management supported our conclusion that there is no cost savings associated with the Domiciliary, they attempt to justify the increase as being reasonable because the amenities offered at Wade Park are well worth the additional costs. Management did not acknowledge or respond to the point of our statement in the report that the cost of shelter housing was compared to domiciliary housing. Also, their response compared domiciliary care costs from FY 2011 to FY 2012 (through May 31, 2012) to derive their stated increase of \$43.19 per bed per day. VA Management's analysis is faulty because the Domiciliary was occupied beginning in May 2011 so the proper comparison would have been to compare FY 2010 to FY 2012 data. This comparison showed the increase in costs per bed, per day is \$105.16, or \$38,383.40 per Veteran per year.

With regard to our statement that VetDev will recoup most of their costs during the first 10 years of the agreement, VA Management responded that we have no knowledge of how real estate works because we did not include the cost of financing. Had VA Management asked for information supporting our statement, they would have known that the data used to develop our analysis did include the cost of financing as well as the cost of the land acquisition. The document we used was provided to us by VA Management and was compiled by JLL. Fundamentally, VA Management has not provided the necessary data to support their position that the rates in the service agreements are fair and reasonable.

Increased Security Risks Exist

VA Management disagreed with our conclusion that there is an increase in security risk on the EUL properties and noted relationships with local police. We found that VA Police had no authority to provide security on those properties as they did on the Brecksville property. VA Management's response confirms this statement and supported our conclusion—VA employees in the administrative building, parking garage, and the domiciliary used to have the full protection of the VA Police and now they do not. Agreements with local police are fine, but as noted by the employees working in the administrative building and domiciliary, there is no on-site police presence, which puts them at greater risk.

The EUL Inappropriately Included Service Agreements For Office Space And Parking

The EUL authority gives VA the authority to lease out land that is underutilized in exchange for cash or in-kind consideration. The EUL for the Brecksville property clearly

articulates that VA was to receive \$2 million and 6,962.48 square feet of office space and 75 parking spaces, both for a period of 240 months. However, VA Management continues to assert that the service agreements themselves are consideration to VA. The service agreements are the vehicles through which VA “leases” over 115,000 square feet of office space and 2,000 parking spaces annually for up to 20 years. These agreements are not consideration under the EUL. VetDev did not build the administration building and parking garage in exchange for VA’s 100 acre campus in Brecksville. The administration building and parking garage were built for VA in exchange for VA leasing the space for 10 to 20 years at above market rates. We conclude that the rates VA is paying under the EUL for the administration and parking service agreements are such that it is highly probable that other developers would have built the administration building and parking garage for those rates without receiving any interest or being a part of the Brecksville EUL. VetDev did not own the land on which the three structures are located and had to obtain an interest in the land from the Cleveland Port Authority. The manner in which Forlani did this was, in part, the basis for the criminal action against him. VA should have simply leased out the Brecksville campus and solicited bids for space that VA needed at Wade Park (under the assumption that VA could have justified a complete consolidation). Competition would have been a significant factor in determining the rates were fair and reasonable. As stated in our report, giving VA a small in-kind consideration “discount” does not justify entering into large, long-term agreements for space with VetDev. As the service agreements do not represent in-kind consideration for the Brecksville EUL, we question the appropriateness of including service agreements for office space and parking as part of the Brecksville EUL. We believe this broad interpretation of VA’s EUL authority is not consistent with the intent of the EUL statute in existence at the time. Recent legislation to extend the EUL authority does not allow for in-kind consideration.

OGC and OAEM Used The Service Agreements To Circumvent Laws and Regulations

VA Management disagreed with our finding that VA circumvented normal procurement and leasing rules. The fact is that the statutory and regulatory procurement requirements, including those related to leasing properties, were circumvented by VA’s broad interpretation of the statute granting EUL authority. One of the reasons VA Management gave for their broad interpretation of VA’s EUL authority was that it did not require VA to comply with FAR, VAAR, and the normal leasing process. This statement supports our conclusion that VA interpreted the statute broadly primarily to circumvent the normal procurement and leasing processes. A literal and straightforward interpretation of VA’s EUL authority would not include using the authority to conduct large and long-term acquisitions of services and space. We also note that although the service agreements bind the Government to pay for space and services, none were signed by a warranted contracting officer as required by law and regulation.

The EUL Inappropriately Included A Service Agreement For Domiciliary Services

VA Management disagreed that the EUL inappropriately included a service agreement for domiciliary services. VA Management asserted that the only reason that VetDev agreed to build a domiciliary for VA is because VA offered up the Brecksville campus; therefore, the domiciliary is consideration. We find no support for VA Management's position in law or in fact. First the EUL did not list a domiciliary as in-kind consideration for the Brecksville EUL. Second, if VA believes the daily rate in the service agreement is fair and reasonable, then it is high enough that other vendors would have been interested in providing domiciliary services without receiving the Brecksville property as an incentive. Lastly, as noted in our report, VHA Handbook 1162.02 prohibits contracting out domiciliary services.

VA Management attempts to argue that the domiciliary really is not a domiciliary and that the services agreement with VetDev is simply to provide vocational and residential support for veterans. However, this is in direct conflict with the plain language in the domiciliary services agreement. Exhibit D to the service agreement, which is titled, "Domiciliary Services Requirements" not only describes the services as "domiciliary" but very clearly delineates requirements that far exceed vocation and residential services. Some of the specific requirements, include:

- Psychosocial Assessment
- Vocational Assessment
- Recreational Therapy Assessment
- Spiritual Assessment
- Nutritional Assessment
- Emotional and Behavioral Functioning Assessment
- Suicide Risk Assessment
- Individual Treatment Plans
- Coordination of Evaluation Services, Counseling Services, Legal Assistance, Family Intervention Services, Recovery/Aftercare Services, Vocational/Employment Services, Medical/Psychiatric Services, and Housing Services
- Counseling Veterans
- Obtain progress status on medical, emotional, psychiatric, employment, and family issues
- Presenting and recommending courses of treatment
- Referrals for medical, psychiatric, and physical care
- Individual Therapy

We also obtained a copy of the agreement between VetDev and the Volunteers of America (VOA) which listed the responsibility of VOA in providing domiciliary services to VA. It states:

Provider shall provide the Domiciliary Services by providing rehabilitative care to eligible Veterans who have a wide range of problems, illnesses, or rehabilitative care needs which may be psychological, vocational, educational, or social. Provider's responsibilities for all facets of the *Domiciliary Services* including staffing, assessment of the Veterans, case management responsibilities, rehabilitative services, nutrition, and quality of life... . (Emphasis added.)

The agreement further stipulates that VOA must have at least one clinical staff member present at all times such as a Social Worker, CNS, RN, LPN, CCEC, Psychologist, or Psychiatrist. Clearly, VOA was required to provide healthcare related services, not just vocational and housing.

VA Management's response that the entire record is inaccurate is nonsensical. The official documents, executed agreements, and statements from VA officials all refute VA's assertion. As stated in our report, it was local domiciliary officials who intervened as VA was preparing to move to the new Wade Park domiciliary and ensured VA clinicians and case workers remained in the domiciliary per VHA policy. But for this intervention, it clearly was the intent of VA Management to *replace* the individuals providing care in the domiciliary in Brecksville with staff from VOA.

VA Management also asserted that there is no "duplication" of services between VOA and VA. The issue in our report wasn't that VOA and VA were duplicating tasks, but that VA is paying twice for the same service because VA employees are performing duties that VA is paying VetDev and VOA to perform. VA Management did not respond to our findings that VA executed a services agreement with VetDev that was all-inclusive and negotiated an all-inclusive rate for those services; therefore, VA is overpaying as VA employees are doing the work that VetDev is being paid to perform, or not perform, as is the case.

VA Inappropriately Attempted to Expand the EUL

VA Management disagreed that officials attempted to inappropriately expand the EUL, but they did not provide any evidence. The documentation that clearly shows that VA officials wanted to use the Brecksville EUL to procure dialysis services, an outpatient surgery center, and additional mental health in-patient beds. VA medical center officials wanted to use the EUL authority to further circumvent procurement and leasing laws and regulations.

The Service Agreements Included Provisions Giving VetDev Sole-Authority To Obtain Services Needed To Make Modifications To The Properties

VA Management disagreed that VetDev has sole-authority to make decisions and enter into agreements to make modifications to the EUL properties. Management asserted that each of those service agreements contains provisions specifically allowing VA to make

desired *non-structural* alterations to the facilities, subject to Veterans Development approval. However, our finding was in regards to the non-allowed *structural* modifications rather than the *non-structural* modifications addressed in VA Management's response. VA Management's position, that relying on an Independent Government Cost Estimate (IGCE) to ensure fair and reasonable pricing when issuing sole-source work to VetDev under the terms of the EUL, is misguided. Competition is the preferred and ultimate method to determine and obtain fair and reasonable pricing. IGCEs are often erroneous and, as prior OIG work has shown, often come from the vendor expected to provide the services. As one example of cost savings achieved through competition, when the Medical Center Director's efforts to sole-source the space needed for the dialysis center to VetDev were thwarted by contacting staff and Regional Counsel, competition resulted in a lower priced offer for the space.

VA Management firmly defends their decision to spend \$6.4 million in addition to an increased monthly lease rate for the data center upgrade that was approved only at the VISN level. While we do not question that the data center is beneficial to the mission of VA, investing significant monetary resources to house the data center in a leased building provides no assurance that the data center will be available for use beyond the term of the EUL, or that the cost was fair and reasonable. There is no need for the data center to be in such close proximity to Wade Park since VA is moving toward establishing regional data centers. This also contradicts VA's rationale for using service agreements for flexibility because VA is committed to the EUL administrative building because of the significant cost VA invested to house the data center thus limiting VA's "flexibility."

Concerns Regarding VA's Involvement In the Financing

VA Management disagreed that VA was inappropriately involved in VetDev's financing. VA Management stated that they had to be involved to ensure that VetDev did not subordinate VA's interest in the Brecksville property, tie into the full faith and credit of the United States, or circumvent VA's rights to terminate the EUL or service agreements. It is unclear how VetDev would have the right or legal authority to do any of those things while securing financing for VetDev's Wade Park construction. If VA Management had concerns at the time, it would have been prudent to review the final financing agreement between VetDev and its financial backers, not for the Medical Center director and others to get intricately involved in the activities relating to attaining approved financing for VetDev. We stand behind the conclusion in our report that VA inappropriately assisted VetDev in obtaining the necessary financing. It was VetDev's responsibility to obtain the financing necessary to enter into the EUL with VA.

OIG Response to VA Management's Action Plan To the OIG Recommendations

1. We recommend that the Under Secretary for Health develop a long range plan that addresses the significant space shortages at Wade Park caused by the EUL for the Brecksville division.

VA Management non-concurred. VA Management asserted that VA's Strategic Capital Investment Planning (SCIP) process will address these issues. We disagree. The SCIP process deals with proposed capital projects regarding major construction and leases. First, it is not clear that the SCIP process includes service agreements as the SCIP process deals with construction and leases. Second, even if VA treats the service agreements as leases for SCIP purposes, the SCIP does not apply to the renewal of leases. Therefore, we conclude that the SCIP process will not address the significant issues regarding the service agreements and whether those service agreements should continue. The SCIP process appears to come into play only if VA decides not to renew the service agreement with VetDev.

2. We recommend that the Under Secretary for Health in coordination with the VAMC Cleveland Director, ensure the VAMC employees comply with the Privacy Act and other confidentiality statutes such as HIPAA and 38 U.S.C. § 7332, VHA Handbooks, and the Cleveland VAMC privacy policies, by appropriately safeguarding VA employees' PII and veterans' PHI.

VA Management concurred.

3. We recommend that the Under Secretary for Health in coordination with the VAMC Cleveland Director, ensure the VAMC employees receive training on records management and the provisions of applicable Records Management Retention schedules.

VA Management concurred.

4. We recommend that the Executive in Charge for the Office of Management and Chief Financial Officer and VA's General Counsel convene an independent group to determine the appropriateness and the legal sufficiency of the Brecksville EUL and service agreements contained in the EUL, particularly in light of the indictment¹⁶ of Michael Forlani and the suspension of VetDev and other entities identified in the indictment, and take appropriate action to include long and short term plans,

¹⁶ On August 30, 2012, Michael Forlani plead guilty to all corruption charges. He is scheduled to be sentenced on December 6, 2012.

including the renegotiation of the terms and conditions of the agreements for the administration building and the parking garage.

VA Management concurred. However, we have significant concerns with the proposed action plan. VA Management stated they intend to procure the services of an outside group; however, we recommend that VA Management first determine the feasibility of convening an in-house group of VA employees with the expertise in procurement of services and space within VA. We believe in-house expertise in these areas drawn from organizations across VA would be more beneficial than procuring contractor personnel who may not have the requisite expertise. Using VA experts would also eliminate the need to seek VetDev's approval to release documents.

5. We recommend that the Executive in Charge for the Office of Management and Chief Financial Officer and VA's General Counsel make a referral to the VA's Procurement Executive for a determination whether any of the service agreements constitute an unauthorized commitment and, if so, take appropriate action to rectify the problem.

VA Management concurred. However, our review of the action plan indicates they are not making a referral until further review by the independent group warrants such as a referral; therefore, we view the action plan as nonresponsive. Because of the seriousness of unauthorized commitments and the fact the VA Management is not making an immediate referral to have the issue evaluated, the OIG has made a referral to VA's Procurement Executive to determine if the service agreements constitute unauthorized commitments. VA Management's response implied that they are not concerned that these are unauthorized commitments and do not want to know at this juncture.

6. We recommend that the Executive in Charge for the Office of Management and Chief Financial Officer and VA's General Counsel immediately determine what services VOA is actually performing and which services VA employees are performing and what services, if any, VA needs from VOA. Consideration should be given to simply leasing the existing space, with VA employees providing all the services, or relocating the domiciliary.

VA Management concurred. However, a review of the action plan shows that VA Management does not agree with our findings and recommendations regarding this issue. VA Management's response was that there was no duplication of services. Our finding did not state that VA and VOA were performing the same services but stated that VA was paying twice for the same services because VA employees are performing services that VOA is being paid to perform. The rate paid to VetDev under the service agreement is an all inclusive rate which includes the services being provided by VA employees. Therefore, we view the proposed action plan as not responsive.

7. We recommend that the Executive in Charge for the Office of Management and Chief Financial Officer and VA's General Counsel issue a Bill of Collection to VetDev to recoup the VA determined value of the overbilling relating to the failure to provide security services.

VA Management concurred and has issued a Bill of Collection. However, we take issue with Management's comments that there was no gap in security services. There was no gap in security services because VA Police stepped in and performed the services VA was paying VetDev to perform. However, there was a gap in VetDev providing security services under the agreement. Also, there was a gap between the time VA's Office of General Counsel determined that VA Police were not authorized to provide the services and the time that VetDev began providing the services.

8. We recommend that the Executive in Charge for the Office of Management and Chief Financial Officer take immediate steps to identify the security requirements for the administration building, parking, and domiciliary space and develop a plan of action to ensure the safety and security of VA employees, veterans, and their families.

VA Management concurred. However, a review of the proposed action plan does not address the recommendation to clarify the security requirements of VetDev in the service agreements. Therefore, we view VA Management's response and action plan regarding security as inadequate and non-responsive.

9. We recommend that the Under Secretary for Health, the Executive in Charge for the Office of Management and Chief Financial Officer, and VA's General Counsel do not execute any amendments to the current EUL or the service agreements to add additional space or services without review and approval by an independent third party. We recommend that any additional requirements for space by the Wade Park VAMC be reviewed and approved in advance by VHA's Chief Procurement Executive to ensure the legitimacy of the requirements, including the area of consideration.

VA Management concurred with an independent review of any modification of the current EUL or service agreements. VA Management non-concurred with the recommendation regarding new space requirements in Wade Park. Because of the history of procuring services and space by inappropriately using VA's EUL authority in Cleveland, we believe review by VHA's Chief Procurement Executive is warranted even if the SCIP process is involved to ensure rules and process are not once again circumvented.

OIG Contact and Staff Acknowledgements

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