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The Honorable Brian Schatz, Ranking Member
Subcommittee on Military Construction, Veterans Affairs, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Elizabeth Warren
United States Senate

**Private Citizens’ Involvement in Decision-Making at the Department of Veterans Affairs:
Information on the Purpose, Scope, and Time Frames of Interactions between 2016 and
2018**

With a budget of \$201.1 billion in fiscal year 2019, the Department of Veterans Affairs (VA) provides benefits to veterans, including various types of financial assistance, burial services, and health care to more than 9 million veterans. In managing and overseeing its complex activities, VA has faced longstanding challenges, including providing veterans with timely access to health care, managing and overseeing its information technology acquisitions, and maintaining leadership stability in its top personnel positions.¹ VA has undertaken various efforts to address these challenges, such as awarding a contract to acquire a commercial electronic health record system in 2018. As part of such efforts, VA may solicit input from entities including federal advisory committees and veterans service organizations (VSO) as well as from private citizens—individuals not employed by a federal agency.²

In a January 2017 news conference, then-President-elect Trump acknowledged VA’s challenges, announced his nomination of David Shulkin as VA Secretary, and stated that he and VA would consult business executive Isaac Perlmutter and other private citizens to help address these issues. Perlmutter, after agreeing to consult with the President, Shulkin, and VA, later included two other private citizens—Bruce Moskowitz and Marc Sherman—in his efforts to help VA.³ For the purposes of our report, we will hereafter refer to Moskowitz, Perlmutter, and Sherman as the “three private citizens.”

¹ Given these challenges, we added VA health care to the GAO High-Risk List in 2015 and continue to include it on the High-Risk List as of 2019 in addition to VA acquisition management. Since the 1990s, GAO’s high-risk program has focused attention on government operations with greater vulnerabilities to fraud, waste, abuse, and mismanagement, or that need broad reform. See GAO, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, [GAO-19-157SP](#) (Washington, D.C.: Mar. 6, 2019).

² See Enclosure III for a discussion of various mechanisms through which VA receives advice and recommendations from private citizens and other entities, VA guidance regarding VA officials’ interactions with private citizens and other entities, and how VA officials have accessed this guidance.

³The three private citizens are represented by a law firm in Washington, D.C. According to their representatives, shortly after his election, President-elect Trump sought input about improving operations at the VA from his acquaintance, Isaac Perlmutter, the Chairman of Marvel Entertainment, as he was “known for his success in helping large organizations.” Perlmutter, in turn, enlisted Bruce Moskowitz, a practicing physician in West Palm Beach, Fla.,

The involvement of these three private citizens in VA activities has raised questions about their alleged influence in VA decision-making, resulting in media attention, litigation, and a congressional investigation.⁴ You asked us to review issues related to the involvement of these three private citizens in VA activities and decision-making. This report provides information on the interactions that the three private citizens had with VA.

For this report, we focused on five activities or decisions that VA undertook between 2016 and 2018, which we refer to collectively as “VA initiatives.” We identified these initiatives based on, among other things, their size, complexity, and the priority placed on them by VA. Specifically, we reviewed VA’s interactions with the three private citizens in relation to 1) activities related to negotiating a contract for an electronic health record system with Cerner Government Services, Inc. (Cerner); 2) the development of mobile applications to access health records; 3) the implementation of a medical device registry summit; 4) veterans’ suicide prevention and mental health awareness efforts, and 5) VA senior-level personnel decisions.⁵

To conduct our work, we reviewed and performed a content analysis of documents that VA provided to various media and other groups in response to Freedom of Information Act requests and as part of an ongoing investigation by the House Committee on Veterans’ Affairs related to the involvement of these three private citizens in VA activities. Our review also included additional documents that we requested from VA related to these interactions. The documents included emails, calendar appointments, and travel records.⁶ In particular we analyzed 1,165 email exchanges, including 223 email exchanges between at least one VA official and one private citizen and an additional 217 email exchanges of communications between federal

as someone with contacts in the academic and nonprofit health care communities, and Marc Sherman, a financial and business consultant who claimed experience in organizational risk management and corporate restructuring. The representatives further stated that “these individuals share a deep concern for veterans’ issues, including health-care-related issues.”

⁴ VoteVets Action Fund filed suit against VA in August 2018, alleging that that VA violated the Federal Advisory Committee Act by obtaining advice and recommendations from private citizens Moskowitz, Perlmutter, and Sherman, without taking the required steps under the act to formally establish a federal advisory committee. In September 2019, a federal district court held that the three private citizens did not constitute an advisory committee under the act, nor did VA utilize them as an advisory committee, and dismissed VoteVets’ complaint. *VoteVets Action Fund v. Department of Veterans Affairs*, 414 F.Supp. 3d 61- (D.D.C. 2019). VoteVets Action Fund has appealed the court’s decision. In addition, in February 2019, the U.S. House of Representatives Committee on Veterans’ Affairs initiated an investigation that is ongoing about the influence of Moskowitz, Perlmutter, and Sherman over policy and personnel decisions at VA.

⁵ Cerner Government Services, Inc. (Cerner) is a corporation that provides health care information technology services and systems. VA awarded Cerner a contract for the procurement of an electronic health record system being deployed by the Department of Defense in May 2018 to replace its existing electronic health record system (VistA) with a commercially available system configured for VA. According to VA, common medical devices for veterans include cardiac devices, such as pacemakers, and orthopedic devices, such as hip and knee replacement implants. VA hosted the June 2018 summit to promote the implementation of a national medical device registry to allow VA to track medical devices for safety recalls, identify medical devices when patients show up for medical emergencies, and track and compare the patient outcomes of medical devices.

⁶ In response to our request, VA provided us non-redacted emails that the agency had previously produced in response to requests under the Freedom of Information Act, which requires federal agencies to provide the public access to certain government records and information. See 5 U.S.C. § 552. These non-redacted emails included selected attachments that contained some meeting agendas, minutes, or notes. In some cases, we did not obtain all meeting-related documents. According to VA officials, meeting agendas, minutes, or notes may not have been developed for all such interactions.

officials, that is, email exchanges that did not have a private citizen as an originator or recipient but included or referred to them in some way. We also interviewed and reviewed statements provided to us by the three private citizens' representatives, as well as written statements they provided to a congressional requester and to the media. For the purpose of this report, "information obtained from the three private citizens," refers to information provided by their representatives, on their behalf. Based on the time frames indicated in these documents, we focused our review on interactions between 2016 and 2018.

While our focus was on the interactions between VA and the three private citizens, we did consider interactions between VA and other private citizens and entities in relation to the five initiatives as we became aware of them during the course of our review. Specifically, we included VA's interactions with executives from entities including the Cleveland Clinic, Johns Hopkins University, Johnson & Johnson, Kaiser Permanente, Mayo Clinic, and Partners HealthCare, among others.⁷

We obtained written responses and conducted interviews with current VA officials, including officials from VA's Office of General Counsel and officials who had or currently have responsibility for one or more of the five VA initiatives included in our review. We also conducted interviews with a former VA official who had responsibility for one of the VA initiatives and with two VA contractors who currently perform work related to this initiative. We also read former VA Secretary David Shulkin's book, *It Shouldn't Be This Hard To Serve Your Country*, and attended a November 2019 presentation at which he spoke about the book; however, he declined our request for an interview.⁸ We also were unable to interview other former VA officials and private citizens, including the former Acting Under Secretary for Health Poonam Alaigh, and executives from private organizations involved in at least one of the five VA initiatives, including executives from Johns Hopkins University and the Mayo Clinic; these individuals either declined to meet with us or did not respond to our outreach.⁹ See Enclosure I for more detail on the scope and methodology of our review.

To describe the involvement of Moskowitz, Perlmutter, and Sherman, or other private citizens in VA activities and decision-making, we developed questions and answers to provide a framework for our observations of interactions. We also developed detailed timelines for each of VA's five initiatives and related interactions with private citizens; these timelines are included in Enclosure II. In addition, in Enclosure III, we provide information about how VA obtains advice and recommendations from private citizens and entities through federal advisory committees and VSOs, how VA provides guidance related to these interactions, and how VA officials have accessed this guidance.¹⁰

⁷ Johnson & Johnson is a multinational corporation founded in 1886 that produces medical devices, pharmaceutical, and consumer goods. According to Johnson & Johnson, it has a longstanding mission to support veterans and has engaged in various collaborations and partnerships with both governmental and non-governmental institutions that support that mission. The Cleveland Clinic, Johns Hopkins University, Kaiser Permanente, Mayo Clinic and Partners HealthCare are medical centers from which VA received advice and recommendations.

⁸ David Shulkin, *It Shouldn't Be This Hard To Serve Your Country*, (New York: PublicAffairs, 2019) and the presentation "A Conversation with David Shulkin," held Monday, November 25, 2019, at The World Affairs Council of Philadelphia. David Shulkin was Secretary of the Department of Veterans Affairs from February 2017 to March 2018.

⁹ Poonam Alaigh was Acting Under Secretary for Health of the Department of Veterans Affairs from May 2017 to October 2017.

¹⁰ According to the Department of Veterans Affairs, the agency uses federal advisory committees to obtain objective advice and recommendations for its programs and policies. Agencies must establish, manage, and terminate federal

We conducted this performance audit from April 2019 to May 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Private Citizens' Interactions with VA Officials

What were the time frames for the interactions of the three private citizens with VA officials, and how do they relate to selected initiatives at VA?

Based on our review of email exchanges and confirmed by individual statements, we found that the interactions between VA officials and the three private citizens took place between late 2016 and July 2018. Specifically, according to statements by former VA Secretary Shulkin in his book, and by the three private citizens, Perlmutter was the first to interact with Secretary Shulkin. Perlmutter then enlisted Moskowitz and Sherman to assist VA officials.

Our analysis shows that the time frames for the interactions between the private citizens and VA officials varied by initiative. Specifically,

- VA officials and one of the three private citizens exchanged emails about mobile application development between February 2017 and March 2018. Although one specific application advocated for by one of the three private citizens did not come to fruition, VA launched a mobile application in 2019 for veterans to access their health records, among other things.
- Email discussions about the Cerner contract and interoperability primarily occurred between November 2017 and April 2018. The former VA Acting Chief Information Officer (CIO) and members of the Electronic Health Record Modernization program met Moskowitz and Sherman in November 2017. Acting VA Secretary Robert Wilkie announced the contract award to Cerner in May 2018.¹¹
- Email exchanges between VA officials and the three private citizens about suicide prevention and mental health efforts began in early 2017; however, communication with Perlmutter about promoting VA's suicide awareness campaign occurred primarily from October to November 2017, which coincided with Secretary Shulkin's ringing of the bell at the New York Stock Exchange in conjunction with Veterans Day events, in part, to promote the campaign.
- Efforts of one of the private citizens to help organize a medical device registry primarily

advisory committees in accordance with the Federal Advisory Committee Act, which is intended to ensure that advice provided to agencies is objective and accessible to the public. Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified, as amended, at 5 U.S.C. App. 2). In general, VSOs are private, non-profit groups that advocate on behalf of veterans. Some VSOs are congressionally chartered or accredited to serve as VA claims agents or attorneys on behalf of veterans.

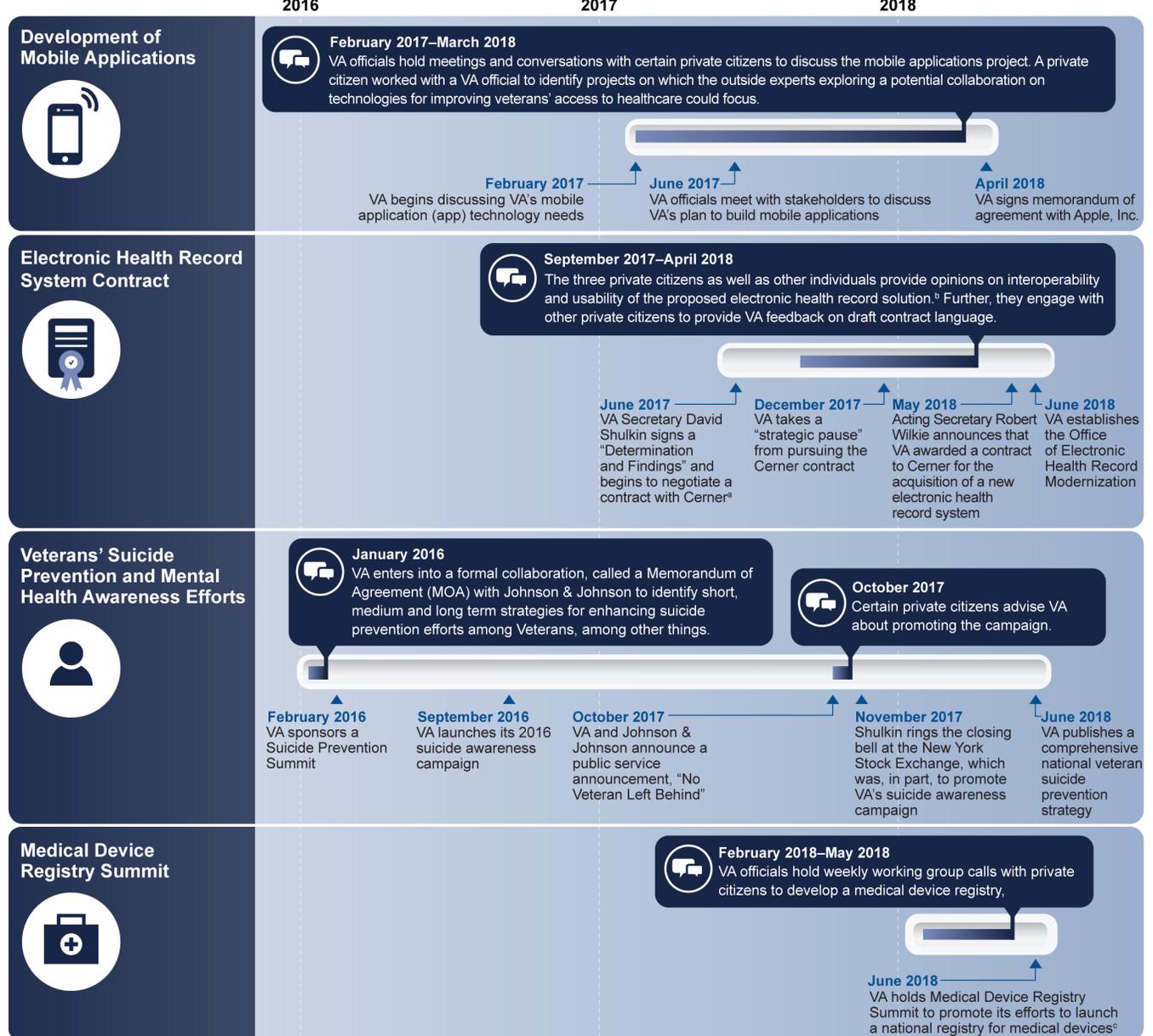
¹¹ Electronic health record interoperability refers to the ability of electronic health record systems to exchange electronic health information with other systems and process the information without special effort on the part of the user, such as a health care provider.

occurred between February and May 2018, and culminated in a summit that took place in June 2018, which none of the private citizens attended.

- Email exchanges regarding personnel decisions varied by position. For example, interactions regarding the VA CIO and Under Secretary for Health positions occurred between September 2017 and July 2018.

Figure 1 illustrates key interactions between private citizens including the three private citizens and VA officials in relation to four of the five initiatives in our review. See also Enclosure II for detailed timelines regarding these interactions.

Figure 1: Interactions of Various Private Citizens in Four Key Department of Veterans Affairs (VA) Initiatives, 2016-2018



Source: GAO analysis of VA documentation and interviews with cognizant officials and private citizens. | GAO-20-447R

Notes: Private citizens are individuals who are not employed by a federal agency.

The information in this figure is based on 223 email exchanges between at least one VA official and one private citizen including individuals other than the three private citizens— Bruce Moskowitz, Isaac Perlmutter, and Marc Sherman—and an additional 217 email exchanges of communications between federal officials, that is, email exchanges that did not have a private citizen as an originator or recipient, but included or referred to them in some way. The emails that GAO obtained and analyzed were originally provided by VA to various media and other groups in response to Freedom of Information Act requests and as part of an ongoing investigation by the House Committee on Veterans' Affairs related to the involvement of the three private citizens in VA activities.

^a"Determination and Findings" means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential

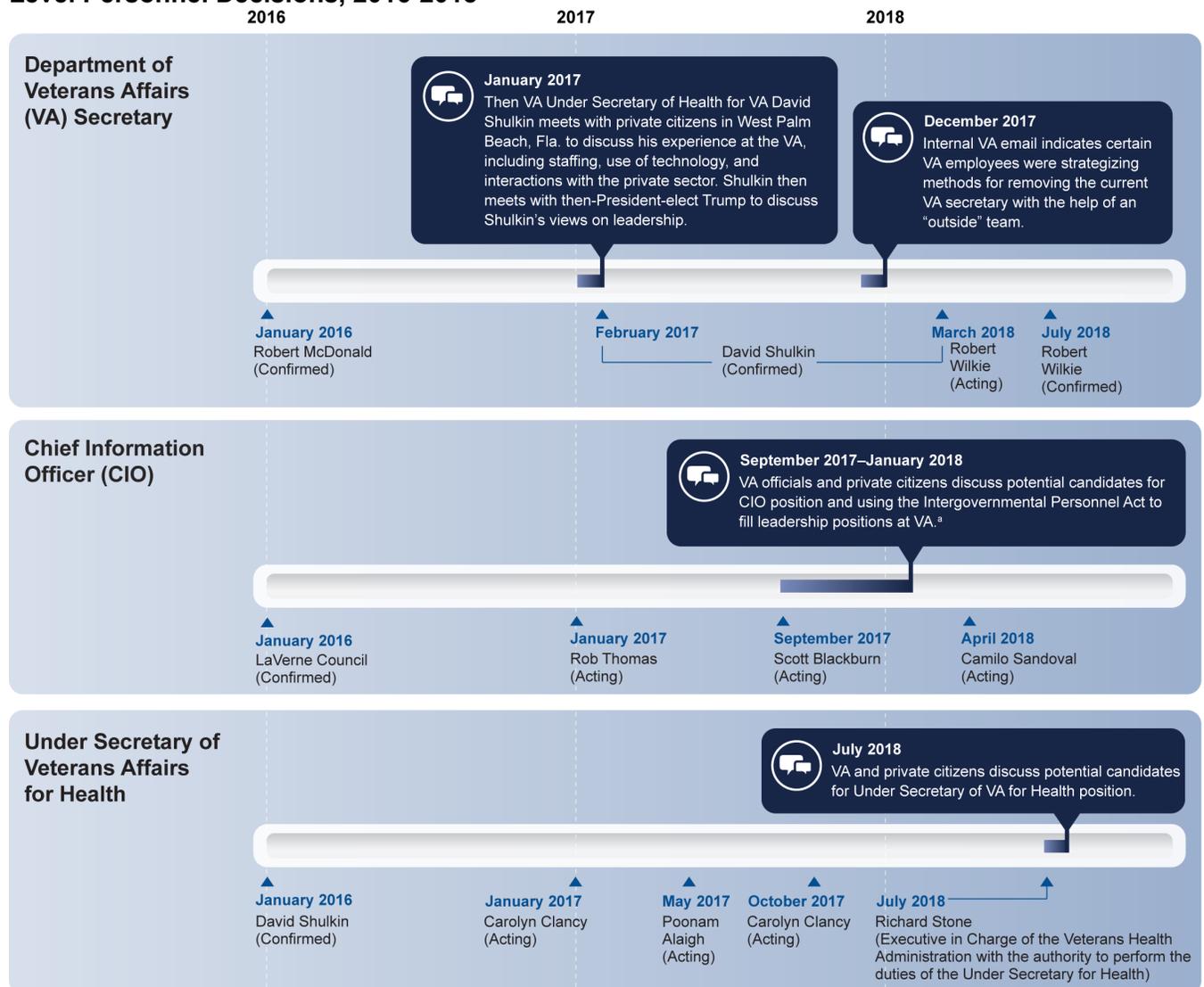
to support the determination and must cover each requirement of the statute or regulation. 48 C.F.R. § 1.701 (2019).

^bElectronic health record interoperability refers to the ability of electronic health record systems to exchange electronic health information with other systems and process the information without special effort on the part of the user, such as a health care provider.

^cAccording to VA, common medical devices for veterans include cardiac devices such as pacemakers and orthopedic devices such as hip and knee replacement implants. VA hosted the June 2018 summit to promote the implementation of a national medical device registry to allow VA to track medical devices for safety recalls, identify medical devices when patients show up for medical emergencies, and track and compare the patient outcomes of medical devices.

Figure 2 illustrates key interactions between private citizens, including the three private citizens and VA officials related to the fifth initiative in our review—senior-level personnel decisions.

Figure 2: Interactions of Private Citizens in Department of Veterans Affairs' (VA) Senior-Level Personnel Decisions, 2016-2018



Source: GAO analysis of VA documentation and interviews with cognizant officials and private citizens. | GAO-20-447R

Notes: Private citizens are individuals who are not employed by a federal agency.

The information in this figure is based on 223 email exchanges between at least one VA official and one private citizen and an additional 217 email exchanges of communications between federal officials, that is, email exchanges that did not have a private citizen as an originator or recipient, but included or referred to them in some way. The emails that GAO obtained and analyzed were originally provided by VA to various media and other groups in response to Freedom of Information Act requests and as part of an ongoing investigation by the House Committee on Veterans' Affairs related to the involvement of three private citizens— Bruce Moskowitz, Isaac Perlmutter, and Marc Sherman— in VA activities.

LaVerne Council was confirmed as Assistant Secretary of Veterans Affairs (Information and Technology) in 2015; however, this date was outside of the scope of our report. Similarly, David Shulkin was confirmed as Under Secretary of Veterans Affairs for Health in 2015; however, this date was outside the scope of our report.

^aThe Intergovernmental Personnel Act of 1970 authorizes the temporary reassignment of employees between federal, state, and local governments and institutions of higher educations, among other entities. Pub. L. No. 91-648, 84 Stat. 1909 (1971) (codified, as amended, at 5 U.S.C. §§ 3371-3375).

According to current and former VA officials and our email analysis, what impact did the three private citizens have on VA initiatives?

Former and current VA officials we spoke with had varying assessments of the impact the citizens had on VA initiatives. According to former VA officials, while the three private citizens had power and influence in part because of the connection of one of the three private citizens to the President, VA officials ultimately made decisions independently of this influence. Further, a former VA official told us that the three private citizens created a “shadow reporting structure” in which they were stakeholders without a formal role. As a result, according to the official, the period in which he was at the VA when the three private citizens were advising VA created confusion for some VA staff who recognized the power and influence of the three private citizens but were not given clear guidance on how to handle that power or make decisions under that influence. In contrast, a current VA official we interviewed told us that there was no impact because the private citizens’ input did not require VA to deviate from its planned strategy for reaching decisions on key matters. In addition, this current official noted that he was never personally directed by VA leadership to change any requirement to conform to the thoughts or desires of the three private citizens.

Similarly, during his November 2019 presentation, former Secretary Shulkin indicated that the three private citizens did not change his decision-making regarding the initiatives that occurred during his tenure as Secretary. Shulkin acknowledged that seeking the advice of private citizens is not an unusual practice for government officials. However, the three private citizens differed from other private citizens because of the pre-existing and ongoing relationship one of them had with the President, the direct access he had to the President, and the President’s expectation that then-Secretary Shulkin listen to them and make them happy, according to statements made by Shulkin both in a November 2019 presentation and in his book. Notwithstanding their status, during the November 2019 presentation that we attended, Shulkin stated that he listened to the advice the three private citizens provided in the same way that he listened to advice from any other private citizens, including chief executive officers in private industry, but that he always made decisions that were consistent with his principles regardless of what these private citizens advised.

Another former VA official told us that he believed that former Secretary Shulkin made decisions independently. However, he also stated that Shulkin had to “bring along” the three private citizens and get their buy-in on certain decisions, for example, on the Cerner contract due, in part, to their direct access to the White House.

Our review of email exchanges and interviews with current and former VA officials reflected the private citizens’ involvement in each of the five VA initiatives:¹²

- **Electronic health record system contract:** Input from the three private citizens may have contributed to the “strategic pause” that VA took on the electronic health record system contract negotiation with Cerner to focus on interoperability, according to a former VA official. According to this official, although the delays in negotiating and

¹² The perspectives of the private citizens are included elsewhere in this report. In addition, Enclosure II provides a more detailed timeline of the interactions between VA officials and private citizens on the five VA initiatives.

signing the contract were, in part, due to the need to address the three private citizens' concerns, the delays were also to ensure that the contract was comprehensive, given the high dollar threshold involved.

- **Development of mobile applications:** According to our review of email exchanges, one of the three private citizens, Moskowitz, worked with at least one VA official to lead discussions on establishing priorities for the development of mobile applications for veterans to use; one specific application that he advocated for was not pursued by VA. VA's 2019 press release describing the application that VA chose to pursue occurred after the three private citizens interactions with the VA had ended.
- **Veterans' suicide prevention and mental health awareness efforts:** According to our review of email exchanges, one of the three private citizens, Perlmutter, helped to arrange former Secretary Shulkin's November 2017 appearance at the New York Stock Exchange, which was, in part, to raise awareness about suicide among veterans.¹³
- **Medical device registry summit:** According to our review of email exchanges, one of the three private citizens (Moskowitz), participated in weekly meetings to plan a medical device registry summit hosted by VA. Moskowitz also invited his son, Aaron Moskowitz, to join in planning the summit, and they both worked to connect VA to other private citizens to participate in the summit. The summit was held on June 4, 2018, at which time, VA officials thanked Bruce and Aaron Moskowitz as driving forces in the field of medical device registries; however, neither of them were present at the summit.
- **Personnel decisions:** According to the three private citizens, although the citizens offered suggestions on potential candidates, VA officials made all hiring decisions. We saw evidence in the emails we reviewed that the private citizens suggested potential candidates for the CIO and Under Secretary for Health positions and that VA attempted to hire one of these potential candidates for the CIO position. This latter effort did not come to fruition because an agreement could not be successfully negotiated between that candidate's private employer and VA.¹⁴ In addition, former VA Secretary Shulkin noted in his book that he "interviewed" with two of the three private citizens, Perlmutter and Moskowitz, prior to his nomination and before his initial meeting with then-President-elect Trump. Shulkin writes in his book that at the conclusion of his meeting with Trump, Trump called Perlmutter to indicate that he agreed with Perlmutter's positive opinion of Shulkin.¹⁵ In addition, although Shulkin attributes his eventual departure from VA to other "influencers" within VA who were not in agreement with Shulkin's stance regarding privatization, Shulkin writes in his book that the influencers' plan to remove him from office was coordinated through Perlmutter. Perlmutter denied this allegation.

¹³ On November 7, 2017, former Secretary Shulkin rang the closing bell at the New York Stock Exchange in conjunction with a variety of events Shulkin was doing in recognition of Veterans Day. The ringing of the bell was done in conjunction with officials from Johnson & Johnson and also included an appearance by a Marvel character. VA conducts multiple and ongoing suicide awareness efforts in collaboration with various private organizations, including Johnson & Johnson, that donate or contract with VA for the services that they provide. The Secretary of VA has broad authority to accept gifts to benefit veterans and to enhance the Secretary's ability to provide services or benefits. 38 U.S.C. § 8301.

¹⁴ The Intergovernmental Personnel Act of 1970 authorizes the temporary reassignment of employees between federal, state, and local governments and institutions of higher educations, among other entities. Pub. L. No. 91-648, 84 Stat. 1909 (1971) (codified at 5 U.S.C. §§ 3371-3375. Before an assignment can occur, the assigned employee and the federal agency and entity to which or from which the employee is being assigned must enter into a written agreement.

¹⁵ Shulkin, *It Shouldn't Be This Hard To Serve Your Country*, p. 24.

According to the three private citizens, VA often did not act on the advice and guidance provided by the three private citizens. For example, the three private citizens identified multiple occasions in which VA did not follow up on information or introductions they provided related to potential initiatives to improve VA facility ratings, suicide prevention activities, or women's health issues. Similarly, in their July 2018 statement to the media, the three private citizens stated that, "any decisions of the agency or the President, as well as the timing of any agency decisions, were independent of our contacts with the VA. We did not make or implement any type of policy, possess any authority over agency decisions, or direct government officials to take any actions."

What were the roles of the three private citizens in their interactions with VA officials?

Our review of the 223 email exchanges indicates that the three private citizens acted as organizers by scheduling meetings with VA officials and helping to plan events, such as the VA's medical device registry summit that occurred in June 2018. At times, the emails show they acted as advisors by making recommendations regarding, for example, the Cerner contract negotiation, mobile application development, and potential candidates for senior level VA positions. Overall, 28 of the 223 email exchanges we reviewed between VA officials and private citizens involved private citizens making recommendations to the VA, and 70 involved them providing information on issues related to the five selected initiatives as well as unrelated issues such as veterans' ability to seek health care outside of VA facilities. The emails also show they acted as intermediaries by introducing VA officials to other private citizens from various businesses and academic medical centers. For example, the emails we reviewed show the three private citizens facilitated several introductions to researchers from academia and the business world who the citizens thought could advise VA in its mental health and suicide awareness and prevention efforts.

Roles according to the three private citizens. According to the three private citizens, they did not have a formal role in the agency, had no decision-making authority, and offered their time and expertise to the VA "at the pleasure of the Secretary." According to a written statement from the three individuals, they provided advice and introductions when asked by VA officials and helped to connect VA to other private citizens who were health care experts to help VA improve services and health care provided to veterans. For example, the emails we reviewed show that the three private citizens advised VA on issues regarding the Cerner contract from an end user/physician perspective. In addition, they were asked on occasion by VA leadership and other executive branch officials to offer suggestions to fill vacant positions at VA, but they did not have the authority or responsibility to make personnel decisions. The three private citizens also introduced VA officials to top executives from academia and leading medical centers, as well as CIOs and other subject matter experts who also provided general advice as well as advice on specific issues including medical supply chain, electronic health records and interoperability, risk management systems, and mental health, among other things, according to the three private citizens.

Similarly, in a July 2018 statement to the media, the three private citizens stated that while they were always willing to share their thoughts, they were aware that their role was not to make or implement any type of policy, possess any authority over agency decisions, or direct government officials to take any actions. Rather, according to their statement, they provided advice and suggestions so that members of the department could consider them as they wished to make their own decisions on actions to be taken.

Additionally, in a February 2019 letter responding to a request from Senator Elizabeth Warren, the three private citizens stated that they were not VA employees or contractors and had never represented themselves as such. They said that they did not profit or seek to profit from their interactions with VA, but contributed their time when requested by President Trump and senior VA leadership who reached out to them to ask for advice and introductions to health-care experts.

Roles according to former VA officials and contractor. Former VA officials and a contractor who was involved in one of the initiatives indicated that the three private citizens did not have a formal role in the agency; however, VA officials were unclear as to the private citizens' informal roles. For example:

- In his book, *It Shouldn't Be This Hard To Serve Your Country*, former Secretary Shulkin stated that although he told the three private citizens that they could not have an official role at VA, he was unsure of the exact role that the President expected them to play.¹⁶
- Another former senior VA official told us that while the role of the three private citizens was unclear, he viewed them as informal civilian advisors to the President and the VA Secretary and, as such, these three private citizens held some degree of power and influence.
- In addition, this former VA official told us that although the three private citizens offered, on occasion, some "fantastic" advice, it was also clear at times that they did not understand the subject matter at hand or how government worked. The official said that the three individuals lacked information or complete context of the projects and the processes they sought to inform. This official stated that while these three private citizens thought they were more knowledgeable than they were, VA officials recognized their power and tried to take the advice they offered that was valuable but disregarded the advice that was not helpful.
- A contractor who performed work for VA told us that while the three private citizens did not have a formal role at VA, he was told by VA officials that they had an informal role as trusted advisors to the White House from whom they had instructions and "blessings" to be involved in VA initiatives. The contractor said that he viewed this informal role as extremely unusual, but he managed his concern about such an unusual relationship by drawing boundaries around the three citizens' participation and by listening to their input and responding accordingly.

What were the more common themes of the interactions that the three private citizens had with VA officials?

The more common themes found in the 223 email exchanges we reviewed between private citizens and VA officials were the following:

- **VA officials or private citizens planning meetings.** Ninety-five of the email exchanges referred to planning meetings. For example, in May 2017, Moskowitz sent VA officials an agenda for a planned teleconference meeting regarding the need for technological solutions to track and manage controlled substances and prevention of medication errors.
- **Private citizens updating VA officials or providing information to VA officials.**

¹⁶ Shulkin, *It Shouldn't Be This Hard To Serve Your Country*.

Seventy email exchanges included examples of private citizens providing information to VA officials. For example, in March 2018, Moskowitz asked the former Acting CIO Scott Blackburn for clarification on what Cerner would provide regarding how intensive care units would interact with a central monitoring system. In doing so, he also explained that all major institutions have a command and control center that monitors intensive care units located in different hospitals and that this capability would expand in the future, for example, to emergency rooms and recovery rooms.

- **VA officials updating private citizens.** Sixty-seven email exchanges involved VA officials providing information to private citizens. For example, in April 2018, former VA Senior Advisor Camilo Sandoval informed Moskowitz that he had begun leading VA's Office of Information and Technology as the Executive in Charge until a permanent CIO could be nominated and confirmed through the Senate process.

Less common themes observed from these interactions involved private citizens requesting action by a VA official, VA officials requesting action by a private citizen, and a private citizen communicating support for a VA decision. Each of these themes was identified three or fewer times in the 223 email exchanges we reviewed.

Our analysis of email exchanges also shows that on occasion, Moskowitz and Sherman disagreed with VA's approach to a particular issue. For example, in November 2017, in an email to Blackburn, Moskowitz stated that, after the VA had selected Cerner, they were committed to the adoption of Cerner as the provider of the electronic health record system, but he noted that having VA rush into a contract without completing its due diligence was problematic.

With respect to the five VA initiatives that we focused on in our review, activities related to negotiating the Cerner contract and interoperability issues were referred to most frequently. Specifically, we identified 77 out of the 223 total email exchanges between private citizens and VA officials that discussed some aspect of Cerner and VA health data interoperability. We also identified discussions about mobile application development and the medical device registry in 31 and 24 of the 223 emails, respectively. In contrast, the email exchanges did not frequently refer to issues related to personnel decisions or veteran suicide prevention and mental health awareness. We observed each of those initiatives mentioned in less than 15 emails. Finally, 83 of the 223 emails were related to topics other than the five initiatives. For example, these emails included discussions about social interactions or scheduling meetings for which no topics were specified.

With which VA officials did the three private citizens interact?

Based on our review of email exchanges, the three private citizens—Moskowitz, Perlmutter, and Sherman—interacted directly with a number of senior VA officials. We determined the three private citizens were in direct email communications with senior officials, such as both the former and current VA Secretary, the former Deputy Secretary, former Chief of Staff, former senior advisors to the VA Secretary, former Acting Under Secretary for Health, and former Acting CIOs, who at VA sometimes had the title of Executive in Charge of the Office of Information and Technology. The emails were initiated by both the VA officials and the private citizens. For example, Secretary Shulkin emailed all three private citizens and the three citizens directly emailed former Secretary Shulkin to schedule meetings, voice concerns about veteran issues, or discuss specific initiatives at the department, among other things, during his tenure as VA Secretary.

In addition, the three private citizens indirectly interacted with VA officials, such as the Program Executive Officer for the Electronic Health Record Modernization efforts and members of his team, by being copied on email exchanges between senior VA officials and by VA officials who emailed among themselves to discuss responses to questions from the three private citizens.¹⁷ For example, we identified email exchanges among VA officials in February 2018 that discussed preparing a response to Moskowitz and Sherman to address concerns raised by technical and clinical experts about the Cerner technology solution for VA.

What was the mode and frequency of communication between the three private citizens and VA officials?

The three private citizens interacted with VA and other federal officials frequently—at times daily, according to former VA officials—through email and telephone. VA officials also occasionally met with the citizens at in-person meetings, some of which involved travel to either Washington, D.C., or West Palm Beach, Florida, where one or more of the private citizens worked or had a residence.

Emails: Within the 223 email exchanges, 55 referenced meetings having occurred via telephone or in person between private citizens, including the three private citizens, and VA officials; 95 were examples of efforts to plan a meeting; and 25 were discussions about planning an event with a number of individuals such as a summit or conference.¹⁸

The email exchanges we reviewed ranged from a single email on a certain day to multiple emails within a single day, or email chains that included a lengthy exchange of multiple emails on the same subject over several days or weeks. VA officials emailed the three individuals from their official department email addresses; however, we identified three VA officials—former Secretary Shulkin, former Chief of Staff Peter O’Rourke, and former Acting Under Secretary for Health Alaigh—who also provided non-governmental email addresses to the three private citizens and directed the three private citizens to communicate with them using those addresses. We cannot quantify how often exchanges occurred on non-governmental email accounts as we did not obtain those emails.¹⁹

¹⁷ The official title for this position is now Executive Director of the Office of Electronic Health Record Modernization. In addition, except for current VA Secretary and the Executive Director of the Office of Electronic Health Record Modernization, many of the VA officials who interacted with the three private officials no longer hold the same positions at VA or are no longer employed by the department.

¹⁸ A single email chain may have included both a discussion of a meeting that had already occurred as well as planning for another meeting. We did not determine unique instances of each meeting, only counted the presence of a discussion about meetings within each email chain.

¹⁹ VA provided to us email exchanges that included at least one VA official government email address in which a reference to Shulkin, Alaigh, or O’Rourke’s nongovernment email was made. In addition, the representatives for the three private citizens provided us emails from Shulkin and from Alaigh sharing their nongovernment email addresses with the three private citizens. In August 2019, litigation was filed alleging that VA and the National Archives and Records Administration failed to carry out their duties under the Federal Records Act to recover federal records containing the communications of then-Secretary Shulkin, including communications with the three private citizens that were transacted over nongovernmental email. *Am. Oversight v. Dep’t of Veterans Affairs*, No. 19-2519 (D.D.C. Aug. 21, 2019). The lawsuit was pending at the time of this report.

Among the 223 email exchanges between VA officials and private citizens, Moskowitz, Perlmutter, or Sherman initiated contact with VA officials for 53 of these exchanges (i.e., they sent the originating email). Further, our review of the 53 email chains initiated by one of the three private citizens identified 15 references to in-person meetings or teleconferences having already occurred and 28 discussions about plans for future meetings.²⁰ For example, in March 2018, Moskowitz contacted other private citizens about a conference call VA planned to schedule to discuss the review of the electronic health record contract for the department, and he copied VA officials on the correspondence. Further, in an April 2017 email to other private citizens and VA officials, Moskowitz referenced previous discussions he had with VA officials and other private citizens and stated that he was available “24/7” to assist them in moving forward with a planned initiative the following month to address veterans’ mental health.

Phone calls: Through our analysis of email exchanges and discussions we had with current and former VA officials, we observed that telephone calls that involved one or more of the three private citizens and VA officials were common. However, we did not obtain phone logs or other records to help us to determine the frequency of this communication, because such records were not readily available to VA. Based on our review of email exchanges, we noted that one or more of the three private citizens participated in teleconferences related to VA initiatives. For example:

- VA officials organized a phone call in November 2017 with five experts from private organizations to discuss VA’s electronic health record strategy and the Cerner system design and implementation. Moskowitz and Sherman also attended the meeting.
- One or more of the three private citizens participated in multiple phone calls with VA officials from February through June 2017 to discuss priorities for VA’s mobile application collaboration with Apple, Inc. (Apple).
- In a May 2017 email, Apple thanked Moskowitz for organizing a recent conference call between VA officials and private citizens and indicated that it would set up an additional conference call with VA medical centers to dive deeper into the specifics of the work and to set the agenda for getting the work done.

One former VA official shared that while he had only one phone call with Perlmutter during his time with VA, he believed other VA officials received phone calls from Sherman or Moskowitz on a near-daily basis. Former Secretary Shulkin also noted in his book that he was in frequent communication with the three private citizens, whom he said would call him several times a day and even “scold him for not communicating with them enough.”²¹

In-person meetings: There were at least five occasions where in-person meetings likely occurred between one or more of the three private citizens and VA officials, based on our review of email exchanges and travel records.²² For example,

- the former Secretary and Acting Under Secretary for Health met Sherman for dinner in Washington, D.C., in late May 2017, and the former Acting CIO met Sherman for lunch

²⁰ Multiple email chains may have referenced the same meeting.

²¹ Shulkin, *It Shouldn’t Be This Hard To Serve Your Country*, p.266.

²² According to their representatives, the three private citizens did travel on occasion to meet with VA officials, but they self-funded all of their travel; none of the expenses were reimbursed by the department.

in December 2017.

- In late February 2018, former Secretary Shulkin and former Chief of Staff O'Rourke traveled to Florida to meet in-person with the three private citizens. Acting Secretary Wilkie also met in-person with at least one of the three private citizens in April 2018 during a trip to Florida that was part of a larger travel itinerary.
- In his book, former Secretary Shulkin also noted that he met with Perlmutter in Florida in January 2017 when he served in his former position, Under Secretary for Health.²³

What interactions did VA initiate with other private citizens, besides the three private citizens, and what were the purpose, scope, and time frames for their interactions?

Through our review of email exchanges, we observed that VA officials sought input from other private citizens in addition to the three private citizens that were the focus of our review. These other private citizens were also able to directly interact with senior VA officials. Interactions with these other private citizens occurred between February 2017 and November 2018 across all of the initiative areas, particularly regarding the department's electronic health record and other information technology initiatives.

Specifically, VA officials engaged in discussions with private citizens from various organizations in an effort to get feedback on VA's electronic health record strategy and proposal to Cerner:

- **Informal feedback with private citizens.** After discussions with officials from the Executive Office of the President, Acting CIO Scott Blackburn coordinated a teleconference in November 2017 with five CIOs from the Cleveland Clinic, Johns Hopkins University, Kaiser Permanente, the Mayo Clinic, and Partners HealthCare. Moskowitz and Sherman participated in the call as well. The call was intended to solicit feedback on VA's current electronic health record strategy and proposal to Cerner:
- **Formal solicitation of expert opinions.** At VA's request, The MITRE Corporation (MITRE) identified subject matter experts from 11 organizations and hosted a panel discussion for the purpose of reviewing interoperability language in the existing Request for Proposal and to develop recommendations for VA to consider.²⁴ The panel discussion and a review of the language in the proposal to Cerner resulted in 50 recommendations, which included suggested changes to the contract with Cerner. VA accepted all of those recommendations and made subsequent updates to the solicitation.
- **Cerner proposal review by private citizens.** In March 2018, VA actively sought input from officials from the University of Pittsburgh Medical Center and Sutter Health. They also solicited contract reviews from officials from the American College of Surgeons, Intermountain Health, Johns Hopkins University, the Mayo Clinic,

²³ Shulkin, *It Shouldn't Be This Hard To Serve Your Country*.

²⁴ The MITRE Corporation (MITRE) is a not-for-profit corporation that operates seven Federally Funded Research and Development Centers, including one, the Center for Enterprise Modernization, which contracted with VA to perform work related to its electronic health record efforts, among other things.

Partners HealthCare, and Moskowitz, Perlmutter, and Sherman.²⁵ The Program Executive for the Electronic Health Record Modernization program tracked the input provided by the individuals. However, according to the correspondence we reviewed, no additional changes to the contract were made based on the input.

According to our analysis of email exchanges and other documents provided by VA and the representatives for the three private citizens, other individuals from private organizations—Alex Gorsky, Chief Executive Officer of Johnson & Johnson, and Tim Cook, Chief Executive Officer of Apple,—and their staffs also provided advice and recommendations to VA regarding veteran suicide and mobile application development, respectively. More specifically:

- VA entered into a memorandum of agreement in 2016 with Johnson & Johnson related to a veteran suicide awareness campaign. According to Johnson & Johnson, in early 2017, VA and Johnson & Johnson agreed to utilize an existing memorandum of agreement, to focus on a project referred to as the “Healthy Heroes” project which consisted of three components: a public campaign to raise awareness of the mental health needs of veterans and reduce veteran suicide; the development of predictive models aimed at identifying veterans at risk of self-harm; and the development of a “master” or “model” research partnership agreement in the hopes of encouraging greater private collaboration with VA on clinical trials that could lead to innovative treatments from which veterans could benefit. For the Healthy Heroes project, which commenced in 2017, Gorsky was contacted directly by then-Secretary Shulkin’s office in February 2017. To date, Johnson & Johnson maintains research-based partnerships with VA, including ongoing scientific collaboration with VA regarding the Healthy Heroes work on developing predictive models of self-harm.
- VA officials engaged in discussions with Apple regarding the development of mobile applications to provide veterans with access to health care information. Email exchanges we reviewed showed that initially former Secretary Shulkin communicated with Moskowitz to identify projects on which outside experts and VA could work together. Moskowitz provided suggestions and included other private citizens from the five medical centers for collaborating on the project.

In addition to VA officials initiating contact with individuals, our review of the 223 email exchanges showed that 80 email exchanges were initiated by a private citizen other than Moskowitz, Perlmutter, or Sherman. These private citizens included, for example, members of academic institutions, health-related organizations, members of the media, and contracted consultants working with VA on specific projects. Within these email exchanges, it was common to observe private individuals asking for information from VA officials or providing information or updates to the VA officials. For example, in June 2017, a professor from a university contacted Secretary Shulkin and Moskowitz about meeting with a doctor at a VA medical center that resulted in an effort to pull together investigators to generate ideas about suicide research in VA. In addition, members of the media exchanged information with the VA Press Secretary, such as questions and answers during the process of gathering information for an upcoming article.

²⁵ According to our review of emails, 49 individuals signed non-disclosure agreements allowing them to review the contract before it was signed. Thirteen of the 49 were MITRE employees and MITRE performed a contract review as part of its interoperability study and report. Thirty-six of the 49 are employees of federal agencies other than VA or unaffiliated private citizens including the three private citizens. According to the former Acting CIO, all updates to the solicitation were posted appropriately online.

Agency Comments

We provided a draft of this report to VA for review and comment. VA told us that it had no comments on the draft report.

We provided portions of the draft of this report to six private citizens and entities for review and comment. Each of the six private citizens or entities provided technical comments, which we incorporated as appropriate.²⁶

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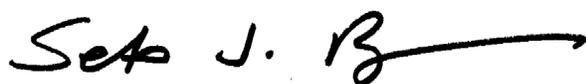
As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of the Department of Veterans Affairs and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

²⁶ We provided portions of the draft of this report to the representatives for the three private citizens who provided comments on their behalf.

If you or your staff have any questions about this report, please contact me at (202) 512-7114 or clowersa@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in Enclosure IV.



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Enclosure(s) – 4

Enclosure I: Scope and Methodology

Based on our analysis of email exchanges between the three private citizens—Bruce Moskowitz, Isaac Perlmutter, or Marc Sherman—and officials from the Department of Veterans Affairs (VA), we determined that many related to five decisions or activities that VA undertook during that time frame—which we refer to collectively as “VA initiatives.” Specifically, we reviewed VA’s interactions with the three private citizens in relation to these five VA initiatives: 1) activities related to negotiating a contract for an electronic health record system with the Cerner Corporation; 2) the research and development of mobile applications to access health records; 3) the implementation of a medical device registry summit; 4) veterans’ suicide prevention and mental health awareness efforts, and 5) VA senior-level personnel decisions.²⁷ We categorized the topic(s) of each email exchange in terms of these five VA initiatives.²⁸ We also identified whether one of the three private citizens or another private citizen sent the originating email in the exchange, and we determined the earliest and last date of each email exchange. Based on our initial content analysis described below, we focused on the interactions that occurred between 2016 and 2018.

For our work, we obtained and analyzed VA documents related to the interactions between VA officials and the three private citizens including emails, travel records, calendar appointments and press accounts between 2016 and 2018.²⁹ The documents we obtained and analyzed were originally provided by VA to various parties in response to Freedom of Information Act requests and as part of an ongoing investigation by the House Committee on Veterans’ Affairs related to the involvement of these three private citizens in VA activities.³⁰ The documents contained nonredacted records reflecting email communications, including attachments, related to one or more of the three private citizens.

We sorted more than 30,000 pages of documents received from VA into 1,165 separate email exchanges, either manually or using pre-processing software when possible. From the 1,165, we eliminated 430 email exchanges that were duplicates, which left 735 unique email exchanges for our analysis. From the 735 email exchanges, we then removed 512 email exchanges that did not include an exchange between a VA official and a private citizen, leaving 223 unique email exchanges that involved interactions between VA officials and private citizens. We manually reviewed all email exchanges using at least two analysts, who each independently coded the emails using a standardized approach and then jointly reconciled their independent results to ensure consistent coding. The two teams of two analysts each were regularly rotated to ensure a uniform approach and eliminate the possibility of any potential differences in coding.

²⁷ VA hosted the June 2018 summit for a medical device registry to promote implementation of a national registry to track medical devices that would allow VA to track the medical devices for safety recalls, identify medical devices when patients show up for medical emergencies, and track and compare the patient outcomes of medical devices.

²⁸ We determined the topic of all email exchanges except for the ones that only communicated media articles or press accounts.

²⁹ For the purposes of our analysis, we defined private citizens as individuals who are not employed by the federal government, including the Department of Veterans Affairs.

³⁰ According to officials from the Department of Veterans Affairs, VA has responded to 67 Freedom of Information Act requests from various media and advocacy groups related to VA’s involvement with the three private citizens. According to VA officials, the Freedom of Information Act requests were compiled using search terms that included variations on the names of Bruce Moskowitz, Isaac Perlmutter, and Marc Sherman, as well as search terms on key VA initiatives, such as electronic health record modernization and interoperability.

When any variations in coding arose, these were discussed by all four analysts and jointly resolved in order to reach consensus on coding conclusions.

To identify the purpose of private citizens' interactions with VA officials, we analyzed themes within the content of each email exchange to identify evidence of whether private citizens were engaged in one or more of the following activities: 1) participating in a meeting with VA officials, 2) planning a meeting, 3) planning an event, 4) connecting VA to other private citizens, 5) updating VA or sharing information, 6) responding to a VA request, 7) requesting action from VA officials, 8) asking for information or making a request, 9) proposing ideas or making a recommendation, 10) supporting a VA position, 11) disagreeing with a VA position, or 12) engaging in social rapport with VA officials. We also analyzed each email exchange to identify evidence that VA officials were 1) connecting a private citizen to others, 2) responding to private citizen request, 3) updating a private citizen or sharing information with them, 4) requesting assistance from a private citizen, or 5) seeking or accepting input from a private citizen.

Finally, we analyzed the reconciled coding results and calculated descriptive statistics, including frequencies for any occurrences noted above to report our observations from the analysis as answers to the questions posed in this report. We also identified selected examples from the email exchanges to illustrate activities or themes observed in the interactions between VA officials and private citizens and identified any related impacts on VA initiatives.

While the documents that we reviewed provide important information about the interactions between VA and the private citizens, there are limitations with this analysis. First, we did not review in-person meeting notes or minutes or notes from phone calls because, according to VA officials, such written accounts may not have been developed or were not readily available. Second, we did not obtain records of text messages, emails from private accounts, and phone call logs, because these data were not readily available to VA. From our content analysis of emails from VA servers, we observed that communication did occur through private email accounts.³¹

We also obtained written responses from senior VA officials and staff to questions regarding their interactions with private citizens, including the three private citizens—Moskowitz, Perlmutter, and Sherman, and written responses from VA's Office of General Counsel and Office of Ethics. Although we attempted to interview several former VA officials, including former Secretary David Shulkin, we were unable to speak with them, as they either declined to meet with us or did not respond to our outreach. According to former Secretary Shulkin, his relevant written comments were reported in his book, *It Shouldn't Be This Hard to Serve Your Country*, which we reviewed.³² We also obtained additional views from him by attending a program, "A Conversation with David Shulkin, 9th U.S. Secretary of Veterans Affairs," sponsored by the World Affairs Council of Philadelphia in Pennsylvania, on Nov. 25, 2019, where Dr. Shulkin provided a brief presentation based on his book and answered questions during a discussion with audience members. Former Acting Under Secretary for Health Poonam Alaigh did not respond to our multiple attempts to reach her, and former Acting CIO Rob Thomas declined our request for an interview through his current employer. We interviewed Scott Blackburn, former

³¹ We also reviewed selected private email exchanges between VA officials and the three private citizens that the private citizens provided and at least one private email exchange that VA provided. Similarly, we were provided and reviewed selected meeting agendas and minutes but did not obtain all documents related to meetings between VA officials and private citizens included in our review.

³² David Shulkin. *It Shouldn't Be This Hard To Serve Your Country*. New York: PublicAffairs, 2019.

Executive in Charge of the Office of Information and Technology (Acting CIO), and obtained copies of his written records for his perspective and interactions with private citizens, including the three private citizens. We also reviewed VA guidance regarding VA officials' interactions with private citizens.

The three private citizens provided written responses to our questions through their representatives. We also engaged with these representatives for comments on the private citizens' involvement with VA, and they assembled assorted documents, such as selected private email exchanges and selected notes from meetings with VA officials, which they provided for our review at their office.

To determine the involvement that other private citizens—other than the three private citizens—had with VA, we used our analysis of email communications to identify other private citizens and entities that had interactions with VA between 2016 and 2018. We requested interviews with these private citizens, conducted interviews, and reviewed written responses from them; however, some either did not respond to our request or declined to speak with us. We received written responses to questions from the Cleveland Clinic and Johnson & Johnson. Bernard Tyson, the Chief Executive Officer of Kaiser Permanente, agreed to provide written responses, but these were not completed prior to his death. Other private citizens at organizations such as Apple, Johns Hopkins University, the Mayo Clinic, and Partners HealthCare, Inc., were contacted but did not respond to our requests for interviews. We interviewed the Vice President and Chief Technology Officer for The MITRE Corporation (MITRE), Jay Schnitzer, regarding his involvement in work contracted by VA, his experience in connecting subject matter experts from the private sector with government organizations, and his interactions with the three private individuals as well as other private individuals. We also interviewed the President of Cerner Government Services, Inc. (Cerner), Travis Dalton, regarding his role in the electronic health record contract, his experience in working with government organizations such as VA, and his interactions with the three private citizens as well as other private citizens.

To obtain perspectives on how veterans service organizations (VSO) provide advice and recommendations to VA, we selected and interviewed officials from a judgmental sample of nine VSOs: the American Legion, American Retirees Association, American Veterans for Equal Rights, Disabled American Veterans, Navy Mutual Aid Association, Paralyzed Veterans of America, Transgender American Veterans Association, Veterans of Foreign Wars, and Wounded Warriors. These VSOs were selected based on a variety in key characteristics in terms of their status as organizations recognized by VA, their access to VA officials, and their areas of VSO interest.³³ The information obtained from our judgmental sample of VSOs is not intended to be generalizable across all VSOs, but rather to provide information about general experiences of different kinds of VSOs.

To understand the role of federal advisory committees in VA decision-making, we reviewed VA's Advisory Committee Management Guide, information on VA's website about their current federal advisory committees, and regulations and guidance implementing the Federal Advisory

³³ We selected VSOs using VA's *Directory of VSOs*, which lists VSOs identified as congressionally chartered and recognized by the VA for the purpose of preparation, presentation, and prosecution of claims before the VA, not congressionally chartered but recognized by the VA, congressionally chartered but not recognized by the VA, neither congressionally chartered nor recognized, and Intergovernmental Affairs.

Committee Act.³⁴ However, it was outside of the scope of our work to determine whether or not the three private citizens constituted an advisory committee subject to the act.³⁵

We conducted this audit from April 2019 to May 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

³⁴ Department of Veterans Affairs, *Advisory Committee Management Guide*, Washington, D.C.: August 2017.

³⁵ At the time of our report, there was active litigation alleging that VA violated the Federal Advisory Committee Act by obtaining advice and recommendations from the three private citizens Moskowitz, Perlmutter, and Sherman, without taking the required steps under the act to formally establish a federal advisory committee. In September 2019, a federal district court held that the three private citizens did not constitute an advisory committee under the act, nor did VA utilize them as an advisory committee, and dismissed VoteVets' complaint. *VoteVets Action Fund v. Department of Veterans Affairs*, 414 F.Supp. 3d 61- (D.D.C. 2019). VoteVets Action Fund has appealed the court's decision.

Enclosure II: Timelines of the Interactions between Officials at the Department of Veterans Affairs (VA) and Private Citizens on VA Initiatives

We constructed the following five timelines in this enclosure primarily based on an analysis of documents, including emails and related documents that we obtained from the Department of Veterans Affairs (VA). We supplemented this material with additional information obtained from VA press releases, congressional hearing statements, interviews, and other written documentation, including former VA Secretary David Shulkin's book, *It Shouldn't Be This Hard To Serve Your Country*.³⁶ While our focus was on the interactions between VA officials and three private citizens—Isaac Perlmutter, Bruce Moskowitz, and Marc Sherman—the timelines also include interactions between VA and other private citizens and entities, as well as related internal discussions among VA officials who were identified during the course of our review. We organized the material in chronological order to illustrate the time frames for interactions between VA and the private citizens as they relate to each of the five VA initiatives included in our review. See Enclosure I for more information about our scope and methodology.

³⁶ David Shulkin, *It Shouldn't Be This Hard To Serve Your Country*, (New York: PublicAffairs, 2019).

Table 1: Timeline of Interactions between Officials at the Department of Veterans Affairs (VA) and Private Citizens on VA’s Initiative on Development of Mobile Applications, 2017-2019

February 2017	<p>A VA official communicated with a private citizen to discuss a potential mobile application collaboration with Apple, Inc. (Apple). Bruce Moskowitz was asked by Isaac Perlmutter to present a short list of potential technology that might help VA better respond to veterans’ health care issues. Shulkin responded positively to Moskowitz’s suggested areas of focus (geotagging available VA facilities, creating a platform for veterans to download both their VA and private medical records into one application, a technology solution for tracking medication compliance and for preventing over-utilization of controlled substances and medical errors, and a more efficient platform for telemedicine). Moskowitz first provided these suggestions to Secretary Shulkin to “change or add” as needed. Shulkin responded, writing “I think this is perfect” and said that VA needed both software development and management to oversee strategy and implementation.</p>
March 2017	<p>Apple, VA, and medical experts introduced to VA by Moskowitz held a call to discuss how Apple could help VA improve veterans’ health care. On the call, led and framed by Shulkin, Moskowitz agreed at the request of VA, to take the lead in establishing a team of individuals to focus on next steps.</p>
May 2017	<p>Moskowitz exchanged emails with then-Secretary David Shulkin, Poonam Alaigh (VA senior advisor who later served as VA Under Secretary for Health), and Darin Selnick (VA senior advisor) regarding proposed priorities for mobile applications for VA to be developed by Apple.</p> <ul style="list-style-type: none"> • Moskowitz stated that making portable health records available to veterans should be VA’s “number one priority with Apple.” • Moskowitz proposed additional priorities for the Apple collaboration creating technology that could 1) identify the appropriate closest medical center, including urgent care, cardiac care, stroke clinics, and others, for the veteran to seek care; 2) track medication compliance, over-utilization of controlled substances, and medication errors; track medical discharge, including follow-up appointments; 3) prevent test duplication; and 4) give access to portable electronic health records. <p>A VA official noted that VA staff and Apple officials wanted to pursue different priorities for the mobile application project than the ones Moskowitz had proposed. VA’s Darin Selnick emailed Shulkin and Alaigh that Apple wanted to go in a different direction from Moskowitz; Apple and VA staff wanted to focus on three areas: 1) credentialing and authenticating, 2) patient-mediated data exchange and analytics, and 3) the development of a research-type application related to veteran suicide. He stated that Apple would not move forward with the project until they received signed non-disclosure agreements, and he suggested meeting with Apple, Moskowitz, and Sherman to “get everyone on the same page.”</p> <p>Selnick emailed Moskowitz that VA was ready to work on the partnership with Apple, as Apple officials had signed a non-disclosure agreement, and he suggested setting up a conference call with Moskowitz, Apple, and others to discuss their partnership with VA and the five medical centers: Cleveland Clinic, Johns Hopkins University, Kaiser Permanente, Mayo Clinic, and Partners HealthCare.</p> <p>Moskowitz emailed individuals from the five medical centers and Selnick to highlight the goals for the application and kicking off the partnership with the Apple/VA partnership project.</p> <p>Moskowitz emailed VA officials and private citizens to plan for the mobile application project. In an email, Moskowitz suggested four more experts from a digital medical technology company (Responsive Health) to join the upcoming June 14th phone call meeting with Apple; Selnick replied with his approval for including them.</p> <p>Shulkin emailed Rob Thomas (VA Executive in Charge of the Office of Information and Technology / Acting Chief Information Officer (CIO)) to introduce Moskowitz,</p>

who he referred to as “a trusted advisor,” so that they could discuss VA’s project with Apple.

Selnick emailed Moskowitz, “The VA staff has limited knowledge and experience, which is why you and the Centers are so important to help VA move forward.”

Selnick reached out to Moskowitz about what tasks VA could begin working on with Apple in advance of the planned June 14 meeting. He emailed Moskowitz that Shulkin had approved of moving forward with the geotagging feature in advance of the June 14 meeting and that VA evaluated the emergency medical center locator application that Moskowitz previously offered to his patients as a free app that helped patients identify the nearest appropriate medical facility.^a

Moskowitz emailed VA officials to provide the agenda for a June 14 meeting developed by VA Office of Information Technology.

Apple contact emailed Moskowitz that Apple had draft non-disclosure agreements for officials at the five medical centers to sign as soon as possible to be able to commence work. Moskowitz responded that VA Acting CIO Rob Thomas was leading the VA staff on the project. Moskowitz noted that he hoped they could use existing technology from the centers so that VA did not have to “reinvent the wheel” in developing technology that already existed elsewhere.

June 2017

VA and Apple officials met to prepare for the June 14 meeting on application development, and discussed various proposals for priorities. VA official Selnick scheduled a phone call with Moskowitz to follow up on two points raised in the meeting concerning the mobile application that Moskowitz proposed.

- VA and Apple staff discussed challenges with the priorities identified by Moskowitz, expressed skepticism about the usefulness of his suggestions for a medical facility finder application, and noted that Moskowitz considered this application a priority.
- VA staff also expressed confusion about who was to build the application.
- A VA official updated Rob Thomas, Acting CIO, and discussed solutions or proposals to the four initiatives discussed by VA, including using the medical center locator mobile application Moskowitz previously offered to his patients to develop a version for VA.

On June 14, VA officials and private citizens Moskowitz, Perlmutter, and Sherman had a teleconference with officials from Apple and technology experts from the five medical centers to discuss VA’s plan to build mobile applications.

- The June 14 teleconference meeting included Shulkin and staff from the VA; Perlmutter, Sherman, and Moskowitz Tim Cook, Apple Chief Executive Officer; other Apple officials, and officials from the five medical centers including the Cleveland Clinic, Johns Hopkins University, Kaiser Permanente, Mayo Clinic, Partners HealthCare, and Responsive Health.
- The meeting focused on the VA’s electronic health and medical records modernization effort and the VA’s plan to build a mobile application, described as part of a “Digital Veteran Platform,” with the assistance of Apple and experts from the five medical centers. Meeting materials stated the project was proposed by the VA and the White House as a collaboration between VA and Apple.

Moskowitz followed up with representatives from Apple, the medical centers, and VA to set up three committees to commence work for the VA-Apple project.

Selnick responded to explain that he had “responsibility to manage and provide oversight for the VA/Apple/Center partnership.”

July 2017

Moskowitz emailed VA officials about programs to review for the Apple project. He wrote, “For geotagging, the bet would be to ask the MGH (Massachusetts General Hospital) if you can use its existing program.” This was in reference to the geotagging project discussed previously.

October 2017

VA ceased its focus on the Apple mobile application to identify the nearest medical facility for veterans, but it continued development of an application for veterans to access their health records via iPhone.

March 2018

Moskowitz, Camilo Sandoval (VA senior advisor) and Peter O’Rourke (VA chief of staff) exchanged emails regarding the Apple project in which Moskowitz conveys

	his disappointment that VA had not heeded advice on the mobile application project. O'Rourke responded to Moskowitz asking what he could do to salvage the work; O'Rourke and Moskowitz planned a phone call to discuss the initiative.
April 2018	VA and Apple officials signed a Memorandum of Agreement
February 2019	Apple issued a press release announcing the future launch of a mobile application for veterans to access their health records.
August 2019	VA released a mobile application, called VA Launchpad for Veterans, which organized existing applications for veterans to access in one application. They included applications to set up reminders for self-care and health tracking, a journal to track and record military and health history, access to official medical records, and online scheduling of primary care appointments.
November 2019	VA and Apple announced the release of a mobile application for veterans to access their health records on their iPhones.

Source: GAO analysis of VA documents, documents provided by representatives for the three private citizens, and interviews with officials as noted. | GAO-20-447R

Notes: In a January 2017 news conference, then-President-elect Trump stated that he and VA would consult business executive Perlmutter and other private citizens—individuals not employed by a federal agency—to help address issues at the VA. Perlmutter, after agreeing to consult with the then-President, former Secretary Shulkin, and VA, later included two other private citizens—Moskowitz and Sherman—in his efforts.

A non-disclosure agreement is an agreement between two or more parties to maintain the confidentiality of certain information shared between the parties.

^a According to the representatives for the three private citizens, the free app was developed by a third party and Moskowitz had made clear in emails that he was pointing to the application only so VA officials had a sense of a potential “format” for VA's own geotagging project.

Table 2: Timeline of Interactions between Officials at Department of Veterans Affairs (VA) and Private Citizens on VA’s Initiative on the Electronic Health Record System Contract, 2017-2018

June 2017	<p>Department of Veterans Affairs (VA) then-Secretary David Shulkin signed a “Determination and Findings“ on June 1, 2017.^a</p> <ul style="list-style-type: none"> The “Determination and Findings” gave the Department of Veterans Affairs (VA) the authority to award a contract to acquire the electronic health record system being deployed by the Department of Defense (DOD) and related services, based on the public interest exception to full and open competition. As a result, the VA began to work to issue a solicitation directly to Cerner Government Services, Inc. (Cerner) rather than hold a competitive bidding process.
September 2017	<p>An official from Amida, a company contracted to examine data migration approaches for the new system, informed Scott Blackburn (VA’s Executive in Charge of VA’s Office of Information and Technology/Acting Chief Information Officer (CIO)) that things related to the electronic health record modernization are “going off the rails a bit.”</p> <ul style="list-style-type: none"> The Amida official emailed his doubts about what VA had been told about data migration by other contractors.
October 2017	<p>The Amida official emailed then-Secretary Shulkin as a follow-up to a prior discussion.</p> <ul style="list-style-type: none"> He described the limitations for VA and DOD’s current approach to sharing data and made a recommendation about data exchange with DOD. <p>VA officials including Secretary Shulkin, Scott Blackburn, and John Windom (VA program executive for Electronic Health Record Modernization) discussed the status of electronic health record modernization with members of the Executive Office of the President.^b</p> <ul style="list-style-type: none"> Blackburn subsequently asked for help connecting VA with the CIOs of five health care organizations: the Cleveland Clinic, Johns Hopkins University, Kaiser Permanente, the Mayo Clinic, and Partners HealthCare. The intended purpose of making these connections was to provide an opportunity for the five CIOs to critically review VA’s electronic health record modernization strategy and the Request for Proposal to Cerner.^c
November 2017	<p>Then-Secretary Shulkin testified on November 15, 2017, before the House Committee on Appropriations Subcommittee on Military Construction, Veterans’ Affairs, and Related Agencies about VA’s electronic health record modernization program and related VA funding requests.</p> <ul style="list-style-type: none"> In his testimony, Shulkin asked Congress for authority to transfer and reprogram funds to enable the department to award the contract for the new electronic health record system and begin modifications to VA’s information technology infrastructure. <p>Call with CIOs from private organizations occurred on November 15, 2017.</p> <ul style="list-style-type: none"> Blackburn asked a representative from The MITRE Corporation (MITRE) to host/facilitate the discussion with the five CIOs.^d The MITRE representative informed Blackburn in advance that Bruce Moskowitz (private citizen) had invited at least one other person from Massachusetts General Hospital to the call. Then-Secretary Shulkin approved additional guests’ attendance via email.^e According to his emails, Blackburn never had contact with Moskowitz before this planned meeting, but he recognized that it seemed “like a sensitive relationship.” He described Moskowitz to other VA officials as a White House advisor and longtime personal doctor and friend to the President.^f VA officials were able to see within an email exchange that Moskowitz conveyed about Cerner. In subsequent internal discussion, VA officials questioned the validity of the comments and observed that the questions showed a lack of understanding of interoperability and the solutions. <p>According to Moskowitz, the call with CIOs raised concerns about interoperability, Cerner, and the proposed contract with VA.^g</p>

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- Moskowitz emailed concerns to Blackburn following the call with the five CIOs. For example, he noted that there were additional questions from the CIOs about the Cerner system design and whether it was ready for implementation and about whether interoperability with non-DOD community providers had been fully defined. Further, he noted concerns about whether the contract had adequate safeguards to proceed without risk to the cost and success of the effort. Moskowitz wrote that the CIO call was the first time Blackburn had spoken to any of the participants, but the participants would be pleased to provide further feedback and advice if desired.
 - Travis Dalton, Senior Vice President and General Manager at Cerner, provided answers to concerns posed by Moskowitz to Windom, program executive for Electronic Health Record Modernization.
 - In an email to Shulkin, Blackburn informed him about his plan to meet again with Moskowitz, Marc Sherman (private citizen who also had joined the CIO call on November 15), and the CIOs. He also acknowledged that concerns had been raised about the extent VA solicited outside opinions on a contract being negotiated, as well as concerns about triggering the application of the Federal Advisory Committee Act.^h Blackburn stated that he would work with the VA Office of General Counsel to make sure “we do this in an appropriate way.”
 - Blackburn suggested to Moskowitz and Sherman through email that they hold another discussion with the five CIOs to get additional feedback. In a response to Blackburn, Moskowitz suggested that discussion with five CIOs was needed to ensure that the electronic health record “provide end users with all tools necessary to provide quality care” and stated that, “we are committed to your adoption of Cerner...” but “being rushed into a contract without due diligence on our part would be problematic.” According to Blackburn, Moskowitz and Sherman clearly stated that they were not comfortable with the electronic health record modernization contract and did not have confidence in the VA team.

December 2017

Blackburn testified on December 7, 2017, before the House Committee on Oversight and Government Reform, Subcommittee on Information Technology.

- Blackburn stated that then-Secretary Shulkin had spent considerable time talking to clinicians and consulting with executives from leading health systems to solicit their thoughts. Further, in his statement, Blackburn noted that VA hoped to “very soon finalize and sign a contract with the Cerner Corporation.”

Blackburn met with Sherman in Washington D.C.

- According to Blackburn, he had lunch with Sherman on December 11, 2017, which was the only time he met Sherman in person.

VA took a “strategic pause” in the electronic health record acquisition process on December 13, 2017.

- According to testimony from Secretary Shulkin before the Senate Committee on Veterans’ Affairs on January 17, 2018, VA took time to examine the national interoperability language contained in the Request for Proposal intended to ultimately support a contract award.

Blackburn contacted Sherman to inform him of a planned panel discussion on interoperability and asked him or Moskowitz to refer experts that might participate.

- Sherman referred individuals from the American College of Surgeons and Massachusetts General Hospital.

January 2018

At VA’s request, MITRE coordinated a review of Cerner’s proposed electronic health record solution.

- MITRE hosted an interoperability review panel discussion on January 5, 2018. Eleven electronic health record subject matter experts (executives, clinicians, academics) served on the panel to review interoperability language in the existing Request for Proposal and to develop recommendations for VA’s consideration. Sixteen individuals from VA and other federal entities observed the panel discussion and Moskowitz attended via telephone.
 - VA, at MITRE’s suggestion and joined by MITRE, sent a team to visit the University of Pittsburgh Medical Center to discuss aspects of interoperability and view the Cerner product in a medical network. Reviews of the demonstrated system implementation at the University were positive.
 - MITRE engaged an independent legal review of the Request for Proposal intended to identify changes to the language necessary to implement recommendations made by the interoperability review panel.
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According to MITRE officials, at the suggestion of VA officials, they traveled to West Palm Beach to discuss the Cerner solution and its capabilities with Moskowitz, who was familiar with a different, older Cerner configuration through his personal experience as a medical practitioner, and Sherman (via phone). Due to the unusual nature of the request, MITRE officials reported that they decided to travel to Florida at MITRE's expense, not the government's. During the visit, MITRE personnel explained Cerner's newer capabilities to Moskowitz.

Questions from the media began with a focus on the delay in VA's awarding a sole-source contract to Cerner.

Private citizens forwarded articles to VA officials and discussed aspects of electronic health record implementation.

- Isaac Perlmutter (private citizen) electronically forwarded an article about electronic health record design and implementation to Secretary Shulkin, Deputy Secretary Thomas Bowman, and Blackburn. In that email forward, Perlmutter noted, "it reminds us of why we care so much about properly designing and 'managing,' the electronic health record design and implementation to satisfy health delivery, patient, and clinical needs. ... VA cannot permit the 'vendor' to make the decisions for the VA, the veterans, and the clinicians."
- Moskowitz sent a position paper to MITRE about the challenges of electronic health records. He noted that this paper "captures what needs to be done not only for the VA but the nation via the clout the VA contract for a new electronic medical record can accomplish." MITRE emailed a response to the article and identified ways VA could incorporate improvements for veteran health care.

February 2018

MITRE transmitted the Interoperability Review Report to VA, including a matrix of recommended changes to the Request for Proposal for Cerner.

- According to the report, the January panel discussion and the review of the language in the Request for Proposal resulted in 50 recommendations made to VA. The department concurred with all recommendations made in the report.
- Camilo Sandoval, a senior VA advisor, shared the MITRE report with Moskowitz and said it could be shared with Sherman.

Sandoval planned a meeting between VA officials and Moskowitz and Sherman to lay out "areas of interest."

Secretary Shulkin and Chief of Staff Peter O'Rourke met with Perlmutter, Moskowitz, and Sherman in West Palm Beach, Fla.

- Blackburn and other VA officials formulated a response to concerns raised by Moskowitz, Perlmutter, and Sherman after the meeting with Shulkin and O'Rourke about technical aspects of the Cerner solution related to voice recognition, lab data, catching test/medication duplication, and streamlining notes.

March 2018

VA solicited additional assistance from private individuals to provide a technical review of the draft Cerner contract. Those who reviewed the contract were required to sign non-disclosure agreements.

- VA asked individuals from Sutter Health and the University of Pittsburgh Medical Center to review the draft Cerner contract.
- Moskowitz suggested a list of individuals to review the contract and to provide advice Secretary Shulkin. The list included CIOs from Johns Hopkins, Intermountain, and Sutter Health, as well as, doctors from the American College of Surgeons, the Mayo Clinic, and Partners HealthCare. Blackburn asked Moskowitz for assistance in getting comments from those individuals with the belief that there was about "a 2-week window" to award the contract to Cerner.
- All private individuals were asked by VA to sign non-disclosure agreements. Moskowitz, Sherman, and Perlmutter signed the non-disclosure agreements as well.
- VA officials scheduled a call to walk Moskowitz and Sherman through the electronic health record contract.
- Windom tracked comments provided by private citizens. However, no additional changes were made to the contract as a result.

Ashwini Zenooz (VA Chief Medical Officer) followed up with Cerner about a technical concern from an individual from Intermountain Health and received a response about the steps Cerner had considered for addressing the issue.

- Blackburn noted in his response that Zenooz should follow up with the individual because “we need these guys on our side for the long game. Life is easier when the back whispers are positive.” He also said he had not heard from Moskowitz or Sherman, but guessed that they or Perlmutter had already called the Secretary.

Sherman emailed then-Secretary Shulkin and Blackburn regarding his disagreement with VA conclusions about experts’ concerns regarding the lack of definitions, standards, and enhanced functionality descriptions in the Cerner contract.

- Windom expressed frustration to other VA officials about Sherman’s comments and his lack of understanding of VA and the federal government. Further, Windom stressed that he was confident that the contract language was sound and appropriately balanced for change management risks, future insertion of technology, innovation opportunities, and more, without inflating the costs of the contract.

Then-Secretary Shulkin vacated his position as VA Secretary on March 28, 2018. Robert Wilkie became the Acting Secretary of VA.

April 2018

Sandoval emailed Blackburn and Windom to say he spoke with Moskowitz regarding contract language provided by several CIOs.

Blackburn resigned as Acting Executive in Charge for the Office of Information and Technology (Acting CIO).

- Sandoval contacted Moskowitz in his new role as Executive in Charge of the Office of Information and Technology and Acting CIO and welcomed any introductions Moskowitz might have for anyone who might be interested in serving as a health care information technology advisor.

May 2018

On May 17, 2018, Acting Secretary Wilkie announced the contract with Cerner for the electronic health record system.

- The VA Technology Acquisition Center awarded a single award, indefinite delivery/indefinite quantity contract to Cerner for a maximum of about \$10 billion over 10 years for the acquisition of the electronic health record system being deployed by DOD and related services.

On May 18, 2018, the White House announced its intent to nominate Robert Wilkie to be Secretary of Veterans Affairs.

On May 29, 2018, Robert Wilkie stepped down as Acting Secretary and Peter O’Rourke was named Acting Secretary on May 30, 2018.

June 2018

Acting Secretary O’Rourke established the Office of Electronic Health Record Modernization to lead the modernization program.

Source: GAO analysis of VA documentation and interviews with cognizant officials and private citizens. | GAO-20 - 447R

^a“Determination and Findings” means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions. The “determination” is a conclusion or decision supported by the “findings.” The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation. 48 C.F.R. § 1.701 (2019).

^bJohn Windom’s title as of March 2020 was Executive Director of the Office of Electronic Health Record Management.

^cAccording to Federal Acquisition Regulation, a Request for Proposal is used in negotiated acquisitions to communicate government requirements to prospective contractors and to solicit proposals. These proposals describe, for example, anticipated terms and conditions that will apply to the contract. 48 C.F.R. § 15.203 (2019).

^dAccording to VA, The MITRE Corporation is a Federally Funded Research and Development Center contracted to work with VA.

^eIn a January 2017 news conference, then-President-elect Trump stated that he and VA would consult business executive Perlmutter and other private citizens—individuals not employed by a federal agency—to help address issues at the VA. Perlmutter, after agreeing to consult with the President, former Secretary Shulkin, and VA, later included two other private citizens—Moskowitz and Sherman—in his efforts.

^f Moskowitz stated that the description in the emails was inaccurate.

^gElectronic health record interoperability refers to the ability of electronic health record systems to exchange electronic health information with other systems and process the information without special effort on the part of the user, such as a health care provider.

^hThe Federal Advisory Committee Act is intended to ensure that advice provided to agencies is objective and accessible to the public. Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified, as amended, at 5 U.S.C. App. 2). The act establishes requirements for federal advisory committees, such as requiring their membership to be “fairly balanced” and to ensure that committees provide advice that is relevant, objective, and open to the public.

Table 3: Timeline of Interactions between Department of Veterans Affairs (VA) Officials and Private Citizens on VA’s Initiative on Suicide Awareness/Prevention and Mental Health Efforts,^a 2016-2018

January 2016	<p>VA collaborated with Johnson & Johnson on suicide prevention efforts.^b</p> <ul style="list-style-type: none"> VA entered into a formal collaboration, called a memorandum of agreement with Johnson & Johnson Health Care Systems, Inc. to identify short-, medium- and long-term strategies for enhancing suicide prevention efforts among veterans, among other things. The memorandum of agreement notes that the “partnership” is a voluntary, collaborative, working relationship between the VA and Johnson & Johnson.
February-April 2016	<p>VA sponsored a Suicide Prevention Summit in February 2016.</p> <ul style="list-style-type: none"> Nearly 200 mental health professionals, caregivers, veterans and their families, veterans service organizations, members of Congress, and experts from other federal agencies attended a VA-sponsored summit on suicide prevention in Washington, D.C. According to Johnson & Johnson officials, Johnson & Johnson also participated in VA’s April 2016 annual “Brain Trust: Pathways to InnoVAtion” meeting, a collaborative event that seeks to identify critical brain health solutions in the areas of prevention, diagnosis, treatment, rehabilitation, and the reintegration of individuals stricken with, and affected by, the effects of traumatic brain injury and/or post traumatic syndrome disorder.
August and September 2016	<p>VA launched its 2016 suicide awareness campaign on September 1st.</p> <ul style="list-style-type: none"> On August 30, 2016, VA published its “Be There” public service announcement, a video created by VA and the Department of Defense that shows how small actions can have a huge impact on veterans and servicemembers who might be going through a difficult time. “Be There: Help Save a Life” featured actual veterans and service members talking about the small actions by friends and family that made a big difference to them. In September 2016, VA awarded a new contract to an outside vendor to provide both suicide prevention and mental health media outreach (initial contract was in 2010). The vendor typically develops two public service announcements per year, which are provided to various local and national media networks to be displayed at no cost to the agency.
February 2017	<p>VA and Johnson & Johnson modified their existing memorandum of agreement at the request of VA and began the “Healthy Heroes” project.</p> <ul style="list-style-type: none"> According to Johnson & Johnson officials, in February 2017, Alex Gorsky, the Chief Executive Officer of Johnson & Johnson, was contacted directly by then-Secretary Shulkin’s office because Shulkin had identified three joint projects with Johnson & Johnson that he believed would help reduce the rates of veteran suicide. As a result, they began the “Healthy Heroes” project which consisted of three components: 1) a public campaign to raise awareness of the mental health needs of veterans and reduce veteran suicide; 2) the development of predictive models aimed at identifying veterans at risk of self-harm; and 3) the development of a “master” or “model” research partnership agreement in the hopes of encouraging greater private collaboration with VA on clinical trials that could lead to innovative treatments from which veterans could benefit. A VA official, Johnson & Johnson representatives, and Bruce Moskowitz discussed how Johnson & Johnson could help VA in these three specific focus areas and Moskowitz proposed collaborating with the five medical centers.^c According to Johnson & Johnson officials, these collaborations proposed by Moskowitz were not incorporated into the Healthy Heroes project.
March 2017	<p>VA and Johnson & Johnson moved forward with collaboration on the “Healthy Heroes” project.</p> <ul style="list-style-type: none"> VA and Johnson & Johnson representatives held a discussion to ensure alignment between both organizations regarding their partnership and set expectations for a March 24, 2017, meeting in Washington, D.C. Email communications between Moskowitz and a VA official indicates that they discussed the progress of the VA/Johnson & Johnson collaboration and on March 24, 2017, VA and Johnson & Johnson officials met in Washington, D.C., during which time they discussed recommendations for creating a “grassroots movement that would unite the nation

	on suicide prevention by connecting communities to veterans and veterans to the right level of care.”
April 2017	<p>VA continued collaboration with Johnson & Johnson but experienced challenges.</p> <ul style="list-style-type: none"> • During the month of April, VA officials, Johnson & Johnson officials, and other private citizens, including the three private citizens, held a conference call to follow up on issues discussed in the February 2017 meeting. • In addition, email communication between a VA official and Moskowitz indicated VA’s concerns that Johnson & Johnson had not agreed to participate in VA’s current Thunderclap initiative in May 2017 although the company had expressed preliminary support for VA’s “Be There” veterans’ suicide awareness campaign in September 2017. VA asked Moskowitz for help to push the Johnson & Johnson collaboration forward. , Moskowitz later emailed Johnson & Johnson and VA officials and acknowledged the issues in supporting the VA mental health initiative, and he stated, “I understand there is [sic] difficulties supporting the VA mental health initiative. As I discussed on our most recent call if there were any concerns or inability to proceed with a robust collaboration for May, I am available 24-7 to assist. Let’s put our collective resources together to immediately determine what can be done and not spend time on what can’t be done because of legal concerns etc.” <p>In April 2017, VA announced that it had fully implemented the Recovery Engagement and Coordination for Health – Veterans Enhanced Treatment (REACH VET) program pilot, a new predictive model that analyzes existing data from veterans’ health records to identify those at a statistically elevated risk for suicide, hospitalization, illness, or other adverse outcomes.</p>
May and June 2017	<p>Sherman and Moskowitz facilitated introductions between VA officials and other private citizens and government officials to help with suicide prevention and mental health initiatives.</p> <ul style="list-style-type: none"> • During the month of May, Sherman facilitated an introduction to a government official who had done extensive work in the area of post-traumatic stress disorder and explored potential collaboration with the VA. Moskowitz also facilitated an introduction between a researcher from an academic institution and the Acting Under Secretary for Health. The researcher was interested in assisting the VA with its veterans suicide efforts and offered to speak with Moskowitz about the different clinical activities happening at the university, its counseling and psychology services, and in its Department of Psychiatry more generally. Moskowitz stated that he would arrange a call with the Acting Under Secretary who Moskowitz understood was committed to suicide prevention issues. • During the months of May and June, Moskowitz, VA and a researcher from an academic institution communicate about more potential collaboration. The researcher indicated that she recently met with the Chairman of Psychiatry at the Philadelphia VA medical center and that investigators from the university will be meeting to generate some ideas about suicide research at the VA, probably in collaboration with other VA medical centers. In addition, Moskowitz, executives from Apple, Inc., and VA had multiple communications about a mobile application that would organize mental health early detection and treatment strategies for veterans, among other things.
June-August 2017	During the months of June-August, VA continued to meet with Johnson & Johnson officials on the Healthy Heroes project including a meeting to finalize their suicide awareness campaign ideas.
September and October 2017	<p>VA conducted its 2017 Suicide Awareness Month campaign.</p> <ul style="list-style-type: none"> • VA recognizes September as Suicide Prevention Month each year. During this month, VA’s Veterans Health Administration establishes a theme and increases its outreach activities, including a combination of both paid and unpaid media outreach. VA also presents its Suicide Prevention Overview during this month.

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- DOD-VA Strategic Decision Team began meeting every 4 to 6 weeks to discuss veterans' suicide among other issues. The slides for the meeting noted that VA and DOD senior leaders had been meeting to provide leadership on joint initiatives to prevent suicides among service members and veterans.

VA announced its public service announcement.

- On October 30, 2017, in advance of Veterans Day, VA, in partnership with Johnson & Johnson announced a new public service announcement, "No Veteran Left Behind," to address the tragic rate of veteran suicides.

In addition, Secretary Shulkin and Johnson & Johnson Chief Executive Officer Gorsky appear together on FoxBusiness.com.

October 2017

VA planned to commemorate Veterans Day 2017 by the ringing of the closing bell at the New York Stock Exchange in collaboration with Johnson & Johnson, Disney, and Marvel Comics. Johnson & Johnson provided administrative assistance in organizational efforts as part of the Healthy Heroes partnership, but no personnel from Johnson & Johnson attended the NYSE event.

- During the month of October, Perlmutter emailed VA senior officials to indicate that "we" are now confirmed to ring the bell at the New York Stock Exchange and that he had arranged for Marvel characters as well as for the public service announcement that "we" worked on with Johnson & Johnson and VA to be shown. Further, a VA official stated that the event may require "OGC [review] as well given how much business the VA does with Johnson & Johnson but this isn't really a Johnson & Johnson event. Marvel Communications is doing this and we don't, as far as I know, do business with them."
- October 20, 2017, in internal VA email communication, VA officials consult VA's Office of General Counsel Ethics Specialty Team regarding Secretary Shulkin's plan to appear at the New York Stock Exchange in November to ring the closing bell in conjunction with a variety of events the Secretary was doing around Veterans Day. The official explained that the ringing of the bell would be done in conjunction with Johnson & Johnson, Disney, and Marvel Comics because they were supporting a joint project at VA for veterans and noted that the Secretary was "friends with the Chairman of Marvel Comics, Mr. Ike Perlmutter," but that Perlmutter would not be in attendance at the event.

November and December 2017

On November 7, 2017, Secretary Shulkin rang the closing bell at the New York Stock Exchange to commemorate Veterans Day.

During the month of December, VA continued to collaborate with Johnson & Johnson on the Healthy Heroes project but did not follow up on another potential collaboration.

- VA and Johnson & Johnson officials met to provide updates, milestones, highlights and a timeline for collaboration.
- Email communication held between Moskowitz and university researcher to inquire about the status of potential partnership with VA that was discussed in May 2017. Researcher responded that VA had not contacted her.

January and February 2018

VA expanded efforts to address veteran suicide through Executive Order and sought to streamline existing agency programs.

- On January 9, 2018, President Trump issued an Executive Order to assist servicemembers and veterans during their transition from uniformed service to civilian life, focusing on the first 12 months after separation from service, a critical period marked by a high risk for suicide.
 - On February 28, 2018, an email communication between private citizens and VA officials discussed VA mental health initiatives and Moskowitz indicated involvement from multiple "academic partners" on a committee that needed a direct working relationship with telemedicine and the Choice Program. A VA official responded that VA would begin a project plan and develop a timeline for action.
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May and June 2018

VA expanded efforts to address veterans' mental health needs through interagency collaboration.

- On May 31, 2018, VA announced that the White House had approved an interagency plan to implement President Trump's executive order supporting veterans with mental health care and suicide-prevention resources during their transition from uniformed service to civilian life.

In June 2018, VA published a comprehensive national veteran suicide prevention strategy that encompassed a broad range of bundled prevention activities to support the veterans who receive care in the VA health care system as well as those who do not come to the VA for care. In addition, VA announced that VA and PsychoArmor Institute would offer online suicide prevention training.^d

Source: GAO analysis of VA documentation and interviews with cognizant officials and private citizens. | GAO-20-447R

^aVeterans suffer a disproportionately higher rate of suicide than the civilian population. VA has estimated that an average of 20 veterans die by suicide per day, and in 2018, VA identified suicide prevention as its highest clinical priority. VA recognizes September as Suicide Prevention Month each year. During this month, VA establishes a theme and increases its outreach activities, including a combination of both paid and unpaid media outreach.

^bJohnson & Johnson is an American multinational corporation founded in 1886 that develops medical devices, pharmaceutical, and consumer packaged goods. According to Johnson & Johnson, it has a longstanding mission to support veterans and has engaged in various collaborations and partnerships with both governmental and non-governmental institutions that support that mission.

^cIn a January 2017 news conference, then-President-elect Trump stated that he and VA would consult business executive Perlmutter and other private citizens—individuals not employed by a federal agency—to help address issues at the VA. Perlmutter, after agreeing to consult with the President, former Secretary Shulkin, and VA, later included two other private citizens—Moskowitz and Sherman—in his efforts. For the purposes of our report, we refer to Moskowitz, Perlmutter, and Sherman as the “three private citizens.” The five medical centers include Kaiser Permanente, Cleveland Clinic, Mayo Clinic, Partners HealthCare and Johns Hopkins University. The Chief Executive Officers from these entities were introduced to VA officials by the three private citizens for the purposes of providing advice and recommendations on various VA initiatives.

^dPsychoArmor Institute is a 501(c)(3) nonprofit that offers resources such as on line training to teach non-military individuals how to engage with and support military service members, veterans, and their families.

Table 4: Timeline of Interactions between Officials at the Department of Veterans Affairs (VA) and Private Citizens on VA’s Initiative on the Medical Device Registry, 2017-2018

March 2017	<p>The idea began for VA developing a medical device registry to allow VA to track medical devices for safety recalls, identify medical devices when patients show up for medical emergencies, and track and compare the patient outcomes of medical devices.</p> <p>VA official Poonam Alaigh (who served as a senior advisor and then as VA Under Secretary for Health) emailed private citizen Bruce Moskowitz that she liked the idea of having VA develop a registry for medical devices, and that VA could lead the way for the nation with this idea.^a Moskowitz emailed Alaigh and then-VA Secretary Shulkin that he would set up a conference call to move quickly on this initiative, and he would include his son Aaron Moskowitz, who had working with the Food and Drug Administration on device registries and is with the Biomedical Research and Education Foundation, a 501 (c)(3) organization focused on patient safety and medical technology.</p>
February 2018	<p>VA officials began to hold weekly working group calls with Bruce Moskowitz, a member of the group, to develop a medical device registry and to prepare to host a summit to promote the effort.</p> <ul style="list-style-type: none"> • Meeting minutes showed that VA officials planning the event discussed various items, including location, time, and agenda for the summit. • Meeting minutes showed that these officials planned to have Bruce Moskowitz’s son, Aaron Moskowitz, help reach out to stakeholders such as medical device provider groups, patient advocacy groups, and potential speakers, and locate a venue for the event.
March 2018	<p>VA’s weekly working group meetings continued planning the medical device registry summit.</p> <p>VA’s emailed meeting minutes show that Bruce Moskowitz coordinated with the American Association of Surgeons for a contact to join the summit and with the Department of Defense (DOD) regarding information on their implant registry.</p>
April 2018	<p>A VA official and the group continued working and holding weekly meetings and planning a draft agenda for the summit, among other things.</p> <p>The working group including VA officials and Bruce Moskowitz finalized the speaker schedule for the Device Registry Summit. A VA official emailed working group members, including Bruce Moskowitz, to add a speaker with a patient perspective to the draft agenda for the summit.</p>
May 2018	<p>VA’s weekly working group meetings continued. A VA official sent a sample invitation letter, draft invitee list, and draft agenda to the working group in advance of the regular weekly meeting. A VA official noted that the summit was being hosted under VA Chief of Staff Peter O Rourke’s leadership.</p> <p>VA Deputy Assistant Secretary for the Office of Public and Intergovernmental Affairs emailed that the event would likely attract media attention, so he planned to provide public affairs coverage including media escort.</p>
June 4, 2018	<p>VA held its Medical Device Registry Summit to launch a national registry for medical devices. The objective of the summit was to develop awareness for the importance of a medical device registry and promote its implementation. VA Acting Secretary Peter O’Rourke had introductory remarks to kick off the summit, noting the summit as an effort to expand collaboration beyond the DOD to also include the Food and Drug Administration, the Centers for Medicare & Medicaid Services, and community care providers. He particularly thanked Bruce and Aaron Moskowitz (neither of whom were in attendance at the summit) as driving forces in medical device registries.</p> <ul style="list-style-type: none"> • An agenda showed the morning roundtable discussion included the following participants: VA Acting Secretary O’Rourke; the Food and Drug Administration Commissioner and Director of the Center for Devices and Radiological Health; the Secretary of the Department of Health and Human Services; an American Medical Association representative; and the Secretary of the DOD.

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- Speakers included a doctor from Harvard Medical School and School of Public Health, a doctor from Yale University, and doctors from Dartmouth and the Food and Drug Administration.
 - Talks focused on moving the medical device registry from a concept, to efforts to develop it, to a sustained project.
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Source: GAO analysis of VA documents. | GAO-20-447R

^aIn a January 2017 news conference, then-President-elect Trump stated that he and VA would consult business executive Perlmutter and other private citizens—individuals not employed by a federal agency—to help address issues at the VA. Perlmutter, after agreeing to consult with the President, former Secretary Shulkin, and VA, later included two other private citizens—Moskowitz and Sherman—in his efforts.

Table 5: Timeline of the Interactions between Officials at the Department of Veterans Affairs (VA) and Private Citizens on VA’s Personnel Decisions, 2017-2018

January 2017	<p>Interactions with private citizens occur regarding the VA Secretary personnel decision.</p> <ul style="list-style-type: none"> January 2017- Then-VA Under Secretary for Health David Shulkin met with Isaac Perlmutter and Bruce Moskowitz in West Palm Beach, Fla., to discuss his experience at the VA as Under Secretary for Health including staffing, use of technology, and interactions with the private sector. Shulkin then met with then-President-elect Trump to discuss his views on leadership of the VA during which time Mr. Trump called Perlmutter to indicate that, in referring to Shulkin, Perlmutter, “had a good guy here” to which Perlmutter replied, “Donald, he’s your guy.....I wouldn’t steer you wrong.”^a <p>President Trump nominated Shulkin and VA installs Rob Thomas as Acting CIO and Thomas “Jake” Leinenkugel as senior advisor.</p> <ul style="list-style-type: none"> President Trump nominated Shulkin to serve as Secretary of the VA. In a press conference, then-President-elect Trump acknowledged the VA’s longstanding challenges and stated that he would consult certain private citizens and organizations including Isaac “Ike” Perlmutter, Toby Cosgrove, and the Cleveland Clinic and Mayo Clinic to help resolve these issues.
February 2017	<p>Several senior VA positions are filled, including VA Secretary, Acting Deputy Secretary and senior advisor.</p> <ul style="list-style-type: none"> Shulkin was sworn in as Secretary of VA. Scott Blackburn named Acting Deputy Secretary. Camillo Sandoval became senior advisor.
May- June 2017	<p>VA filled its Executive Director of the Office for Electronic Health Records Modernization position.</p> <ul style="list-style-type: none"> John Windom became Executive Director, Office for Electronic Health Records Modernization. <p>Private citizens and VA officials discussed potential human resources training for VA officials.</p> <ul style="list-style-type: none"> Email communication is held among then-Secretary Shulkin, Acting Under Secretary of Veterans Affairs for Health Poonam Alaigh and private citizens Moskowitz, Marc Sherman, and Perlmutter in which they discussed a human resources (HR) contact at a private university who was willing to donate time to set up an online course for training VA staff, have the university’s whole HR department come in, assist in any way that would be beneficial to VA, and invite VA leadership to their twice yearly leadership conference. Moskowitz noted that the university actively worked with the Cleveland Clinic, so it was well versed on human resources for medical institutions.
August-October 2017	<p>VA made personnel changes including Deputy Secretary and Acting Chief Information Officer (CIO) and a VA official interacted with a private citizen regarding potential candidates for CIO position.</p> <ul style="list-style-type: none"> Thomas Bowman became Deputy Secretary. (August) Rob Thomas vacated Acting CIO position and Scott Blackburn became Acting CIO and Executive in Charge, Office of Information and Technology. (September/October) Email communication from Perlmutter to Shulkin listed 11 names and resumes for potential CIO candidates.(September)
December 2017	<p>VA senior officials discussed removing Secretary Shulkin.</p> <ul style="list-style-type: none"> Email communication from Jake Leinenkugel to Camillo Sandoval covered leadership issues at the VA and possible solutions including removing then-Secretary Shulkin with the help of “outside team (Permuter)” to which Sandoval replied, “Thanks, will swing by after meeting with Chris Liddell.” <p>VA consulted private citizens about candidates for multiple VA vacancies.</p> <ul style="list-style-type: none"> Email communication between Sherman and an executive from a medical center. The executive asked how Sherman’s lunch with the Secretary went to which Sherman replied, “he would love to get options from you for CIO and HR candidates.”

- Email communication between Scott Blackburn and Marc Sherman in which Mr. Blackburn stated that they met early that week and identified three follow-up items including identifying an experienced executive willing to become a government employee to help drive VA from the inside. He noted that outside advisors/consultants could only do so much in government due to ethics laws, etc. In the email, Blackburn made several alternative suggestions such as “bringing in a former CIO that we can trust that does not need the money.” In response, Sherman noted that Moskowitz had identified multiple potential candidates interested in working for VA and that he would provide Blackburn a more detailed update after speaking with Moskowitz.
- In the same email communication between Blackburn and Sherman in which Blackburn indicated that an earlier meeting had occurred and asked him, “Any luck identifying an executive that would be willing to come on as a government employee? The Secretary has also been nagging me about this.” To which Sherman replied, “All three of these items are actively in progress. I know they are all working on #1. Bruce has identified multiple candidates and I will be talking to him later today and will get a more detailed update and get back to you.”

January and February 2018 **VA experienced staffing change and discussed options for filling vacant positions.**

- Email communication and perhaps subsequent telephone discussion occurred between Shulkin and Moskowitz regarding the potential use of Intergovernmental Personnel Agreement Act agreements (IPA) to help VA fill leadership and other positions. An internal email earlier that day from a VA official to Shulkin stated that, “I am sending you a note on IPAs ahead of the session coming up on hiring. After our last roundtable with MITRE, you had asked all the university participants to think about sending experts to VA through IPAs]. I followed up on that with several university dean’s offices and have received very positive responses.” She also stated that “I have identified 6 core areas requiring experts who can fill leadership and other positions in Veteran Health Administration /Electronic Health Record space and associated hospital systems where the experts would come from.”^b (January)
- Peter O’Rourke became VA Chief of Staff. (February)

Potential CIO candidate indicated that the position is not an option for him.

- Email sent from a then-potential CIO candidate to Sherman in which the candidate indicated that “Once Sutter Health declined the IPA arrangement, I came to understand there was no other creative path forward,” indicating that the CIO position was not an option for that candidate. (February)

March and April 2018 **Shulkin left his position as VA Secretary and multiple staff changes occurred**

- On March 28, 2018, Shulkin vacated his position as VA Secretary, and Robert Wilkie became Acting Secretary of VA.
- On April 17, 2018, Scott Blackburn resigned as Acting Executive in Charge for the Office of Information and Technology.
- In April 2018 Camillo Sandoval vacated senior advisor position and became Acting CIO until January 2019.

VA officials requested candidates to fill vacant VA positions

- Email communication sent from Moskowitz to O’Rourke entitled, “requested names.pdf” that includes names and professional experience for several individuals that VA may have requested from Moskowitz to fill positions at VA; however, this is not explicitly stated in the email exchange
 - Email communication sent from Camillo Sandoval to Scott Blackburn inquiring whether Sherman would be willing to be a “special government employee.”
 - Email communication sent from Camilo Sandoval to Moskowitz, in which he introduced himself to Moskowitz in his new role as Executive-in-Charge for VA until a permanent CIO was nominated and confirmed. In his email, he noted that he was looking for “a private sector CIO (1-or-2) with healthcare IT experience that could advise me on enterprise-wide IT infrastructure and operation services. I am very interested in identifying areas where best practices from the private sector can be applied to enhance the customer experience, and improve support to veterans.” Moskowitz responded by copying the CIO from a university medical center indicating
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that she would be the best resource.

May 2018

VA experienced more staffing changes.

- The White House announced its intent to nominate Robert Wilkie as Secretary of VA.
 - Robert Wilkie stepped down as Acting Secretary, and Peter O'Rourke became Acting Secretary.
 - Jacquelyn Hayes-Byrd became Acting Chief of Staff.
 - Thomas Bowman vacated Deputy VA Secretary position.
-

July and August 2018

VA continued to experience senior leadership changes

- Thomas "Jake" Leinenkugel vacated senior advisor position and Peter O'Rourke vacated Acting Secretary of VA position.
- Robert Wilkie was sworn in to serve as the tenth Secretary of VA.
- Genevieve Morris served as Chief Health Information Officer from July to August 2018.
- Jacquelyn Hayes-Byrd vacated Acting Chief of Staff. (August)
- Jacquelyn Hayes-Byrd served as Acting Assistant Secretary for Human Resources and Administration from August 2018 to February 2019.
- James Byrne named Acting Deputy Secretary of VA. (August)

VA sought suggestions from private citizens for Under Secretary for Health position. Private citizens suggested that academic medical centers would be best positioned to provide recommendations.

- VA official Peter O'Rourke emailed Moskowitz and Perlmutter requesting suggestions for candidates for Under Secretary for Health. Moskowitz responded, "my first thought would be that the commission should have input from the five CEO's we work with who know almost everyone" and later asked, "Can I have permission to ask the group and in addition a physician CEO who is retired and would know who best can qualify for this?" O'Rourke replied "Absolutely, I'm asking everyone interested in veterans' issues to consider making recommendations and spreading the word."
 - Email sent from Moskowitz to O'Rourke, then the Acting Secretary, and copied to Leslie Cooper, a physician at the Mayo Clinic, in which Moskowitz said, "I suggested Dr. Cooper emails you directly to make sure his application is received" to which O'Rourke responds, "Thank you. Dr. Cooper, I look forward to hearing from you."^c
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Source: GAO analysis of VA documentation, *David Shulkin's book, "It Shouldn't Be This Hard To Serve Your Country"*, and interviews with cognizant officials and private citizens. | GAO-20-447R

^aIn a January 2017 news conference, then-President-elect Trump stated that he and VA would consult business executive Perlmutter and other private citizens—individuals not employed by to help address issues at the VA. Perlmutter, after agreeing to consult with the President, former Secretary Shulkin, and VA, later included two other private citizens—Moskowitz and Sherman—in his efforts. One or more of these three individuals had a residence or worked in West Palm Beach, Fla. David Shulkin, *It Shouldn't Be This Hard To Serve Your Country*. (New York: PublicAffairs, 2019).

^bUnder the Intergovernmental Personnel Act, Agencies can enter into interpersonal agreements with other federal agencies, state and local governments and institutions of higher education, among other entities, to provide for the temporary reassignment of employees between such entities. Pub. L. No. 91-648, 84 Stat. 1909 (1971) (codified, as amended, at 5 U.S.C. §§ 3371-3375).

^cThe email does not expressly say it is for the Under Secretary for Health position; however, that is the subject line of the email.

Enclosure III: Advice and Recommendations from Private Citizens and Entities

Private citizens may provide advice and recommendations to federal agencies, including the Department of Veterans Affairs (VA). In the case of VA, such advice and recommendations may be provided through federal advisory committees mandated by Congress or established by VA to obtain stakeholder and public input or through veterans service organizations (VSO)—private, non-profit groups that advocate on behalf of veterans. In addition, other entities and individual private citizens may contact the department independently or may be contacted by department officials.

To understand the role of federal advisory committees in VA decision-making, we reviewed VA's Advisory Committee Management Guide, information on VA's website about their current federal advisory committees, and regulations and guidance implementing the Federal Advisory Committee Act.³⁷ However, to determine whether or not the three private citizens constituted an advisory committee under the act was outside the scope of our engagement.³⁸

To obtain perspectives on how VSOs provide advice and recommendations to VA, we selected and interviewed officials from a judgmental sample of nine VSOs: the American Legion, American Retirees Association, American Veterans for Equal Rights, Disabled American Veterans, Navy Mutual Aid Association, Paralyzed Veterans of America, Transgender American Veterans Association, Veterans of Foreign Wars, and Wounded Warriors. These VSOs were selected based on a variety of key characteristics in terms of their status as recognized by VA, access to VA officials, and areas of VSO interest.³⁹ The information obtained from our judgmental sample of VSOs is not intended to be generalizable across all VSOs, but rather to provide information about general experiences of different kinds of VSOs.

Advice and Recommendations from Federal Advisory Committees

VA uses federal advisory committees, which may include government officials and private citizens, or “representatives”—as VA refers to them, to obtain advice and recommendations regarding agency programs and policies.⁴⁰ Advisory committee representatives provide a nongovernmental entity's point of view and, according to VA, committee members are generally acknowledged by VA's leadership as consumer representatives of VA beneficiaries who are affected by various VA programs. According to VA, one of VA's principle objectives for its advisory committees is to ensure that committee members appropriately reflect the diversity of

³⁷ Department of Veterans Affairs, *Advisory Committee Management Guide*, Washington, D.C.: August 2017.

³⁸ At the time of our report, there was active litigation alleging that VA violated the Federal Advisory Committee Act by obtaining advice and recommendations from the three private citizens Moskowitz, Perlmutter, and Sherman, without taking the required steps under the act to formally establish a federal advisory committee. In September 2019, a federal district court held that the three private citizens did not constitute an advisory committee under the act, nor did VA utilize them as an advisory committee, and dismissed VoteVets complaint. *VoteVets Action Fund v. Department of Veterans Affairs*, 441 F.Supp. 3d 61- (D.D.C. 2019). *VoteVets Action Fund* has appealed the court's decision.

³⁹ We selected VSOs using the Department of Veterans Affairs' Directory of VSOs, which lists VSOs identified as congressionally chartered and recognized by the VA for the purpose of preparation, presentation, and prosecution of claims before the VA, not congressionally chartered but recognized by the VA, congressionally chartered but not recognized by the VA, neither congressionally chartered nor recognized, and Intergovernmental Affairs.

⁴⁰ See Department of Veterans Affairs, *Advisory Committee Management Guide*, Washington, D.C.: August 2017, for more information about VA's advisory committee requirements.

American society and the veteran population and therefore, members may include stakeholders such as veterans, members of VSOs, and subject matter experts. Committee members meet regularly with VA's senior leadership, and receive frequent briefings by program managers in subject areas related to their particular chartered jurisdictions and duties.

Federal advisory committees must comply with the Federal Advisory Committee Act, which is intended to ensure that advice provided to agencies is objective and accessible to the public.⁴¹ The act establishes requirements for federal advisory committees, such as requiring their membership to be "fairly balanced" and to ensure that committees provide advice that is relevant, objective, and open to the public.⁴² For example, federal agencies sponsoring a committee must publish adequate advance notice of meetings in the Federal Register, open all meetings to the public, unless an exception applies, and maintain detailed minutes of meetings that are available to the public. According to the General Services Administration, this helps ensure that the public has access to information on issues affecting federal policies and programs, and ensures the public is afforded an opportunity to provide input into a process that may form the basis for government decisions. Additionally, the Federal Advisory Committee Act and government regulations require federal agencies, including VA, to provide assurance that the advice and recommendations an advisory committee produces are independent of the agency that established the committee.

Under the act, federal advisory committees may be created under one of four establishment authorities:

- 1) Congress may require creation of committees by statute,
- 2) the President may create committees using a presidential directive,
- 3) Congress may authorize but not require creation of committees by statute, and
- 4) an agency may create committees using its own authority under Title 5 of the United States Code.

VA currently has 27 VA advisory committees that provide advice on selected VA programs and policies, 17 of which were established by statute and 10 that are non-statutory. For example, the Advisory Committee on Prosthetics and Special Disabilities Programs is a statutorily established committee created to provide advice to the VA Secretary on VA prosthetics programs and the rehabilitation research, development, and evaluation of prosthetics technology. The Committee also assesses VA programs that serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities. In contrast, VA established the Veterans' Rural Health Advisory Committee using its Title V authority. The committee was established to provide advice to the Secretary on health care issues affecting enrolled veterans residing in rural areas.

⁴¹ Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified, as amended, at 5 U.S.C. App. 2). The General Services Administration is responsible for implementing the Federal Advisory Committee Act and has established regulations and guidance regarding compliance with the act, as well as maintains an online database that federal agencies use to manage advisory committees.

⁴² The Federal Advisory Committee Act requires that committee memberships be "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring agencies. In balancing committee memberships, agencies are expected to consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and function of the advisory committee, according to VA.

VA's Advisory Committee Management Office is responsible for the oversight of all VA federal advisory committees. This office directs and manages all phases of committee management policy and develops and disseminates policy to both VA staff and advisory committee members.⁴³

Advice and Recommendations from Veterans Service Organizations (VSOs)

VSOs represent the interests of veterans and provide advice and recommendations to VA in regard to programs and policies that affect the veterans they represent. In some cases, federal law directs VA to obtain advice and recommendations from VSOs on certain matters and authorizes the VA Secretary to approve certain VSOs to prepare, present, and prosecute claims on behalf of veterans.⁴⁴ VA maintains a directory of VSOs, some of which are congressionally chartered and/or recognized by VA for the purpose of representing veterans with VA claims.⁴⁵ Congressionally chartered VSOs are subject to applicable requirements in the law establishing their charter, such as the submission of annual reports to Congress regarding their activities. Further, employees of VSOs and other individuals that serve as accredited representatives of veterans in VA claims matters must undergo a formal application and training process to represent veterans in such matters.

VSOs may also interact with VA through VA federal advisory committees on which individuals from VSOs serve. In some cases, federal law requires statutorily established federal advisory committees to include individuals from VSOs.⁴⁶ Officials from several VSOs we spoke with told us that at least one official from each of their VSOs serves on a VA federal advisory committee. For example, officials from one VSO we interviewed serve on VA's Advisory Committee to the Secretary for Prosthetics and Special Disabilities.

In addition, VSOs may enter into agreements with VA that further define their roles and responsibilities for activities that they undertake with VA, ranging from clinically based activities to hosting special events, according to VSOs we spoke with. VSOs also may provide VA with input and feedback on various topics, through other interactions that are not statutorily required or set forth in formal agreements. Several VSOs we spoke with reported that VSOs' interactions with VA may vary depending on the current Administration or VA Secretary, as involvement with VSOs is conducted at each Secretary's discretion. According to these VSOs, some VA Secretaries are more inclusive of VSOs by engaging them and seeking their input in VA meetings and discussions.

⁴³ See Department of Veterans Affairs, *Advisory Committee Management Guide*, Washington, D.C.: August 2017, for more information about VA's advisory committee requirements.

⁴⁴ See, e.g., Veterans Mobility Safety Act of 2016, Pub. L. No. 144-256, § 4(c), 130 Stat. 1345, 1348 (2016) (codified at 38 U.S.C. § 7401 note) (requiring VA to consult with VSOs regarding qualifications for hearing aid specialists).

⁴⁵ The VSO Directory lists five categories of VSOs: 1) congressionally chartered and recognized by VA for the purpose of representing veterans in claims issues before the VA; 2) congressionally chartered but not recognized by the VA; 3) not congressionally chartered but recognized by the VA; 4) neither congressionally chartered or recognized; and 5) Intergovernmental Affairs. See United States Department of Veterans Affairs, Office of the Secretary, *2019 Directory Veterans and Military Service Organizations and State Directors of Veterans Affairs* (Washington, D.C.: 2019).

⁴⁶ See, e.g., 38 U.S.C. § 545 (establishing the Advisory Committee on the Readjustment of Veterans and requiring the membership to include "individuals from veterans service organizations").

Advice and Recommendations from Private Citizens and Entities Outside of Federal Advisory Committees and VSOs

Former and current VA officials involved with acquisitions told us that it is common to consult outside experts when researching opportunities or solutions on issues facing VA. More specifically, in regard to government contracting, the Federal Acquisition Regulations support the use of market research. According to a current VA official involved with acquisitions, market research is an important element of properly creating and solidifying a government requirement; thus, interactions with companies, consultants or stakeholders are a common practice in support of successfully achieving acquisition objectives. However, this same official noted that it would be inappropriate to involve private citizens or any other entities in decisions that would improperly advantage those parties financially, such as in providing them an advantage in any future business or acquisitions. Similarly, a former VA official told us that market research, including getting input from private citizens on certain VA initiatives, was permissible and even encouraged because it helped to inform VA's efforts. In addition, the federal rulemaking process in which VA publishes proposed rules in the Federal Register for public comment provides the general public an opportunity to provide advice and recommendations to VA. VA also may, at the discretion of VA officials, seek advice and recommendations from private citizens not affiliated with a group or organization, according to current VA officials.

Based on our review of email exchanges, we found that VA officials in the period of our review obtained advice and recommendations from various private citizens, such as chief executive officers and CIOs of private industry based on the needs of the agency and the private citizens' expertise.⁴⁷

VA Guidance Regarding VA Officials' Interactions with Private Citizens and Entities

According to VA officials, outside of statutorily required interactions, VA officials should use their discretion in determining how to involve private citizens, whether as part of a formal group or independent actors, in VA decision-making and activities. VA Office of General Counsel officials told us that their office provides ethics training and consultations on matters ranging from federal ethics statutes and regulations to the Federal Advisory Committee Act to guide its employees in their interactions with private citizens.

According to VA's Office of General Counsel officials, all VA employees receive ethics training, including new appointee ethics training and an annual ethics training. Training records for 2018 provided by VA indicate that senior officials required to take this training including the former and current VA Secretary received formal ethics training as required. In addition, former and current senior VA officials we spoke with including the former Acting CIO, a former senior advisor, and the current director of the Electronic Health Records Modernization Office told us that they had or have received annual ethics training during their tenure at VA. According to VA, officials may also address questions regarding ethical concerns to VA's Office of General

⁴⁷ The VA also maintains some public-private partnerships. In November 2016, VA established the Secretary's Center for Strategic Partnerships to identify opportunities for public-private collaboration and formal partnerships. The center interacts with external stakeholder organizations to help further the Secretary's highest priority programs in partnership with the VA. For example, according to VA officials, VA is currently working to identify future partnerships to help prevent veteran suicide.

Counsel Ethics Specialty Team for assistance or to request an advisory opinion. VA's Ethics Specialty Team was established as a pilot in 2011 and became a permanent office in 2012.

VA officials we spoke with told us that they consulted both VA's Office of General Counsel and the Ethics Specialty Team regarding their interactions with private citizens. For example, VA officials consulted the team prior to former Secretary Shulkin's November 2017 appearance at the New York Stock Exchange. We also found that multiple VA senior officials consulted VA's Office of General Counsel regarding their interactions with private citizens. For example, our analysis of email communications noted several emails between VA officials, including those in the Office of General counsel, regarding former Secretary Shulkin's appearance at the New York Stock Exchange as part of VA's 2017 veterans' suicide awareness campaign. Further, one former VA official involved in VA information technology efforts told us that his team operated in a lot of "gray areas", so the team constantly sought guidance and asked questions of VA's ethics advisors and lawyers to help inform their decisions and understand any restrictions on their activities in this area. The lawyers helped the team navigate situations that were less clear and did not necessarily have a precedent or clear guidance for action, according to this official. Similarly, in his book, former Secretary Shulkin cites numerous examples of seeking the advice of officials in VA's Office of General Counsel to ensure that his interactions with private citizens were both ethical and legal. For example, he stated that after consulting with officials in VA's Office of General Counsel, he told certain private citizens that they could only offer advice and recommendations individually and not as a group because in the government, any advisory group needs to be officially sanctioned and meet the requirements of the Federal Advisory Committee Act.⁴⁸

⁴⁸ David Shulkin, *It Shouldn't Be This Hard To Serve Your Country*, (New York: PublicAffairs, 2019), p. 93.

Enclosure IV: GAO Contact and Staff Acknowledgments

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Staff Acknowledgments

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