



October 9, 2017

The Honorable David Shulkin
Secretary
United States Department of Veterans Affairs
810 Vermont Avenue
Washington D.C. 20420

Dear Secretary Shulkin:

Vets Advocacy respectfully submits these comments in response to the Report on the West Los Angeles Leasing Act of 2016 dated August 2017 filed by the U.S. Department of Veterans Affairs (“VA”) with certain Congressional offices (the “Annual Report”). Vets Advocacy is a nonprofit formed out of the landmark settlement of the *Valentini v. Shinseki* class action litigation to partner with VA to end veteran homelessness in the Los Angeles region. Vets Advocacy is committed to fulfilling its obligations as a partner of the VA under the *Valentini* settlement agreement and securing the VA’s promises to homeless veterans in Los Angeles. At the outset, we wish to express our sincere appreciation for submitting the report to Congress in a timely manner. The report is informative and useful and represents a good faith effort to comply with the obligations of the West Los Angeles Leasing Act of 2016 (the “Act”).¹ Accordingly, it is in the spirit of collaboration and commitment to our mission that we submit these comments and request that VA promptly amend and supplement the report to address these comments.

Congress enacted the Act to authorize the implementation of the Draft Master Plan and bring more transparency and accountability regarding the use of the VA West LA Campus (the “Campus”). In the *Valentini* suit, the plaintiffs sought an accounting of profits under land sharing agreements on the Campus, including UCLA, Brentwood School, and City of Los Angeles, and challenged such agreements as invalid.² The VA defended these agreements by arguing they were valid “health care sharing agreements” under 38 U.S.C. § 8153 because the VA received revenue that the VA used to support veteran health care programs.³ The district court voided the agreements in issue, holding that the VA lacked the legal authority to enter into land sharing arrangements at the Campus exclusively for the purpose of raising revenue.⁴ With the enactment of the Act, Congress codified this part of the district court’s opinion in law, specifically cutting off the VA’s

¹ See West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226, §2(l), 130 Stat. 926, 930 (2016) (the “Act”).

² See First Amended Complaint for Injunctive, Declaratory, Mandamus, and Accounting Relief, ¶¶ 303-306 (“Accounting for Profits”), ¶ 265 (“there has not been a public accounting of how these deals were reached, what their details are, how much revenue is generated by them, and how such revenue, if any, is used. In fact, the total fiscal year budget reported in VA GLA’s 2010 Annual Report has an asterisk next to it, indicating that the figure does not include “alternative revenue.” On or about Thursday, August 11, 2011, Plaintiffs submitted a formal request for an accounting of profits of all money received by DVA or VA GLA as a result of any land-use agreements for the WLA Campus under which the land is used for any purpose that is not directly related to providing a home for disabled veteran.”).

³ See *Valentini v. Shinseki*, No. CV 11-04846 (C.D. Cal. Aug. 29, 2013) (order denying defendants’ motion for summary judgment; granting in part plaintiffs’ motion for summary judgment) (“Thus, Congress knew how to authorize the DVA to enter into land use agreements for the purpose of generating revenue. As such, reading § 8153 [i.e., the authority on which the VA relied to enter into the various land-sharing agreements prior to the Act] to allow this same result, only without the procedural safeguards required by § 8163 [the EULs], would render the DVA’s EUL authority superfluous.”)

⁴ See *id.*



ability to enter into land use agreements at the Campus exclusively for revenue purposes. The Act mandated that every single lease “principally benefit veterans and their families” and expressly defined that term to “exclude[] services in which the only benefit to veterans and their families is the generation of revenue for Department of Veterans Affairs.”⁵ Further, Congress limited the purposes to which the VA could spend revenue generated from Campus leases “exclusively for the renovation and maintenance of the land and facilities at the Campus.”⁶

Moreover, recognizing the VA’s history of opacity at the Campus, Congress required additional accountability and transparency with respect to all land sharing arrangements on the Campus, including the revenue generated therefrom. Under § 2(j)(2) of the Act, the VA must submit annual reports to relevant Congressional members and committees “evaluating all leases and land-sharing agreements carried out at the Campus, including (A) an evaluation of the management of the revenue generated by the leases; and (B) the records [documenting the value of the additional services and support provided by UCLA].”⁷ The legislative history demonstrates that Congress intended to bring much needed accountability and transparency to the management of land at the Campus, and the annual report is a fundamental disclosure requirement to achieve this.⁸

After reviewing the Annual Report, we believe it is both incomplete and inadequate. The Annual Report is incomplete because it fails to evaluate all leases and land-sharing agreements carried out on the campus during the relevant time period. And it is inadequate because the report fails to actually evaluate the leases and land-sharing arrangements it does discuss in a manner that satisfies the Act.

1. The Annual Report is incomplete because it fails to discuss all leases and land-sharing agreements carried out at the Campus.

The Annual Report discusses only three current leases with Veterans Housing Partnership, LLC (Building 209), the Brentwood School, and the Regents of the University of California on behalf of UCLA. The report also discusses a potential lease to be entered into with the Veterans Housing Partnership, LLC for Buildings 205 and 208. However, there are, or were, many other land sharing agreements on the Campus during the period from September 29, 2016 (the date of enactment) and August 2017. At the very least, land sharing agreements with Westside Services, LLC and its subtenant Tumbleweed Bus Company for the purpose of providing parking, the City of Los Angeles for the purpose of operating and maintaining a public park, The Salvation Army and New Directions for the purpose of providing veteran housing, the American Red Cross for the purpose of providing office space, and Breitburn for the purpose of operating an oil drill were in existence and in effect during the relevant period. None was discussed in the Annual Report. The VA must evaluate those arrangements by the express terms of the Act.

⁵ See the Act, §2(l), 130 Stat. at 930.

⁶ *Id.* §2(d), 130 Stat. at 927.

⁷ *Id.* §2(j)(2), 130 Stat. at 929.

⁸ 162 Cong. Rec. H5276 (daily ed. Sept. 12, 2016) (statement of Rep. Miller) (“The bill also includes numerous reporting requirements to ensure that the VA is fully transparent with Congress and the American people regarding the management use and operations of the campus.”)



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2. The Annual Report is inadequate because it fails to evaluate the leases and land-sharing agreements it does discuss, including the management of revenue generated therefrom and UCLA's record-keeping requirements.

The Act requires the annual report to “include[] an evaluation of the management of the revenue generated by the leases.”⁹ Thus, to comply with the Act, the VA must analyze how the revenues have been managed (e.g. collected, held, and used)—not just how much revenue was generated. The Annual Report does merely the latter, not the former. The report informs us that the Brentwood School has paid \$779,166.63 and UCLA has paid \$257,493.57 to date. This is good to know, but not enough. The Annual Report must evaluate the VA's “management of the revenue.” For example, the report fails to describe the collection, custody, control, or expenditure of such revenues – all critical issues in the *Valentini* litigation that led to Congress' desire full transparency at the Campus. Without this information, the public is left guessing as to whether VA has done what the Act requires – to keep the revenue locally and reserve such funds exclusively for the renovation and maintenance of the land and facilities at the Campus per §2(d) of the Act. The annual report is a mandatory disclosure meant to obviate the need for public guessing and to fill any informational void the VA thrived in prior to the *Valentini* litigation.

Further, the Annual Report is inadequate because it lacks an “evaluation” of meaningful components of the leases and land-sharing agreements. A dictionary definition of “evaluation” requires VA to determine the value and significance of the relevant leases.¹⁰ With respect to both the UCLA and the Brentwood School leases, the Annual Report merely describes the in-kind services provided by the respective counterparties. The report fails to determine their value or significance, postponing this determination until after a third-party audit has been conducted.¹¹ The truth is that VA has already internally documented the value to the services provided by these tenants. While we can understand VA's fear that the auditors will disagree with the value VA has documented, it is important that VA be fully transparent and open with the public. The VA can always, of course, caution the public that its evaluation may be revised after a third-party audit has been conducted. But VA must provide a true evaluation to comply with reporting requirements established in the West Los Angeles Leasing Act of 2016. That is how we all must agree VA will win back the veteran community's trust.

Finally, the Annual Report omits any discussion of UCLA's recordkeeping obligations as required by § 2(j)(2)(B) of the Act. The VA must disclose an evaluation of the records maintained by UCLA to document the value of the additional services and support provided under the relevant lease. Considering the problems VA had in litigation of producing records in the district court, this discussion is essential to repairing VA's reputation with respect to the UCLA lease.

We wish to reiterate our appreciation that VA has created this annual report in a timely manner. We submit these comments in the spirit of collaboration and partnership in the hopes that VA will supplement and

⁹ See the Act, §2(1), 130 Stat. at 930.

¹⁰ See, e.g., *Evaluation Definition*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/evaluation> (last visited Oct. 9, 2017) (“to determine or fix the value of” or “to determine the significance, worth, or condition of usually by careful appraisal and study”).

¹¹ Annual Report, pp. 10, 13 (“Until the audit is completed, this report will catalog, without associating value, the events, activities...” of both UCLA and the Brentwood School)



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amend the Annual Report. We request that VA do so, thereby addressing the problems identified herein, within a two-week period. If you have any questions or would like to discuss further by phone, please let us know.

Sincerely,

Dan Garcia
CEO, Vets Advocacy

Jesse Creed
Executive Director, Vets Advocacy