Understanding Surviving Spouse Ownership Requirements

Issue:

This brief defines who qualifies as a surviving spouse and discusses the requirements for a surviving spouse to hold an ownership interest in a Service-Disabled Veteran-Owned Small Business (SDVOSB).

(For purposes of this brief, applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulation:

38 CFR § 74.1 provides as follows:

Surviving spouse is any individual identified as such by VA's Veterans Benefits Administration and listed in its database of veterans and family members. To be eligible for VetBiz VIP Verification, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described in paragraph (2) of this definition, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to in paragraph (1) of this definition is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or

(iv) The date on which the business concern is no longer small under Federal small business size standards.

(3) The veteran must have had a 100 percent service-connected disability or died as a direct result of a service-connected disability.

NOTE TO DEFINITION OF SURVIVING SPOUSE: For program eligibility purposes, the surviving spouse has the same rights and entitlements of the service-disabled veteran who transferred ownership upon his or her death.

38 CFR §§ 74.3(e)(1) and (3) provide as follows:

> A participant may remain eligible after a change in its ownership or business structure, so long as one or more veterans or service-disabled veterans own and control it after the change and the participant files a new application identifying the new veteran owners or their new business interest…Where the transfer results from the death or incapacity due to a serious, long-term illness or injury of an eligible principal, prior approval is not required, but the concern must file a new application with contracting officer and CVE within 60 days of the change.

What This Means:

- The Center for Verification and Evaluation (CVE) does not determine who is a surviving spouse. CVE determines whether a particular surviving spouse qualifies for the Veterans First Contracting Program.
- In all cases, CVE has to determine whether the interest held by the deceased Service-disabled Veteran (SDV) would cause ownership in the SDVOSB to drop below the required 51 percent ownership by SDVs.
- If the death of the SDV does not cause the concern to be less than 51 percent owned by one or more SDVs, the issue of eligibility ends and the spouse of the deceased SDV will not be recognized as a surviving spouse for purposes of the Veterans First Contracting Program. (**Example:** Two SDVs own a SDVOSB: one owns a 51 percentage interest and the other a 49 percent interest. The 49 percent interest owner dies and the deceased Veteran has a surviving spouse. The surviving spouse cannot claim surviving spouse status for purposes of the Veterans First Contracting Program, since the loss of the 49 percent interest holder does not cause the concern to be owned by less than 51 percent by one or more SDVs.)
- If the death of the SDV causes the concern to be less than 51 percent owned by one or more SDVs, CVE is required to determine whether the person claiming surviving spouse status is identified as such in the Veterans Benefits Administration's Beneficiary Identification and Records Locator Subsystem (BIRLS). (**Example:** If there are three owners—two SDVs and one non-Veteran—one SDV owing a 50 percent interest, the other SDV owning a 1 percent interest, and a non-Veteran owning the remaining 49 percent interest. If one of the two SDVs dies, the company will no longer be owned 51 percent by one or more SDVs. In such case, the surviving spouse of one of the two SDV owners would be an eligible surviving spouse since the SDV ownership interest would fall below the required 51 percent due to the death of one of the SDV owners.)
- To be an eligible surviving spouse, the individual must be listed as the surviving spouse in BIRLS.
- If the individual is not listed in BIRLS as the surviving spouse, CVE cannot recognize the individual as the surviving spouse for purposes of the Veterans First Contracting Program.
- A company may lose SDVOSB status if it is found that the combined ownership interest of the remaining SDVs, if any, and the surviving spouse does not equal at least 51 percent.
- If the person claiming surviving spouse status is unable to register as the deceased Veteran's surviving spouse, CVE will examine the company as though the person claiming such status was a non-SDV.
- To determine eligibility of the surviving spouse, the deceased SDV must, at the time of death, have died as the result of a Service-connected disability or had a 100 percent Service-connected disability. CVE uses BIRLS to confirm whether the deceased SDV satisfies this requirement.
- An individual attempting to qualify using the 100 percent Service-connected disability exception would not qualify if the deceased Veteran did not have at least one single Service-connected disability rated at 100 percent.
- A deceased Veteran with two or more Service-connected disabilities which collectively equal a rating of 100 percent, no one disability is individually rated at 100 percent, does not qualify for the 100 percent disability exception.
- CVE must also confirm that the spouse of the deceased SDV applying for surviving spouse status has received the deceased SDV's ownership interest in the company. This is evidenced by wills, company business documents, and Letters of Explanation. Not everyone registered as a surviving spouse in BIRLS serves as the

surviving spouse for purposes of the Veterans First Contracting Program.

- A surviving spouse will not qualify if the deceased SDV's ownership interest has been willed or otherwise transferred to someone else.
- Once it is determined that the spouse of the deceased SDV qualifies as a surviving spouse for purposes of the Veterans First Contracting Program, CVE will require such surviving spouse to complete, if not already completed, a new VA Form 0877 to identify himself or herself as the surviving spouse. 38 CFR **§** 74.3(e) requires any change in ownership to be reported to CVE within 60 days.
- CVE will also require the business to provide amended business documents (i.e., stock certificates, bylaws, operating agreements, stock ledgers, etc.) to recognize the new ownership.
- If it is determined that the spouse of the deceased Veteran does not qualify as the surviving spouse, the person claiming surviving spouse status is directed to complete a new VA Form 0877 to identify himself or herself as either a non-Veteran, a Veteran, or a Service-disabled Veteran—whichever is applicable.
- The period that a person may qualify as a surviving spouse for purposes of the Veterans First Contracting Program begins the date on which the Veteran dies and ends on the earlier of the following dates:

  (i) The date on which the surviving spouse remarries;

  (ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

  (iii) The date that is 10 years after the date of the Veteran's death; or

  (iv) The date on which the business concern is no longer small under Federal small business size standards.

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