



VETERANS IN BUSINESS-STILL SERVING AMERICA



CENTER FOR VETERANS ENTERPRISE

VERIFICATION PROCESS PRE-COURSE TRAINING GUIDE

2013

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OSDBU VERIFICATION PROCESS TRAINING

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OSDBU VERIFICATION PROCESS TRAINING

Date	Version	Name/POC	Description
11-Feb-13	1.0	Kathleen Martin	Completed Initial Version
11-Mar-13	2.0	Kathleen Martin	Revisions to date and sub-title
11-Apr-13	3.0	Kathleen Martin	Revisions to CVE Verification Process Flow Chart - Graphics

About This Guide

The CVE Verification Process Training Guide is developed for multiple stakeholders who provide the Veteran community with education and services needed to complete the Veteran's First Contracting Program application at www.VetBiz.gov.

The guide is a reliable and standardized library of resources designed to aid stakeholders in achieving Veteran service goals and objectives. By explaining the overarching vision of the Office of Small and Disadvantage Business Utilization (OSDB) and the aligned mission of the Center for Veterans Enterprise (CVE), internal and external stakeholders are given contextual relevance to know what makes each instructional component important and how to use each most effectively.

This guide is the single training reference to understanding the VetBiz application, the governing regulation that determines eligibility, and the verification lifecycle processes that seamlessly collaborate on behalf of the Veteran seeking application approval.

For best use of the guide's information, attendance to the CVE Verification Process training is essential. This guide does not intend to replace the critical engagement that comes through instructor-led courses.

Subject Matter Experts (SMEs) have provided invaluable knowledge in the development of this guide. Contributions have been made by CVE Process Owners, CVE Support Function Owners, the Office of General Counsel (OGC), OSDBU, the Department of Veterans Affairs, and Consultants from GCC, Addx, & HeiTech.

Course Objectives

At the end of this course, you will be able to:

- Understand the roles, responsibilities and interdependence of the Office of Small and Disadvantaged Business Utilization (OSDBU) and the Center for Veteran Enterprises (CVE), both dedicated to supporting Veteran-owned businesses.
- Know the objectives of the Veteran's First Contracting Program.
- Recognize the various stages of the verification process needed to qualify for the Veteran's First Contracting Program.
- Appreciate both the policy mandates and application of Title 38 Code of Federal Regulations (CFR) Part 74 in making a determination.

Office of Small and Disadvantaged Business Utilization - OSDBU



Tom Leney
Executive Director

- Oversee the work of the Office of Small and Disadvantaged Business Utilization (OSDBU), which includes the Center for Veterans Enterprise (CVE).
- OSDBU provides outreach and liaison support to businesses (small and large) and other members of the public and private sectors concerning Small Business Acquisition issues.
- OSDBU is responsible for monitoring VA implementation and execution of the socioeconomic programs.
- Visit our website for more information: <http://www.va.gov/osdbu>.

Acquisition Support Team

SB Programs Procurement Reviews (VA Forms 2268 and 2268A):

- To assist Acquisition in developing appropriate acquisition strategies.
- We add value by ensuring that the requirements of Public Law (P.L.) 109-461 and other small business related laws/regulations are correctly followed in

order to provide maximum, practicable opportunities for small businesses.

Integrated Product Teams (IPTs):

- An Integrated Product Team (IPT) is a cross-functional team, lead by the Program Manager or Program Office, that works collaboratively to develop strategies and approaches that meet specific acquisition and program objectives.
- An IPT is mandatory for new acquisitions valued at \$ 5 million or more. However, IPTs are sometimes recommended for complex acquisitions valued at less than \$5 million. IPTs are to be established as early as possible in the acquisition stage.
- Procurements Excluded from an IPT: Construction and A/E services; Orders against pre-existing Indefinite Delivery contracts (GWAC, FSS, SEWP); Interagency Agreements; NAC pharmaceutical procurements and all FSS contracts established by the NAC.

Subcontracting Program:

- Review Subcontracting Plans to ensure they comply with the 11 Elements of FAR Part 19.704.
- Publish Subcontracting Plan Model, in the process of developing increased oversight program of VA prime contractors to ensure they provide subcontracts to small businesses as provided for in their subcontracting plans.

Contracting Research & Analysis:

- Program Office Engagement – assist with Market Research & Analysis on requirements to provide maximum practicable opportunity for Veteran owned and other small businesses.
- Assist with determining Goals, Research & Negotiation.
- Customer Service to our contracting and program office partners to provide added value to acquisition process.
- Assist Strategic Communications and Outreach with the identification and development of outreach to stakeholders.

Center for Veterans Enterprise - CVE



A. Michelle Gardner-Ince
Director

CVE Purpose:

- Verifies Veteran-owned and service-disabled Veteran-owned small businesses for inclusion in the VetBiz database. This process is called Verification.

- Companies granted approval are offered preferential access to VA government contracts and set-aside funds.

CVE Vision:

“World class professionals protecting the Veteran advantage, one Vet at a time.”

CVE Mission:

“Enable Veteran Business Opportunities through Verification Excellence. Consistently deliver accurate and timely verifications and through integrated technology, service and process platforms.”

- Certify – Eligibility
- Validate Control
- Examine / Evaluate – Ownership and Business Model

CVE Goals:

- Meet Regulatory Goals - 60 days to Verification
- Enable VA Small Business Goals and improve access to contract opportunities
- ISO 9000 Certified
- World Class Customer Service and Respected Staff

CVE Values:

- | | |
|--------------|--------------|
| • Service | • Respect |
| • Loyalty | • Leadership |
| • Integrity | • Excellence |
| • Commitment | • Teamwork |

Strategic Outreach



**Chanel Bankston-Carter
Director**

**Strategic Outreach and
Center for Small Business
Utilization (CSBU)**

What is Verification?

- Verification is the process by which a Veteran is evaluated and determined eligible to be listed in the Vendor Information Pages (VIP) VetBiz database.
- Evaluation is primarily based on the requirements found in Title 38 Code of Federal Regulations (CFR) Part 74.
- Once eligibility is determined and found in order, a VOSB / SDVOSB can participate in the Veteran's First Contracting Program through the VetBiz system.

Verification Assistance Program – VAP:

- VAP forms partnerships with Veteran services and small business organizations.
- Education and assistance is offered to VOSBs and SDVOSBs who want to participate in the Veteran's First Contracting Program by registering in the VetBiz system.

- VAP reduces the risk of misinterpreting the governing regulation used to determine eligibility into the program.

Veteran's First Contracting Program

- The Veterans First Contracting Program within the VA was created under P.L. 109-461.
- Created for Veteran-owned small businesses and expanded the service-disabled Veteran contracting program for VA procurements.
- Beneficial to both Veteran business owners and the Government. Documented proof of eligibility is granted upon approval.
- This process ensures that set-aside funds are awarded to legitimate firms owned and controlled by Veterans or service-connected disabled Veterans.

Veteran's First Contracting Program Governing Laws

- On December 22, 2006, President Bush signed P.L. 109-461, Veterans Benefits, Health Care, and Information Technology Act of 2006.
- Title V - Housing and Small Business Matters, contains provisions that enable VA to create a unique procurement program among Federal agencies.
- This program permits VA contracting officers to conduct acquisition actions limited to SDVOSBs or VOSBs in the Department's requirements when such

businesses appear as “VERIFIED” in the VetBiz.gov VIP database.

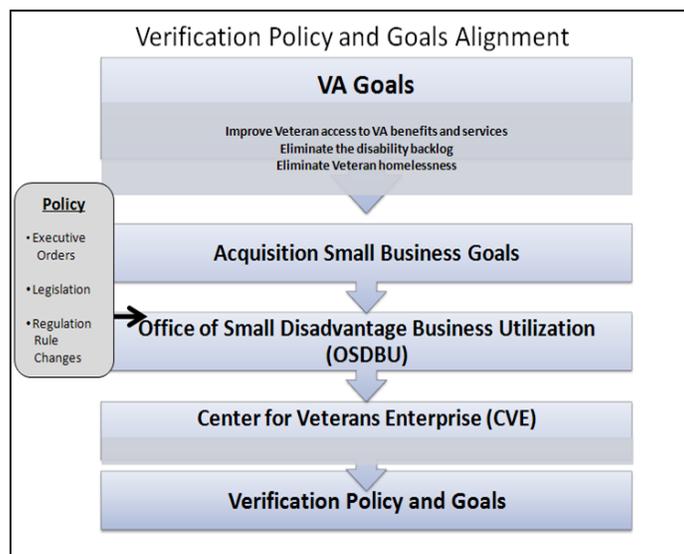


- In addition, prime contractors of the VA are required to use verified SDVOSBs and VOSBs to obtain credit in their subcontract plan and reports submitted to the VA.
- On October 20, 2004, President Bush issued Executive Order 13360, which directs the heads of agencies to significantly increase opportunities for service disabled Veteran businesses in Federal prime contracting and subcontracting actions.
- To achieve that objective, agencies shall more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)) through various efforts, including the development of a strategic plan. to implement the policy set forth in the Executive Order.
- The Executive Order also directs the Center for Veterans Enterprise (CVE) to assist agencies in verifying the accuracy of contractor databases.

Veteran’s First Contracting Program Timelines and Milestones

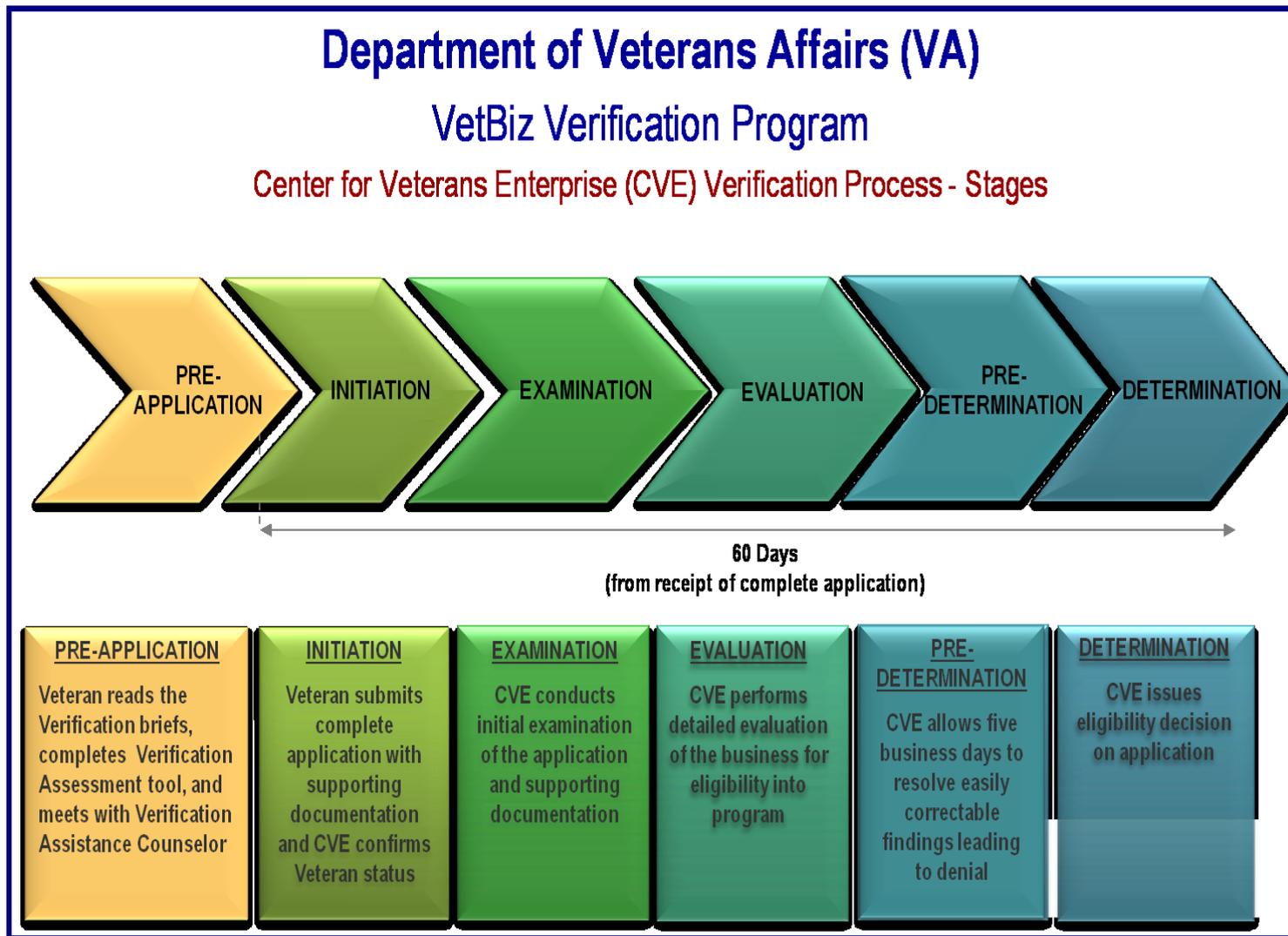
YEAR	ACHIEVEMENTS
DECEMBER 2006	P.L. 109-461 signed, creating Veterans First Contracting and SDVOSB/VOSB Verification
MAY 2008	VOSB Verification launches: voluntary program, self-representation still allowed. Also referred to as "verification light"
JUNE 2009	In 2009 there were 5,029 applications submitted; of which 4531 were initial applications
OCTOBER 2010	P.L. 111-275 approved - No firms visible in Vendor Information Pages (VIP) without being verified by CVE
FEBRUARY 2011	CVE begin certifying firms in accordance with P.L. 111-275
JUNE 2012	Interim rule change is approved. There were 2,423 businesses positively affected by the 2-year rule change.
JANUARY 2013	There were 5,315 verified firms in the VIP database

Verification Policy and Goal Alignment



CVE Verification Process Stages - Graphic

Figure 1a: CVE Verification Process Stages and Process Functional Teams



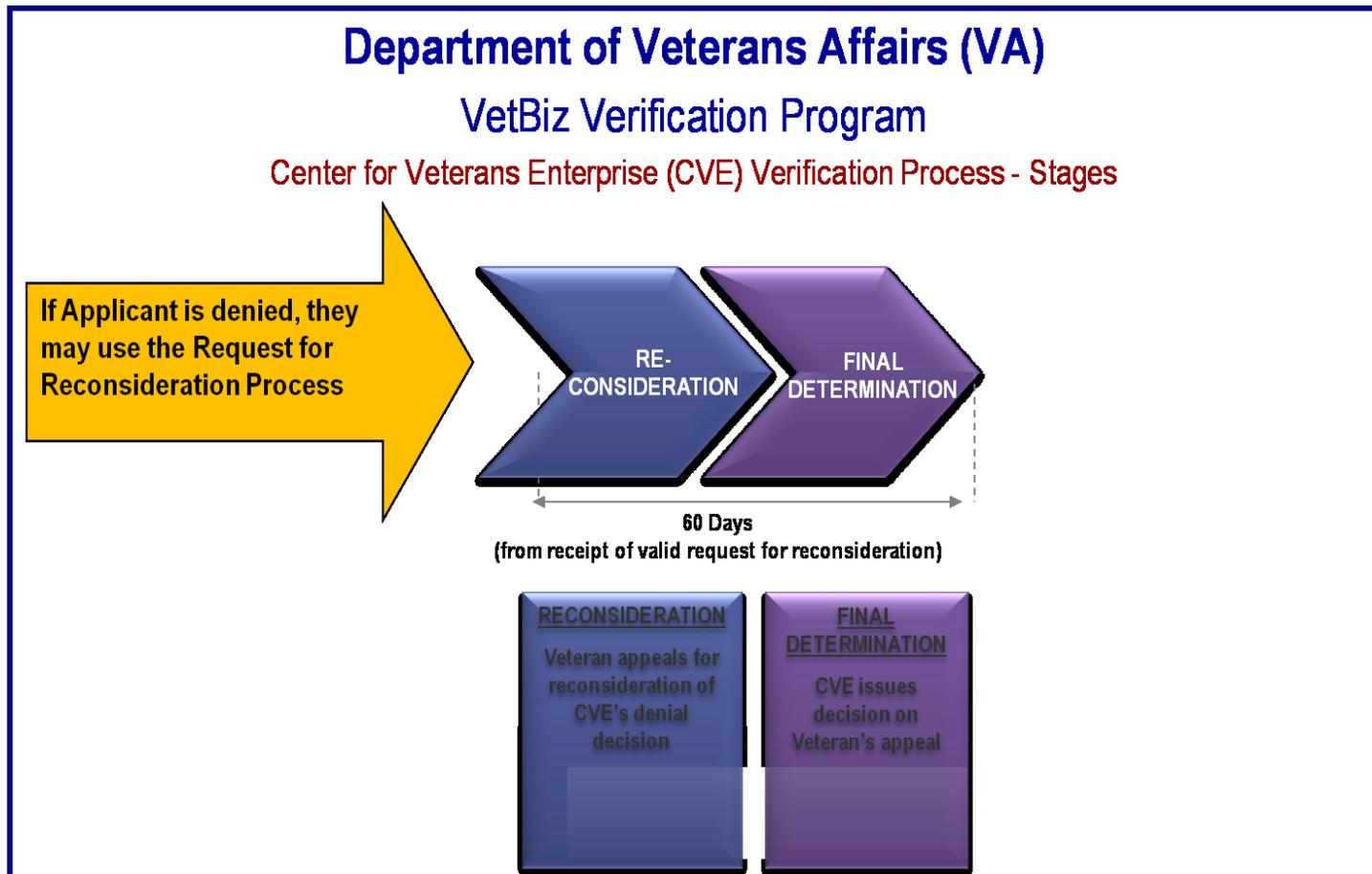


Figure 1b: CVE Verification Process Stages and Process Functional Teams

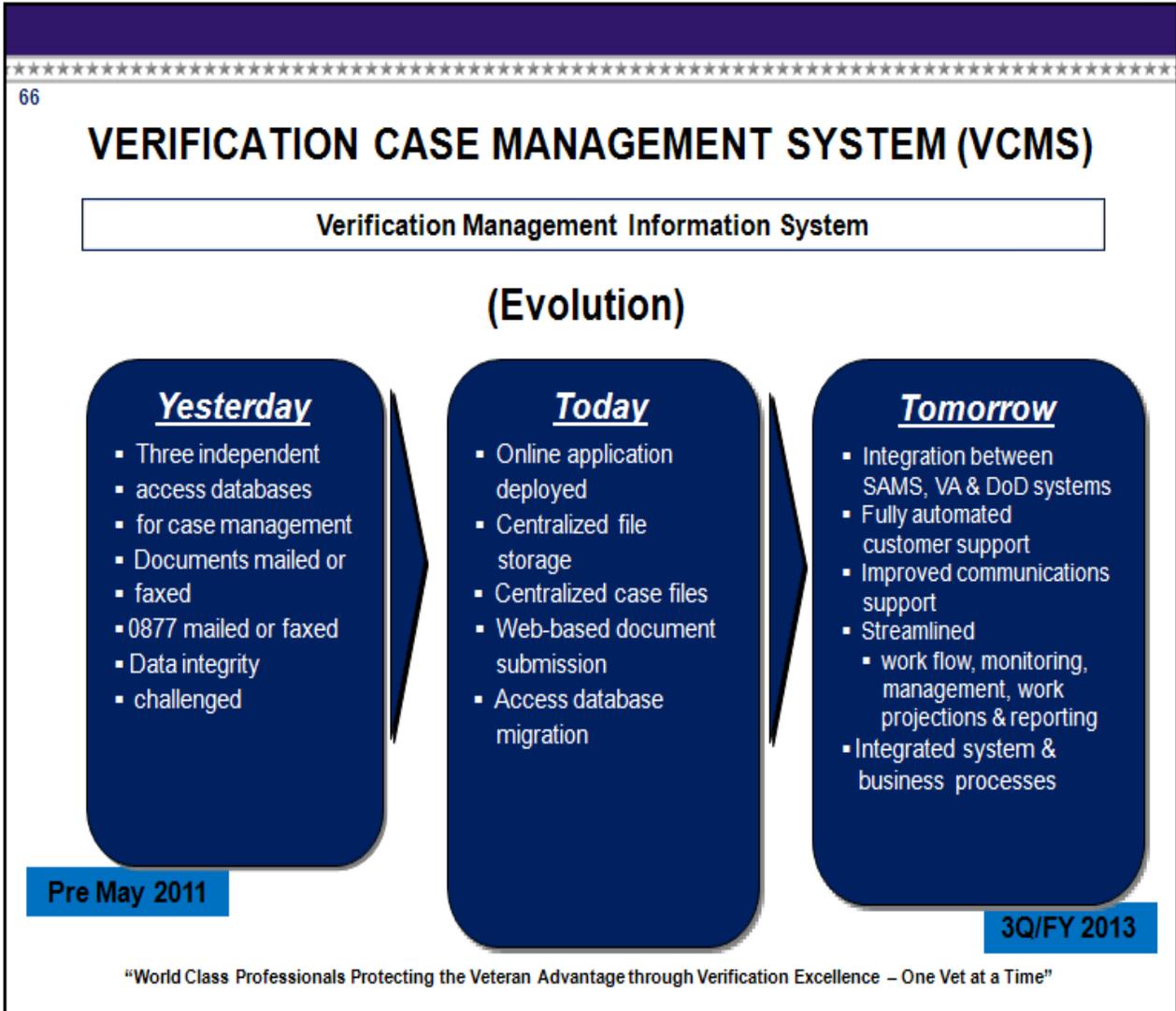


Figure 1c: CVE Verification Case Management System

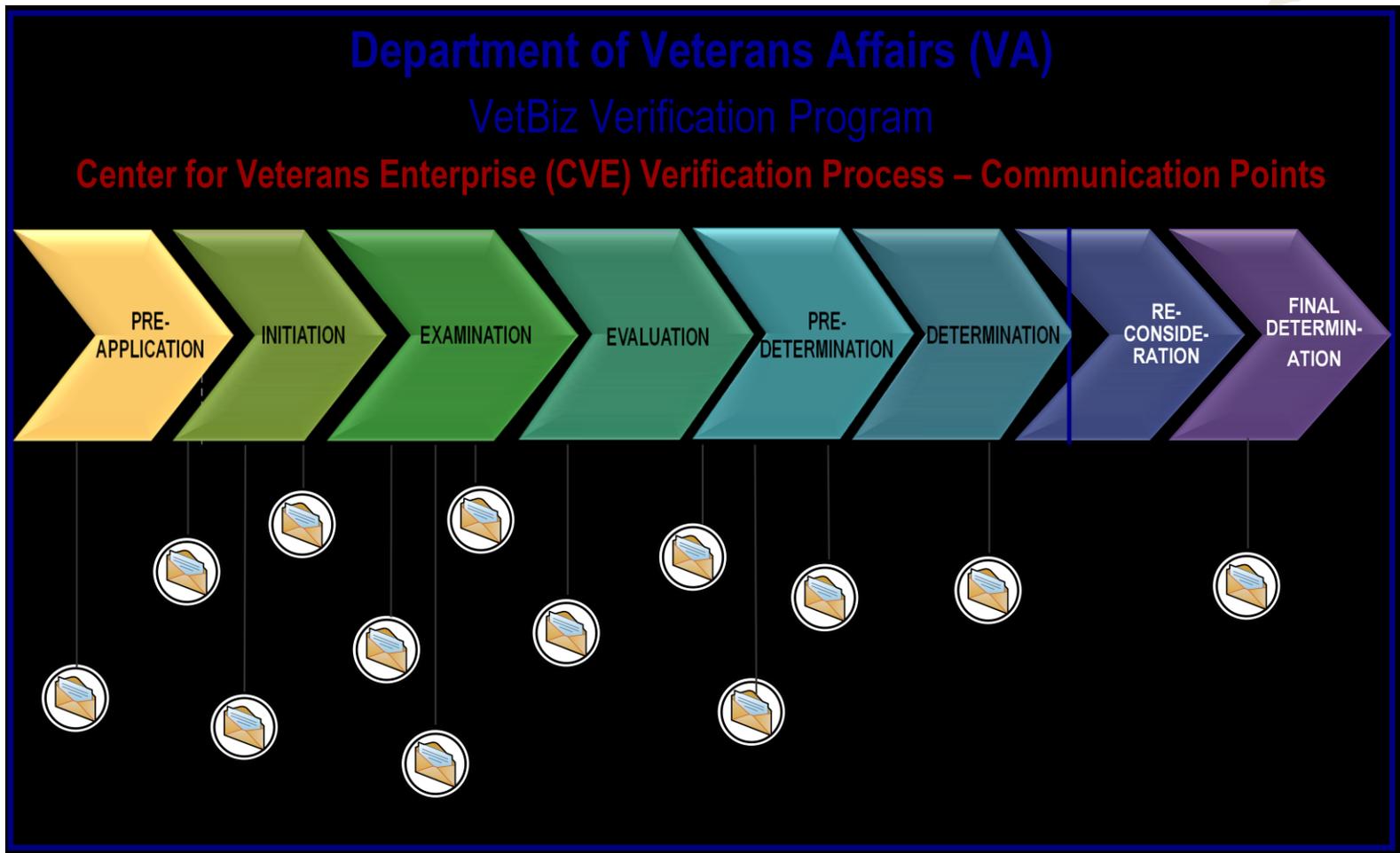


Figure 1d: CVE Verification Process Communication Milestones

CVE Process and Support Functions

Functional Area	Core Objectives
Pre-Assessment	<ul style="list-style-type: none"> • Prepares interested Veterans Owned Small Businesses (VOSB) and Service Disabled Veterans Owned Small Businesses (SDVOSB) to understand eligibility requirements, governing regulations and probability of program fit, prior to applying.
Initiation	<ul style="list-style-type: none"> • Confirms all required documentation needed to determine eligibility of all VOSB and SDVOSB applications. • Reviews and validates all required business documents submitted by the applicants.
Examination	<ul style="list-style-type: none"> • Ensures receipt of complete application, performs quality control and conduct a thorough examination of Veterans application. • Upon completion of application examination, provides a suggested recommendation to CVE.
Evaluation & Simplified Reverification	<ul style="list-style-type: none"> • Ensures all applications processed and completed within congressionally mandated timelines – 60 Days of complete application. • Ensures all applications are completed with professional, unbiased judgment. • Completes processes for accelerated reverification for eligible businesses in support of VA Small Business Goals.
Pre-Determination	<ul style="list-style-type: none"> • Provides the VOSB or SDVOSB an opportunity to resolve easily correctable issues that will lead to a denial.
Determination	<ul style="list-style-type: none"> • Updates VMIL and VIP logo Upon Approval or Denial of the application • Denial Letter is sent for signature and then sent to the applicant. • VIP Master Inventory (VMIL) - Keeps track of all verified firms listed in VIP/VCMS.

CVE Process and Support Functions (continued)

Functional Area	Core Objectives
Reconsideration (R4R)	<ul style="list-style-type: none"> • Provides an appeal process for applicants that have been denied inclusion into the VetBiz Vendor Information Pages (VIP) Verification Program. • The service-disable Veteran or Veteran small business owner submits a Request for Reconsideration and supporting documents within 30 days in response to the denial received. • Evaluates the request based on findings that the applicant did not adhere to the requirements of 38 CFR Part 74.
Risk & Site Visits	<ul style="list-style-type: none"> • Safeguards the integrity of the Veterans First Program by ensuring applicants and participants operate within 38 C.F.R. Part 74 criteria both pre- and post verification. • Acts on information concerning verification eligibility when it deems the firm ineligible. One of the following actions are taken: <ul style="list-style-type: none"> • OIG referrals • Cancellation of eligibility • Status Protests • Debarments and Suspensions • Site Visits to firms office location
Contact Center (Customer Service)	<ul style="list-style-type: none"> • Answers incoming calls and provide information and assistance to the Veterans between the hours of 8:00 AM and 8:00 PM Eastern Standard Time (EST). • Provide answers and information to VAP Counselors, Partners, Contracting Officers within a 72-hour timeframe • Respond to Special Verification Inquiries within 48 hours
Quality Review (Verification Decisions)	<ul style="list-style-type: none"> • Cradle to grave verification case review (random and referred) • Full re-examination of the concern within 72 hours • Verification SME on policy implementation and program integrity
Office of General Counsel (OGC)	<ul style="list-style-type: none"> • Policy/ FOIA/ Rule Changes • Litigation (Liaison with Dept of Justice Lawyers on behalf of VA) • Reviews accuracy of Verification Decisions and provides Legal Opinions (Applications/Law/Regulation) • Evaluates R4R Evaluations (Appeals)

CVE Process and Support Functions (continued)

Functional Area	Core Objectives
<p style="text-align: center;">Quality Assurance</p>	<ul style="list-style-type: none"> • Information Technology <ul style="list-style-type: none"> • Maintains the smooth execution of the VCMS/VIP technology platform. • Technical expert for Verification Case Management System (VCMS) and VA Office of Information Technology liaison. • Staff support for basic computer and VCMS application training. IT Equipment distribution, accountability, information security, privacy program. • Records Management <ul style="list-style-type: none"> • Manages the controlled physical and electronic documents and records on both internal business processes and those related to the application process inherent in the VCMS/VIP system. • Ensures and maintains policies and procedures for the storage, recording, indexing, filing, & retrieval. • Maintains computerized/manual records/documents, implements, and standardizes (VCMS) content & storage. • Quality Assurance <ul style="list-style-type: none"> • QA assures CVE's compliance with law, regulations, policies, processes, and ISO standards. Manages audits, improvement plans, processes and policies. Develop and implement Standard Operating Procedures (SOP's). • Oversight of process re-engineering, develops, implements, tracks internal self assessment, quality assurance plan. • Conducts process & program audits and recommends corrective actions to the Director • Tracks GAO/IG report findings and ensure recommendations are closed. • Learning & Development <ul style="list-style-type: none"> • Assesses, creates and facilitates training solutions aligned to business goals, objectives and performance targets. • Identifies and assesses training needs. • Ensures training, materials and content adhere to training strategy • Coordinate, schedule & facilitate business process, technical training for counselors, coaches, new hires employees. • Facilitate strategic planning, program development, implementation committees.

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OSDBU VERIFICATION PROCESS TRAINING

Title 38 Code of Federal Regulation Part 74

How to Use This Tool

Title 38 CFR Part 74 provides the legal instruction for all parties engaged in the Veterans First Contracting Program.

For VA Agencies and representatives, it explains the program business imperatives, goals, processes and policies.

For VAP Partners and Counselors, it serves as a reference tool to educate and site the governing regulation of the program.

The information herein is a true reflection of the CFR, but includes additional highlights for ease of use and educational purposes.

Note that all highlights in **yellow** represent sections of the Regulation.

Note that all highlights in **turquoise** represent definitions.

Note that all highlights in **green** represent Agency specific information.

Finally, all highlights in **red** represent areas where new information exists and stands to be updated in this document.

Department of Veterans Affairs Title 38 CFR Part 74 – Veterans Small Business Regulations PART 74—VETERANS SMALL BUSINESS REGULATIONS GENERAL GUIDELINES

Sec.

74.1

What definitions are important for the VetBiz Vendor Information Pages (VIP) Verification Program?

74.2

What are the eligibility requirements a concern must meet for VetBiz VIP Verification Program?

74.3

Who does the Center for Veterans Enterprise (CVE) consider to own a veteran-owned small business?

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Who does CVE consider to control a veteran-owned small business?

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How does CVE determine affiliation?

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What must a concern submit to apply for VetBiz VIP Verification Program?

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Can an applicant or participant

reapply for admission to the VetBiz VIP Verification Program?

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What is a verification examination and what will CVE examine?

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What are the ways a business may exit VetBiz VIP Verification Program status?

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What types of personally identifiable information will VA collect?

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What types of business information will VA collect?

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How will VA store information?

74.28

Who may examine records?

74.29

When will VA dispose of records?

1101

§ 74.1

AUTHORITY: 38 U.S.C. 501, 513, and as noted in specific sections.

SOURCE: 75 FR 6101, Feb. 8, 2010, unless otherwise noted.

GENERAL GUIDELINES

§ 74.1

What definitions are important for VetBiz Vendor Information Pages (VIP) Verification Program?

For the purposes of part 74, the following definitions apply.

Center for Veterans Enterprise (CVE) is an office within the U.S. Department of Veterans Affairs (VA) and is a subdivision of VA's Office of Small and Disadvantaged Business Utilization. The CVE helps veterans interested in forming or expanding their own small businesses.

It also helps VA contracting offices identify veteran-owned small businesses and works with the Small Business Administration's Veterans Business Development Officers and Small Business Development Centers nationwide regarding veterans' business financing, management, and technical assistance needs.

Days are calendar days. In computing any period of time described in part 74, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday.

Similarly, in circumstances where CVE is closed for all or part of the last day, the period extends to the next day on which the agency is open.

Day-to-day management means supervising the executive team, formulating sound policies and setting strategic direction.

Day-to-day operations mean the marketing, production, sales, and administrative functions of the firm.

Eligible individual means a veteran, service-disabled veteran or surviving spouse, as defined in this section.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

Joint venture is an association of two or more small business concerns to engage in and carry out a single, specific business venture for joint profit, for 38 CFR Ch. I (7-1-11 Edition) which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. For VA contracts, a joint venture must be in the form of a separate legal entity.

Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's chapter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

Non-veteran means any individual who does not claim veteran status, or upon whose status an applicant or participant does not

rely in qualifying for VetBiz Vendor Information Pages (VIP) Verification Program participation.

Office of Small and Disadvantaged Business Utilization is the office within the Department of Veterans Affairs that establishes and monitors small business program goals at the prime and subcontract levels and which functions as the ombudsman for veterans and service-disabled veterans seeking procurement opportunities with the Department.

Participant means a veteran-owned small business concern that has verified status in the VetBiz Vendor Information Pages database.

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the participant. The NAICS code designations are described in the North American Industry Classification System (NAICS) Manual published by the U.S. Office of Management and Budget.

Principal place of business means the business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's current business records are kept. If the office from which management is directed and where the current

business records are kept are in different locations, CVE will determine the principal place of business for program purposes.

Same or similar line of business means business activities within the same three-digit “Major Group” of the 1102 Department of Veterans Affairs NAICS Manual as the primary industry classification of the applicant or participant. The phrase “same business area” is synonymous with this definition.

Service-disabled veteran is a veteran who possesses either a disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a disability determination from the Department of Defense.

Service-disabled veteran-owned small business concern is a business not less than 51 percent of which is owned by one or more service-disabled veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; the management and daily business operations of which are controlled by one or more service-disabled veterans, or in the case of a veteran with a permanent and severe disability, a spouse or permanent caregiver of such veteran. In addition, some businesses may be owned and operated by an eligible surviving spouse.

Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify.

Small business concern is—CVE applies the small business concern definition established by 48 CFR 2.101.

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.

Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executor agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

VA is the U.S. Department of Veterans Affairs.

Vendor Information Pages (VIP) is a database of businesses eligible to participate in VA's Veteran-owned Small Business Program. The online database may be accessed at no charge via the Internet at: <http://www.VetBiz.gov>.

Verification eligibility period is a 12-month period that begins on the date the Center for Veterans Enterprise issues the approval letter establishing verified status. The participant must submit a new application each year to continue eligibility.

VetBiz.gov (VetBiz) is a Web portal VA maintains at <http://www.VetBiz.gov>. It hosts the Vendor Information Pages database.

Veteran is a person who served on active duty with the U.S. Army, Air Force, Navy, Marine Corps or Coast Guard, for any length of time and at any place and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to Federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a veteran.

Veteran-owned small business concern (VOSB) is a small business concern that is not less than 51

percent owned by one or more veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; the management and daily business operations of which are controlled by one or more veterans and qualifies as "small" for Federal business size standard purposes. **All service-disabled veteran-owned small business concerns (SDVOSBs)** are also, by definition, veteran-owned small business concerns.

When used in these guidelines, the term "VOSB" includes SDVOSBs.

Veterans Affairs Acquisition Regulation (VAAR) is the set of rules that specifically govern requirements exclusive to the U.S. Department of Veterans Affairs (VA) prime and subcontracting actions. The VAAR is chapter 8 of title 48, Code of Federal Regulations, and supplements the Federal Acquisition Regulation (FAR), which contains guidance applicable to most Federal agencies. [75 FR 6101, Feb. 8, 2010, as amended at 76 FR 3022, Jan. 19, 2011]

§ 74.2 What are the eligibility requirements a concern must meet for VetBiz VIP Verification Program?

(a) Ownership and control. A small business concern must be unconditionally owned and controlled by one or more eligible veterans, service-disabled

veterans or surviving spouses, have completed the online Vendor Information Pages database forms at <http://www.VetBiz.gov>, and has been examined by VA's Center for Veterans Enterprise. Such businesses appear in the VIP database as "verified."

(b) Good character. Veterans, service-disabled veterans and surviving spouses with ownership interests in VetBiz verified businesses must have good character. Debarred or suspended concerns or concerns owned or controlled 38 CFR Ch. I (7-1-11 Edition) by debarred or suspended persons are ineligible for VetBiz VIP Verification.

(c) False statements. If, during the processing of an application, CVE determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause CVE to deny the application, and regardless of whether correct information was given to CVE in accompanying documents, CVE will deny the application. If, after verifying

the Participant's eligibility, CVE discovers that false information has been knowingly submitted by a firm, CVE will remove the "verified" status from the VIP database and notify the business by phone and mail. Whenever CVE determines that the applicant submitted false information, the matter will be referred to the **Office of Inspector General** for review. In addition, the CVE will request that debarment proceedings be initiated by the

Department.

(d) Federal financial obligations. Neither a firm nor any of its eligible individuals that fails to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing, is eligible for VetBiz VIP Verification.

(e) U.S. Small Business Administration (SBA) Protest Decisions. Any firm registered in the VetBiz VIP database that is found to be ineligible due to an SBA protest decision or other negative finding will be immediately removed from the VetBiz VIP database. Until such time as CVE receives official notification that the firm has proven that it has successfully overcome the grounds for the determination or that the SBA decision is overturned on appeal, the firm will not be eligible to participate in the 38 U.S.C. 8127 program.

§ 74.3 Who does the Center for Veterans Enterprise (CVE) consider to own a veteran-owned small business?

An applicant or participant must be at least 51 percent unconditionally and directly owned by one or more veterans or service-disabled veterans.

(a) Ownership must be direct. Ownership by one or more veterans or service-disabled veterans must be direct Ownership. An applicant or participant owned principally by another business entity or by a

trust (including employee stock ownership plans [ESOP]) that is in turn owned by one or more veterans or service-disabled veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust. For employee stock ownership plans where 5 or fewer persons who are individuals, estates, or trusts own 50 percent or more of the total combined voting power of the corporation, the employee plan will be determined to be “excluded stock” and eligible parties must control 51 percent or more of the combined voting power of the corporation.

For employee stock ownership plans where greater than 5 persons who are individuals, estates, or trusts own 50 percent or more of the total stock, eligible parties must control 51 percent or more of the combined voting power of the corporation, including the ESOP stock.

(b) Ownership must be unconditional.

Ownership by one or more veterans or service-disabled veterans must be unconditional ownership. Ownership must not be subject to conditions precedent, conditions subsequent, executor agreements, voting trusts, restrictions on assignments

of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. In particular, CVE will evaluate ownership according to the following criteria for specific types of small business concerns.

(1) Ownership of a partnership. In the case of a concern that is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more veterans or service-disabled veterans. The ownership must be reflected in the concern’s partnership agreement.

(2) Ownership of a limited liability company. In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more veterans or service-disabled veterans.

(3) Ownership of a corporation. In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more veterans or service-disabled veterans.

(c) Stock options’ effect on

ownership. In determining unconditional ownership, CVE will disregard any unexercised stock options or similar agreements held by veterans or service-disabled veterans. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-veterans will be treated as exercised, except for any ownership interests that are held by investment companies licensed under part 107 of title 13, Code of Federal Regulations.

(d) Profits and distributions. One or more veterans or service-disabled veterans must be entitled to receive:

(1) At least 51 percent of the annual distribution of profits paid to the owners of a corporate, partnership, or LLC applicant or participant; (2) At least 51 percent of the net profits earned by a joint venture in which the applicant or participant is the lead concern;

(3) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(4) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation, partnership, or LLC.

(5) An eligible individual's ability to share in the profits of the concern should be commensurate with the extent of his/her ownership interest in that concern.

(e) Change of ownership. (1) 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.

(2) Any participant that is performing contracts and desires to substitute one veteran owner for another shall submit a proposed novation agreement and supporting documentation in accordance with FAR Subpart 42.12 to the contracting officer prior to the substitution or change of ownership for approval.

(3) 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. Existing contracts may be performed to the end of the instant term. However, no options may be exercised.

(4) Continued eligibility of the participant with new ownership and the award of any new contracts require that CVE verify all eligibility requirements are met by the concern and the new owners.

(f) Community property laws given effect.

In determining ownership interests when an owner resides in any of the community property

States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws. [75 FR 6101, Feb. 8, 2010, as amended at 76 FR 3022, Jan. 19, 2011]

§ 74.4 Who does CVE consider to control a veteran-owned small business?

(a) Control means both the day-to-day management and long-term decision-making authority for the VOSB. Many persons share control of a concern, including each of those occupying the following positions: Officer, director, general partner, managing partner, 38 CFR Ch. I (7-1-11 Edition) managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. CVE will consider the control potential of such key employees on a case-by-case basis.

(b) Control is not the same as ownership, although both may reside in the same person. CVE regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations.

An applicant or participant's management and daily business operations must be conducted by

one or more veterans or service-disabled veterans. Individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A veteran need not have the technical expertise or possess a required license to be found to control an applicant or participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.

However, where a critical license is held by a non-veteran having an equity interest in the applicant or participant firm, the non-veteran may be found to control the firm.

(c)(1) An applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the application which demonstrates that such activities will not have a significant impact on the owner's ability to manage and control the applicant concern. Applications from joint-ventures are exempt from the requirement to submit a supplemental written statement.

(2) An eligible full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant

or participant.

(3) One or more veterans or service-disabled veteran owners who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business.

Work in a wholly-owned subsidiary of the applicant or participant may be considered to meet the requirement of full-time devotion. This applies only to a subsidiary owned by the VOSB itself, and not to firms in which the veteran has a mere ownership interest.

(4) Except as provided in paragraph (f)(1) of this section, a veteran owner's unexercised right to cause a change in the management of the applicant concern does not in itself constitute veteran control, regardless of how quickly or easily the right could be exercised.

(d) In the case of a partnership, one or more veterans or service-disabled veterans must serve as general partners, with control over all partnership decisions. A partnership in which no veteran is a general partner will be ineligible for participation.

(e) In the case of a limited liability company, one or more veterans or service-disabled veterans must serve as management members, with control over all decisions of the limited liability company.

(f) One or more veterans or service-disabled veterans must control the board of directors of a corporate applicant or participant.

(1) CVE will deem veterans or

service-disabled veterans to control the board of directors where:

(i) A single veteran owns 100 percent of all voting stock of an applicant or participant concern;

(ii) A single veteran owns at least 51 percent of all voting stock of an applicant or participant, the individual is on the board of directors and no super majority voting requirements exist for

shareholders to approve corporation actions. Where supermajority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by State law, the veteran must own at least the percent of the voting stock needed to overcome any such supermajority voting requirements; or

(iii) No single veteran owns 51 percent of all voting stock but multiple veterans in combination do own at least 51 percent of all voting stock, each such veteran is on the board of directors, no supermajority voting requirements exist, and the veteran shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has supermajority voting requirements, the veteran shareholders must own at least that percentage of voting stock needed to overcome any such supermajority ownership requirements.

(2) Where an applicant or participant does not meet the

requirements set forth in paragraph (f)(1) of this section, the veteran(s) upon whom eligibility is based must control the board of directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (e.g., in a concern having a two-person board of directors where one individual on the board is a veteran and one is not, the veteran vote must be weighted—worth more than one vote—in order for the concern to be eligible for VetBiz VIP Verification). Where a concern seeks to comply with this paragraph:

(i) Provisions for the establishment of a quorum cannot permit non-veteran directors to control the board of directors, directly or indirectly;

(ii) Any executive committee of the board of directors must be controlled by veteran directors unless the executive committee can only make recommendations to and cannot independently exercise the authority of the board of directors.

(3) Non-voting, advisory, or honorary directors may be appointed without affecting veterans' or service-disabled veterans' control of the board of directors.

(4) Arrangements regarding the structure and voting rights of the board of directors must comply with applicable state law.

(g) Non-veterans may be involved in the management of an applicant or participant, and may be stockholders, partners, limited

liability members, officers, or directors of the applicant or participant. With the exception of a spouse or personal caregiver who represents a severely disabled veteran owner, no such non-veteran or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or participant;

(2) Be a former employer or a principal of a former employer of any affiliated business of the applicant or participant, unless it is determined by the CVE that the relationship between the former employer or principal and the eligible individual or applicant concern does not give the former employer actual control or the potential to control the applicant or participant and such relationship is in the best interests of the participant firm; or

(3) Receive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant.

(h) Non-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are

presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.

(i) Non-veterans or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Non-veterans control the board of directors of the applicant or participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-veterans effectively to prevent a quorum or block actions proposed by the veterans or service-disabled veterans.

(2) A non-veteran or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or participant which directly or indirectly allows the non-veteran significantly to influence business decisions of the participant, unless an exception is authorized by the Office of Small and Disadvantaged Business Utilization. 38

CFR Ch. I (7–1–11 Edition)

(3) A non-veteran or entity controls the applicant or participant or an individual veteran owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-veteran or entity

the power to control a firm.

(4) Business relationships exist with non-veterans or entities which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk. [75 FR 6101, Feb. 8, 2010, as amended at 75 FR 80720, Dec. 23, 2010; 76 FR 3023, Jan. 19, 2011]

§ 74.5 How does CVE determine affiliation?

The Center for Veterans Enterprise applies the affiliation rules established by the Small Business Administration in 13 CFR part 121.

APPLICATION GUIDELINES

§ 74.10 Where must an application be filed?

An application for VetBiz VIP Verification status must be electronically filed in the Vendor Information Pages database located in the Center for Veterans Enterprise's Web portal, <http://www.VetBiz.gov>. Guidelines and forms are located on the Web portal. Upon receipt of the applicant's electronic submission, an acknowledgment message will be dispatched to the concern, containing estimated processing time and other information. Address information for the CVE is also contained on the Web portal. Correspondence may be dispatched to:

Director, Center for Veterans Enterprise (OOVE), U.S. Department of Veterans Affairs,

810 Vermont Avenue, NW., Washington, DC 20420.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675)

§ 74.11 How does CVE process applications for VetBiz VIP Verification Program?

(a) The Director, Center for Veterans Enterprise, is authorized to approve or deny applications for VetBiz VIP Verification. The CVE will receive, review and evaluate all VetBiz VIP Verification applications. CVE will advise each applicant within 30 days, when practicable, after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. CVE will process an application for VetBiz VIP Verification status within 60 days, when practicable, of receipt of a complete application package. Incomplete application packages will not be processed.

(b) CVE, in its sole discretion, may request clarification of information contained in the application at any time in the eligibility determination process. CVE will take into account any clarifications made by an applicant in response to a request for such by CVE.

(c) An applicant's eligibility will be

based on circumstances existing on the date of application, except where clarification is made pursuant to paragraph

(b) of this section or as provided in paragraph (d) of this section.

(d) Changed circumstances for an applicant occurring subsequent to its application and which adversely affect eligibility will be considered and may constitute grounds for denial of the application.

The applicant must inform CVE of any changed circumstances that could adversely affect its eligibility for the program (i.e., ownership or control changes) during its application review. Failure to inform CVE of any such changed circumstances constitutes good cause for which CVE may withdraw verified status for the participant if non-compliance is discovered after a participant has been verified.

(e) The decision of the Director, CVE, to approve or deny an application will be in writing. A decision to deny verification status will state the specific reasons for denial, and will inform the applicant of any appeal rights.

(f) If the Director, CVE, approves the application, the date of the approval letter is the date of participant verification for purposes of determining the participant's verification eligibility term.

(g) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means. (The Office of Management and Budget has approved the information

collection requirements in this section under control number 2900-0675)

§ 74.12 What must a concern submit to apply for VetBiz VIP Verification Program?

Each VetBiz VIP Verification applicant must submit the electronic forms and attachments CVE requires. All electronic forms are available on the VetBiz.gov Vendor Information Pages database Web pages. At the time the applicant dispatches the electronic forms, the applicant must also retain on file at the principal place of business a completed copy of the electronic forms supplemented by manual records that will be used in verification examinations. These forms and attachments will include, but not be limited to, financial statements, Federal personal and business tax returns, payroll records and personal history statements. An applicant must also retain in the application file IRS Form 4506, Request for Copy or Transcript of Tax Form. These materials shall be filed together to maximize efficiency of verification examination visits. Together with the electronic documents, these manual records will provide the CVE verification examiner with sufficient information to establish the management, control and operating status of the business on the date of submission. (The Office of Management and Budget has approved the

information collection requirements in this section under control number 2900-0675)

§ 74.13 Can an applicant ask CVE to reconsider its initial decision to deny an application?

(a) An applicant may request that the Director, CVE, reconsider his or her decision to deny an application by filing a request for reconsideration with CVE within 30 days of receipt of CVE's denial decision. "Filing" means a document is received by CVE by 5:30 p.m., eastern time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at CVE. Submit requests for reconsideration to: Director, Center for Veterans Enterprise (OOVE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. A formal decision will be issued within 60 days after receipt. (b) The Director, CVE, will issue a written decision within 60 days, when practicable, of receipt of the applicant's request. The Director, CVE, may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the Director, CVE, will explain why the applicant is not

eligible for the VetBiz VIP Verification and give specific reasons for the denial.

(c) If the Director, CVE, denies the application solely on issues not raised in the initial denial, the applicant may ask for reconsideration as if it were an initial denial.

(d) If CVE determines that a concern may not qualify as small, they may directly deny an application for VetBiz VIP Verification or may request a formal size determination from the U.S. Small Business Administration (SBA).

A concern whose application is denied because it is other than a small business concern by CVE may request a formal size determination from the SBA Associate Administrator, Office of Government Contracting (ATTN: Director, Office of Size Standards), 409 3rd Street, SW., Washington, DC 20416. A favorable determination by SBA will enable the firm to immediately submit a new VetBiz VIP Verification.

(e) A denial decision that is based on the failure to meet any veteran or service-disabled veteran eligibility criteria is not subject to a request for reconsideration and is the final decision of CVE. 38 CFR Ch. I (7-1-11 Edition)

(f) Except as provided in paragraph (c) of this section, the decision on the request for reconsideration shall be final.

(g) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

§ 74.14 Can an applicant or participant reapply for admission to the VetBiz VIP Verification Program?

Once an application, a request for reconsideration, or an appeal to a cancellation notice, as applicable, has been denied, the applicant or participant shall be required to wait for a period of 6 months before a new application will be processed by CVE.

§ 74.15 What length of time may a business participate in VetBiz VIP Verification Program?

(a) A participant receives an eligibility term of 1 year from the date of CVE's approval letter establishing verified status. The participant must maintain its eligibility during its tenure and must inform CVE of any changes that would adversely affect its eligibility. The eligibility term may be shortened by cancellation by CVE or voluntary withdrawal by the participant (i.e., no longer eligible as a small business concern), as provided for in this subpart.

(b) When at least 50 percent of the assets of a concern are the same as those of an affiliated business, the concern will not be eligible for verification.

(c) CVE may initiate a verification examination whenever it receives credible information calling into the question a participant's eligibility as a VOSB. Upon its completion of the examination, CVE will issue a written decision regarding the continued eligibility status of the questioned

participant.

(d) If CVE finds that the participant does not qualify as a VOSB, the procedures at § 74.22 will apply.

(e) If CVE finds that the participant continues to qualify as a VOSB, the program term remains in effect.

OVERSIGHT GUIDELINES

§ 74.20 What is a verification examination and what will CVE examine?

(a) General. A verification examination is an investigation by CVE officials, which verifies the accuracy of any statement or information provided as part of the VetBiz VIP Verification application process. Thus, examiners may verify that the concern currently meets the eligibility requirements, and that it met such requirements at the time of its application or its most recent size recertification. An examination may be conducted on a random, unannounced basis, or upon receipt of specific and credible information alleging that a participant no longer meets eligibility requirements.

(b) Scope of examination. CVE may conduct the examination, or parts of the program examination, at one or all of the participant's offices. CVE will determine the location of the examination.

Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the legal structure, ownership and control of the concern. As a minimum, examiners shall review all

documents supporting the application, as described in § 74.12. These include: Financial statements; Federal personal and business tax returns; personal history statements; and Request for Copy or Transcript of Tax Form (IRS Form 4506) for up to 3 years. Other documents, which may be reviewed include (if applicable): Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses.

§ 74.21 What are the ways a business may exit VetBiz VIP Verification Program status?

A participant may:

(a) Voluntarily cancel its status by submitting a written request to CVE requesting that the "verified" status button be removed from the Vendor Information

Pages database; or

(b) Delete its record entirely from the Vendor Information Pages database; or

(c) CVE may cancel the "verified" status button for good cause upon formal notice to the participant. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the participant's VetBiz VIP Verification application.

(2) Failure by the participant to

maintain its eligibility for program participation.

(3) Failure by the participant for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, management, and control by veterans, service-disabled veterans or surviving spouses.

(4) Failure by the concern to disclose to CVE the extent to which non-veteran persons or firms participate in the management of the participant.

(5) Debarment, suspension, voluntary exclusion, or ineligibility of the participant or its owners.

(6) A pattern of failure to make required submissions or responses to CVE in a timely manner, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(7) Cessation of the participant's business operations.

(8) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(9) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

(10) Failure by the concern to provide an updated application (VA Form 0877) within 60 days of any change in ownership.

(d) The examples of good cause listed in paragraph (c) of this section are intended to be illustrative only. Other grounds for canceling a participant's verified status include any other cause of so serious or compelling a nature that it affects the present responsibility of the participant.

§ 74.22 What are the procedures for cancellation?

(a) General. When CVE believes that a participant's verified status should be cancelled prior to the expiration of its eligibility term, CVE will notify the participant in writing. The Notice of Proposed Cancellation Letter will set forth the specific facts and reasons for CVE's findings, and will notify the participant that it has 30 days from the date it receives the letter to submit a written response to CVE explaining why the proposed ground(s) should not justify cancellation.

(b) Recommendation and decision. Following the 30-day response period, the Director, CVE, will consider any information submitted by the participant. Upon determining that cancellation is not warranted, the Director, CVE, will notify the participant in writing. If cancellation appears warranted, the Director, CVE, will make a decision whether to cancel the participant's verified status.

(c) Notice requirements. Upon deciding that cancellation is warranted, the Director, CVE, will issue a Notice of Verified Status Cancellation. The Notice will set

forth the specific facts and reasons for the decision, and will advise the concern that it may re-apply after it has met all eligibility criteria.

(d) Effect of verified status cancellation. After the effective date of cancellation, a participant is no longer eligible to appear as "verified" in the VetBiz VIP database. However, such concern is obligated to perform previously awarded contracts to the completion of their existing term of performance.

(e) Appeals. A participant may file an appeal with the Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise, concerning the Notice of Verified Status Cancellation within 30 days of receipt of CVE's cancellation decision. "Filing" means a document is received by CVE by 5:30 p.m., eastern time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears 38 CFR Ch. I (7-1-11 Edition) the risk that the delivery method chosen will not result in timely receipt at CVE. Submit appeals to: Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise (OOVE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. A

formal decision will be issued within 60 days after receipt. The decision on the appeal shall be final.

RECORDS MANAGEMENT

§ 74.25 What types of personally identifiable information will VA collect?

In order to establish owner eligibility, the Department will collect individual names and Social Security numbers for veterans, service-disabled veterans and surviving spouses who represent themselves as having ownership and control interests in a specific business seeking to obtain verified status.

§ 74.26 What types of business information will VA collect?

VA will examine a variety of business records. See § 74.12, “What is a verification examination and what will CVE examine?”

§ 74.27 How will VA store information?

VA intends to store records provided to complete the VetBiz Vendor Information Pages registration fully electronically on the Department’s secure servers. CVE personnel will compare information provided concerning owners who have veteran status, service-disabled veteran status or surviving spouse status against electronic records maintained by the Department’s Veterans Benefits Administration.

Records collected during examination visits will be scanned onto portable media and fully secured in the Center for Veterans Enterprise, located in Washington, DC.

§ 74.28 Who may examine records?

Personnel from the Department of Veterans Affairs, Center for Veterans Enterprise and its agents, including personnel from the Small Business Administration, may examine records to ascertain the ownership and control of the

applicant or participant.

§ 74.29 When will VA dispose of records?

The records, including those pertaining to businesses not determined to be eligible for the program, will be kept intact and in good condition for seven years following a program examination or the date of the last Notice of Verified Status Approval letter. Longer retention will not be required unless a written request is received from the Government Accountability Office not later than 30 days prior to the end of the retention period.

(Authority: 38 U.S.C. 8127(f))

END OF SECTION

Verification Assistance Briefs

51% of the Annual Distribution

Issue: How is a Veteran owner entitled to receive 51% of the Annual Distribution?

The Regulation:

38 CFR § 74.3(d)(1):

One or more veterans or service-disabled veterans must be entitled to receive:

- **(1) At least 51 percent of the annual distribution of profits paid to the owners of a corporate, partnership, or LCC applicant or participant.**

What this means:

- As a requirement for ownership of a Veteran Owned Small Business, a Veteran owner must be entitled to 51% of the company's annual distribution of profits at years end after all of the company's bills have been paid.
- This information is usually found on the company's Schedule K-1 (Form 1120S) tax statement and outlines the percentage of ownership that each owner is entitled.
- A Veteran owner is not required to draw this profit every year as long as he can show that not drawing a profit will benefit the company.
- If the company suffers a loss, then the Veteran owner will not draw any profit. In this case, the Veteran owner is responsible for at least 51% of the loss.

Excerpts from current denial letters:

In order for a limited liability company to qualify as a SDVOSB, "at least 51 percent of each class of member interest must be unconditionally owned by one or more Veterans or service-disabled Veterans." 38 CFR § 74.3(b)(2). Here, the applicants' 2011 K-1 and 1065 tax statements indicate that AAA (service-disabled Veteran) and ZZZ (non-Veteran) each have 50% ownership of applicant, including profit, loss, and capital. Additionally, each member contributed an equal amount (\$500) for capital contributions as listed in the Meeting Minutes dated March 9, 2011. Therefore, CVE

cannot reasonably conclude that the ownership requirements of 38 CFR § 74.3 have been satisfied.

For a limited liability company to qualify as a SDVOSB, "...at least 51 percent of each class of member interest must be unconditionally owned by one or more veterans or service-disabled veterans" and "One or more veterans or service-disabled veterans must be entitled to receive at least 51 percent of the annual distribution of profits paid to the owners of a corporate, partnership, or LLC applicant or participant." 38 CFR § 74.3 (b)(2); 38 CFR § 74.3 (d)(1). You supplied an Operating Agreement for your company. Section 1 of the Operating Agreement states that, "[t]he company's profits and losses (as determined for federal income tax purposes) shall be allocated in proportion to the capital account balances of the members of the Company." Schedule A lists the capital contributions of the Members as: AAA (service-disabled Veteran)-\$500 (50.6%) and ZZZ (non-Veteran)-\$488 (49.3%). As AAA (service-disabled Veteran) is only entitled to 50.6% of the annual distribution of profits, CVE cannot reasonably conclude that the ownership requirements of 38 CFR § 74.3 have been satisfied.

Dependence with Other Entities

Issue: What type of business relationship does an applicant need to have with a non-Veteran or entity to avoid CVE determining that the applicant is "dependent" upon non-Veterans or entities? How is the "dependence" with other non-Veterans or entities determined?

The Regulation:

38 CFR § 74.4:

- **(i)(4) "Non-veterans or entities may be found to control or have the power to control...when "[b]usiness relationships exist with non-veterans or entities which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk."**

What This Means

- The determination as to whether an applicant is dependent upon a non-Veteran or entity is decided on a case-by-case basis, by evaluating the particular facts and circumstances presented.
- Some common examples that will prohibit an applicant from receiving verified status: 1) if the applicant is sharing office resources such as, phone numbers, fax numbers, office space, office equipment, and employees at little or no cost to the applicant; or 2) the applicant is a franchisee where mandatory requirements of how to operate various aspects of the business are outlined in the franchise agreement by the franchisor entity in order for the applicant to continue operating as a franchisee.

Excerpts from Current Denial Letters

Example #1

“As previously shown, the company ACME Fictional, Inc. (AFI) appears on service-disabled Veteran’s resume and personal taxes. AFI and the concern provide similar services in commercial or industrial machinery and electrical contracting. Research shows that the concern’s phone number is listed as being that of AFI. Research also shows that the concern has an AFI disclaimer on its website stating “AFI does not distribute or sell its mailing list to any companies or entities whatsoever.” Based on this information, CVE cannot reasonably conclude that the applicant operates independently of AFI, and therefore, the requirements of 38 CFR § 74.4(i) have not been satisfied.”

Example #2

“The applicant appears to have a business relationship with ABC ACME, Inc.; a company owned and operated by John Smith and Jane Doe, the two non-Veteran owners of the applicant. The contracts provided by the applicant show that ABC ACME, Inc., a construction firm, subcontracts work to the applicant. Moreover, the letter of explanation provided by the applicant states that the service-disabled Veteran is leveraging the skills and knowledge of his partners at ABC ACME, Inc. to develop the applicant. The applicant has not provided

further documentation, indicating a Mentor-Protégé agreement that would allow ABC ACME, Inc. to serve as a Protégé to the applicant. As stated previously, the service-disabled Veteran does not have any background or prior construction experience that would give him the managerial experience necessary to the extent and complexity to manage the applicant company. Furthermore, the applicant’s primary operating location is in California and the service-disabled Veteran resides in Georgia. The applicant states that John Smith and Jane Doe (both non-Veterans) are established in California (as ABC ACME, Inc.) and that the applicant is utilizing this company for its start-up operations. It is unclear how the applicant company will perform its work without being unduly dependent on ABC ACME, Inc. Based on the above, CVE finds the applicant company has a business relationship with ABC ACME, Inc. which causes such dependence that the applicant company cannot exercise independent business judgment without great economic risk. Therefore, CVE cannot reasonably conclude that the control requirement of 38 CFR § 74.4(i)(4) has been satisfied.

Example #3

“As previously shown, the applicant’s Franchise Agreement dictates how the company is to obtain business, which services to offer for sale, and expenditures on advertising. The continued operation of the concern as a Franchisee is conditioned on these requirements being met. Therefore, CVE cannot reasonably conclude that the applicant can exercise independent business judgment and hence, the control requirements of 38 CFR § 74.4 have not been satisfied.”

Control of Strategic Policy and Day to-Day Operations?

Issue: How do Veterans demonstrate Control of Strategic Policy and Day to-Day Operations?

Definition: Day-to-day management: means supervising the executive team, formulating sound policies and setting strategic direction.

Day-to-day operations: means supervising the marketing, production, sales, and administrative functions of the firm.

The Regulation:

38 CFR § 74.4 – As it relates to control of strategic policy and day-to-day operations:

- (a) “Control means both the day-to-day management and long-term decision-making authority for the VOSB...”
- (b) “Control is not the same as ownership, although both may reside in the same person. CVE regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations...”

What This Means

- Examples of day-to-day operations of the company include assigning of check signing authority, the hiring and firing of employees, and assignment of ownership rights of company property.
- If an owner resides in a state other than where the applicant operates, the Veteran is presumed not to have the requisite control of strategic policy and day-to-day operation of the applicant. The Veteran or service-disabled Veteran can submit evidence to support control of day to day operations and strategic decision making through a letter of explanation that would state how he/she manages strategic policy and day-to-day operations for example: while residing in a state other than where the subject company operates.
- Provisions located in the applicant’s various agreements or formation documents cannot restrict

the service disabled Veteran's ability to manage the daily business operations of the subject company.

Excerpts from Current Denial Letters

- “According to 38 CFR § 74.4(b), ‘[c]ontrol is not the same as ownership, although both may reside in the same person. CVE regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or participant’s management and daily business operations must be conducted by one or more veterans or service-disabled veterans.’ The applicant concern has agreed to operate under the terms of the ZZZ, Inc. Franchise Agreement. The Franchise Agreement contains numerous provisions in Article V, ‘Your Duties,’ that restrict the service-disabled Veteran's ability to set strategic policy for the corporation and manage the day-to-day operations. For example, Article V, section B.1 states, ‘[n]o other services other than those authorized by this Agreement may be offered or conducted from Your office.’ Section B.4 states, ‘[a]ny deviation from the suggested interior layout and design provided to You by Us for establishing Your new business must be approved in advance in writing.’ Section G states, ‘ ... implement Our programs in Your territory.’ As these provisions restrict the service disabled Veteran's ability to manage the daily business operations of the concern; therefore, CVE cannot conclude that the requirements of 38 CFR § 74.4(b) have been satisfied.”
- “Furthermore, according to 38 CFR § 74.4(b), ‘An applicant or participant’s management and daily business operations must be conducted by one or more...service-disabled veterans...’ CVE defines control to include, ‘the day-to-day management and administration of business operations.’ 38 CFR § 74.4(b). All checks, contracts, and the applicant’s lease agreement have been signed by non-Veteran Member, Jack Black. Based on the documentation provided, CVE cannot reasonably conclude that the service-disabled Veteran is involved with managing the daily business operations of this concern. As a

result the requirements of 38 CFR § 74.4(b) have not been satisfied.”

that the requirements of 38 CFR § 74.4 have been satisfied.”

- “According to 38 CFR § 74.4 (a), ‘[c]ontrol means both the day-to-day management and long-term decision-making authority for the [SD]VOSB.’ All the cancelled checks provide by the applicant were signed by Jane Smith, non-Veteran. In addition, the non-Veteran is listed as the President on the applicant’s Small Business Administration (SBA) and Dun & Bradstreet (D&B) profiles. Based upon this evidence as well as the fact that the Veteran is employed during the day with the US Postal Service, CVE cannot conclude that John Smith (Veteran) manages the day-to-day operations of the applicant and therefore does not meet the control requirements of 38 CFR § 74.4 (a).”
- “Moreover, ‘[a]n applicant or participant’s management and daily business operations must be conducted by one or more... service-disabled veterans ...’ and ‘[c]ontrol means both the day-to-day management and long-term decision-making authority for the VOSB...’ 38 CFR § 74.4(b) 38 CFR § 74.4(a). Section K.1 of the Stock Purchase and Sale Agreement states that ‘... if at any time purchasers are in default on said payments, grant Sellers total management authority with respect to the conduct of the business and veto power with respect to expenditures and all other matters connected with the carrying on of the daily affairs of the business.’ Additionally, Section D.2 states that, ‘[t]he Notes are for a term of nine (9) years with payments to be made quarterly.’ As the agreement was entered into on January 15, 2007, this condition is effective until January 15, 2016. The grant sellers are identified as John Smith (service-disabled Veteran) and Jane Smith (non-Veteran). Because the applicant has two grant sellers, only one of whom is a service-disabled Veteran, and as both grant sellers have equal managerial control until the Note is paid in full or until the end of the term, a non-veteran can potentially control the day-to-day and long-term decisions of the applicant. Therefore, CVE cannot reasonably conclude

Ownership Must Be Direct

Issue: What is required to satisfy the direct ownership requirements?

**The Regulation:
38 CFR § 74.3**

- (a) Ownership must be direct. Ownership by one or more veterans or service-disabled veterans must be direct ownership. An applicant or participant owned primarily by another business entity or by a trust (including employee stock ownership plans [ESOP]) that is in turn owned by one or more veterans or service-disabled veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust.

What This Means

- The applicant must be 51 percent directly owned by one or more veterans or service-disabled veterans. If the applicant is owned primarily by another business or entity or by a trust they will be deemed to not meet the requirements, unless the trust is a revocable living trust. In this instance, the veteran or service-disabled veteran must be the grantor, a trustee, and the sole current beneficiary of the trust.
- The Government Accountability Office has flagged this issue, and it issued a report which found that a Veteran cannot be deemed to have direct ownership if the veteran is principally owned by another business entity or by a trust. See U.S. Gov’t Accountability Office, Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts, GAO-10-108 (Oct. 2009). This example often results in a denial because

the applicant is not at least 51 percent directly owned.

- The determination as to whether an applicant meets the direct ownership requirement is decided by evaluating the particular facts and circumstances presented.
- One common example that will prohibit an applicant from receiving verified status: if the applicant provides information stating that the applicant is owned in trust and the veteran or service-disabled veteran is not the grantor, a trustee, and the sole beneficiary of the trust.

Excerpts from Current Denial Letters

XXX Certificate of Trust, signed and notarized, was provided that shows that both the Veteran and service-disabled Veteran are the Trustees and the Grantors. The applicant does not meet this requirement.

Highest Compensation

Issue: Must I receive the highest compensation of other applicant officers?

**The Regulation:
38 CFR § 74.4**

- (g)(3) No non-Veteran may receive “compensation from the applicant or participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant.”

What This Means

- While receiving a lower salary than non-veteran owners is not necessarily a bar to establishing control of the applicant, CVE will find that the requirement of 38 CFR 74.4(g)(3) has been satisfied where the

applicant demonstrates that the Veteran/Service-Disabled Veteran owner receives a higher salary than non-veteran owners. If the Veteran/Service-Disabled Veteran does not, CVE will find that this requirement is satisfied if the applicant has provided a statement explaining that the Veteran/Service-Disabled Veteran elected to take a lower salary and why doing so benefits the Veteran owned company. Also, the requirement may be satisfied where the applicant’s documentation shows that the Veteran/Service-Disabled Veteran has a salary equal to that of non-veteran owners.

- If the Veteran/Service-Disabled Veteran provides an explanation as to why he or she elected to take a lower salary, it is important to show how the applicant (associated veteran owned company) benefits, rather than how the Veteran/Service-Disabled Veteran benefits personally. Explanations indicating personal benefits are insufficient to satisfy the requirement.
- Examples of sufficient explanations are: 1) that the Veteran/Service-Disabled Veteran will be able to retain employees by electing to compensate those employees, rather than taking a salary for him or herself; and 2) that the applicant is a start-up company and the Veteran/Service-Disabled Veteran must use resources for start-up costs to ensure the company’s success. This list is not exhaustive, and CVE will assess the totality of the circumstances of every applicant when making a determination of eligibility.

Excerpt from Current Denial Letters

“...the applicant’s 2011 K-1 shows that service-disabled Veteran owns 33.3 percent of the concern, and the Operating Agreement shows that service-disabled Veteran owns 51 percent. Service-disabled Veteran provided an explanation stating that he wanted all members to share in the profits and losses of the company. He provided this statement to explain why the K-1 showed that he owned 33.3 percent of the company, instead of at least 51. However, this

statement does not explain why electing to take a lower salary would benefit the company. Absent further explanation, CVE cannot reasonably determine that the requirements of 38 CFR § 74.4(g)(3) have been satisfied.”

Highest Officer

Issue: Must I be the highest-ranking officer of the applicant?

**The Regulation:
38 CFR § 74.4**

- (c)(2) “[a]n eligible full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or participant.”

What This Means

- CVE will find that the requirement of 38 CFR 74.4(c)(2) has been satisfied where the applicant demonstrates that the Veteran/Service-Disabled Veteran owner is the highest-ranking officer of the applicant. Typically, this position is that of President or Chief Executive Officer (CEO).
- The determination as to whether officer-raking will bar inclusion in VIP is decided on a case-by-case basis, evaluating the particular facts and circumstances presented. It is helpful if the applicant provides formation documents, such as Bylaws or an Operating Agreement, that indicate the corporate structure of the applicant. Documents that identify officer positions and their respective duties will assist CVE in making a determination of eligibility. Where an applicant can demonstrate that the Veteran/Service-Disabled Veteran occupies the highest position, which assigns control over the applicant and non-veteran officers, CVE will determine that the requirement of 38 CFR 74.4(c)(2) has been satisfied.

Excerpts from Current Denial Letters

“...the service-disabled Veteran is the Vice President of the corporation and the non-service-disabled Veteran is the President. Article IV, section 5 of the applicant’s Bylaws states ‘The President shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. He shall, when present, preside at all meetings of the shareholders and of the Board of Directors, unless there is a Chairman of the Board in which case the Chairman shall preside.’ As there is no chairman, the position of President is the highest position. Because it is held by a non-service-disabled veteran, CVE cannot reasonably conclude that the service-disabled Veteran holds the highest officer position as required by 38 CFR § 74.4(c)(2).”

“...the Operating Agreement states that each member has equal control over the applicant. Service-disabled Veteran is not listed as a member in the Operating Agreement. Also, Article IV, section 3 of the Operating Agreement states ‘The Members are authorized to appoint one or more officers from time to time...The current officers of the Company are listed on Exhibit B.’ However, Exhibit B is not provided. Therefore, CVE cannot reasonably conclude that service-disabled Veteran has the highest officer position.”

“The only document that holds the service-disabled Veteran out as President is an agreement...signed October 26, 2011. The Operating Agreement, Dunn and Bradstreet profile, and bank account signature cards submitted on behalf of the applicant identify...service-disabled Veteran...as a Member of the concern. Additionally, the responses to the clarifying questions are silent on the issue of company officers. Absent further qualifying information and explanation regarding the management and corporate structure of the concern, CVE cannot reasonably determine that the requirements of 38 CFR § 74.4(c)(2) have been satisfied.”

Managerial Experience

**Issue: What type of managerial experience does a Veteran need to have?
How is the “extent and complexity” of managerial experience determined?**

**The Regulation:
38 CFR § 74.4**

- (b) “...An applicant or participant’s management and daily business operations must be conducted by one or more veterans or service-disabled veterans. Individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A veteran need not have the technical expertise or possess a required license to be found to control an applicant or participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, where a critical license is held by a non-veteran having an equity interest in the applicant or participant firm, the non-veteran may be found to control the firm.

What This Means

- The determination as to whether a Veteran meets the necessary managerial experience requirement is decided on a case-by-case basis, by evaluating the particular facts and circumstances presented.
- One common example that will prohibit an applicant from receiving verified status: 1) if the Veteran’s resume does not reflect prior occupational or management experience in the industry that relates to the primary NAICS code that was selected by the applicant; and 2) the Veteran has not provided a written explanation regarding this deficiency.

Excerpts from Current Denial Letters

Example #1

“The concern’s website states that it, “[m]arkets gloves made to the highest regulatory standards for medical, food service, law enforcement, and other various

industries. The service-disabled Veteran’s resume indicates that he worked for the United States Postal Service for approximately 36 years and was also a real estate investor. His resume does not indicate that he has had any experience in the sale of gloves prior to becoming owner of this concern. As a result, absent further documentation or explanation, CVE cannot reasonably conclude that the service-disabled Veteran has the requisite experience necessary to run this type of business and therefore, the requirements of 38 CFR § 74.4(b) have not been satisfied.”

Example #2

“...for a concern to qualify as an SDVOSB, “...Individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A Veteran need not have the technical expertise...if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the...technical expertise...” 38 CFR § 74.4(b). The LLC’s website states that, “Our primary expertise is the supply of clothing and textile products to the federal government as well as the private sector on an international scale.” According to the service-disabled Veteran’s resume, he has experience as a Counselor with the Department of Veteran Affairs and as a Sales Representative at a car dealership. The resumes for the two non-Veteran owners indicate that they each have substantial experience in the clothing industry. Based upon the documentation submitted, CVE cannot reasonably conclude that the service-disabled Veteran has the ultimate managerial and supervisory control over the much more experienced non-Veteran owners as is required by 38 CFR § 74.4(b).

Example #3

“...according to 38 CFR § 74.4(b)] “[i]ndividuals managing the concern must have managerial experience of the extent and complexity needed to run the concern.” The applicant business is a construction business. The resume for the service-disabled Veteran shows he is the current Owner/CEO of the applicant and that he was previously an Elementary School Teacher

from 2006-2012. From 2009-2011, the service-disabled Veteran owned and operated his own catering business and was enlisted in the US Air Force from 1998-2003 as a Fire Protection Crew Chief. The service-disabled Veteran holds a Bachelors Degree in Education and a Masters Degree in Management. None of his prior work experience would prepare him to manage a construction business on a day-to-day basis. Therefore, the resume provided by the service-disabled Veteran does not reflect the necessary experience needed to satisfy the control requirement of 38 CFR § 74.4(b).

Ownership – 51% Unconditional

Issue: Who does the Center for Veterans Enterprise (CVE) consider to own a veteran-owned small business?

**The Regulation:
38 CFR § 74.3**

- An applicant or participant must be at least 51 percent unconditionally and directly owned by one or more veterans or service-disabled veterans.

What This Means

- The applicant must be 51 percent unconditionally owned by one or more veterans or service-disabled veterans. Ownership provisions must not have conditions or restrictions that will prevent the applicant from freely transferring their interests.
- The Government Accountability Office has flagged this issue, and it issued a report which found that a Veteran cannot be deemed to have unconditional ownership if the veteran’s ownership interest can potentially go to another (other than after death or incapacity) . See U.S. Gov’t Accountability Office, Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts, GAO-10-108 (Oct. 2009). This example often results in a denial because the applicant is not at least 51 percent unconditionally owned.
- The determination as to whether an applicant meets the unconditional ownership requirement is decided

by evaluating the particular facts and circumstances presented from the bylaws, operating agreements, and other documents relating to the formation and operation of the applicant.

- One common example that will prohibit an applicant from receiving verified status: if the applicant provides information relating to a right of first refusal, or language stating that the shares of the applicant shall be sold, assigned, pledged, etc. and follows with conditions that the shares must first be offered to then existing shareholders who desire to accept the offer.

Excerpts from Current Denial Letters

- XXX company Section 5 states “No Corporate Shares shall be sold, assigned, pledged, disposed of, or otherwise encumbered or transferred (whether by reason of death, sale, gift, assignment, order of the court, any judicial process or otherwise) unless said Shares are offered: first, to this Corporation for repurchase, by tender to its Board of Directors; and second, to the other then-existing Shareholders of the Corporation, in proportion to the number of Shares of stock then owned by such other Shareholders who desire to accept the offer. Therefore, CVE cannot reasonably conclude that the applicant meets the direct and unconditional ownership requirement set forth by 38 CFR Section 74.

Service as Management Member of LLC

Issue: Does at least one Veteran serve as a management member of the LLC and have control over all the decisions of the LLC?

**The Regulation:
38 CFR § 74.4 – control of a veteran-owned small business**

- Control means both the day-to-day management and long-term decision-making authority for the VOSB. Many persons share control of a concern, including each of those occupying the following positions: Officer, director, general partner, managing partner,

managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. CVE will consider the control potential of such key employees on a case-by-case basis.

- (e) In the case of a limited liability company, one or more veterans or service-disabled veterans must serve as management members, with control over all decisions of the limited liability company.

What This Means

- The corporate documentation such as the Operating Agreement of the LLC should designate the Veteran owner as the management member of the LLC.
- The corporate documentation should not include non-Veteran members as managers of the LLC.
- The Veteran must have control of the LLC.
- The Veteran must be able to make decisions for the LLC without requiring a non-Veteran's consent or presence.

Excerpts from Current Denial Letters

Furthermore, "In the case of a limited liability company, one or more veterans or service-disabled veterans must serve as management members, with control over all decisions of the limited liability company." 38 CFR § 74.4(e). In item 24 of the Operating Agreement, it states, "...Both founding members, John Smith and Jane Doe must be present at a meeting for any decisions to be binding." As this provision requires a non-Veteran, Jane Doe, to be present for the applicant's decisions to be binding, CVE is unable to conclude that the requirements of 38 CFR § 74.4 have been satisfied.

Finally, for a limited liability company to qualify as a SDVOSB, "one or more...service-disabled veterans must serve as management members, with control over all decisions of the limited liability company." 38 CFR § 74.4(e). Article VI, Section 1 of the Operating Agreement states that, "The Members may delegate responsibility for the day-to-day management of XXX Company to any individual Member, who shall have and exercise on behalf of XXX Company all powers and

rights necessary or convenient to carry out such management responsibilities including, but not limited to, the execution of contracts, loan documents, checks, drafts or other orders of payment of money agreed upon by Members holding a majority of the Member interests in the Company. If no Member accepts this appointment, only then Members holding a majority of the Member interests in the Company may delegate the day-to-day management of XXX Company to a non Member. This appointment may be terminated at any time with or without cause by Members holding a majority of the Member interests in the Company'." The 3rd Amendment to the Operating Agreement, dated September 30, 2012, indicates that the current Members are; Mr. Veteran (service-disabled Veteran) 26%, Mr. Veteran(service-disabled Veteran) 25%, Jane Doe (non-Veteran)10%, XXX (non-Veteran)10%, XXX (non-Veteran) 10%, XXX (non-Veteran) 5%, XXX (non-Veteran) 5%, XXX (non-Veteran) 5% and XXX (non-Veteran) 4%. As responsibilities for the day-to-day operations may be delegated to non-Veteran Members and/or non-Members, the service-disabled Veterans do not have full-control over all decisions of the applicant. As a result, CVE cannot reasonably conclude that the requirements of 38 CFR § 74.4(e) have been satisfied.

Moreover, for a limited liability company to qualify as a SDVOSB, "one or more...service-disabled veterans must serve as management members, with control over all decisions of the limited liability company." 38 CFR § 74.4(e). Section 2 of the Operating Agreement states that it is "[A]greed among Members that Jane Doe shall serve as the Managing Member of the Company and is granted all the customary powers and obligations associated therewith." Section 3 further states that, "The managing member shall have authority in all day to day operations of the Company and shall be responsible for all decisions not requiring a vote of the Members..." As non-Veteran, Jane Doe, is the Managing Member with authority in all day to day operations, it cannot be reasonably concluded that the service-disabled Veteran has full-control over all decisions and that the requirements of 38 CFR § 74.4(e) have been satisfied.

Applicant Must Meet Small Business Definition

Issue: An applicant must qualify as a small business as defined by the Small Business Administration

The Regulation 38 CFR § 74.13(d):

- According to 38 CFR § 74.13(d), if CVE determines that a concern may not qualify as small, they may directly deny an applicant for VetBiz VIP Verification or may request a formal size determination from the U.S. Small Business Administration (SBA). A concern whose application is denied because it is other than a small business concern by CVE may request a formal size determination from the SBA Associate Administrator, Officer of Government Contracting (ATTN: Director, Office of Size Standards), 409 3rd Street, SW., Washington, DC 20416. A favorable determination by SBA will enable the firm immediately submit a new VetBiz VIP Verification.
- Small Business Concern: CVE applies the small business concern definition established by 48 CFR 2.101.
- According to 48 CFR 2.101 a Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity. (See 15 U.S.C. 632.)
- According to 13 CFR Part 121(a) SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences

reserved for “small business” concerns. Size standards have been established for types of economic activity, or industry, general under the North American Industry Classification System (NAICS).

What This Means

- An applicant must meet the size standards established by the North American Industry Classification System (NAICS)
- A applicant's average three year annual gross receipts should be equal or less than the SBA size standard established under the NAICS it is has chosen
- During the verification process, CVE will review the applicant's taxes and other business and organizational documents to confirm that the applicant meets the classification of a small business
- If an applicant is denied because it does not qualify as a small business, it will have to provide evidence showing that is in fact a small business as defined by the SBA.

Excerpt from a Current Letter

Finally, under 38 CFR § 74.13(d), CVE may deny an application if it determines that a concern may not qualify as a small business. The primary NAICS code chosen by the applicant is 238210, Electrical Contractors and other Wiring Installation Contractors. The SBA size standard for this NAICS is \$14.0M. The business taxes provided for the applicant show three year annual average receipts of \$32,762,392. [(2008) \$38,861,361 + (2009) \$29,445,420 + (2010) \$29,980,395]. The applicant has average annual receipts of \$32,762,392, which is higher than the SBA size standard for the selected Primary NAICS code. Based on the documentation submitted, CVE has reason to believe that this concern may not qualify as small. If the concern wishes to request reconsideration, or submit a new application, evidence will have to be provided showing that it is in fact a small business as defined by SBA.

Transfer of Ownership and Control within 2 Years

Issue: Transfer of majority ownership or control of the concern from an immediate family member to a Veteran or Service-Disabled Veteran within two years of the application for verification.

38 CFR § 74.4 (h)

- Non-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.
- Immediate Family Member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

What This Means:

- If the majority interest of an applicant is transferred from a non-Veteran family member to a Veteran or service-disabled Veteran, two years prior to the application for verification, and that family member remains involved with the firm as stockholder, officer, director, or key employee of the firm, that family member is assumed to still control the firm.
- The transfer must occur within two years of the application for verification
- This includes the transfer of the Membership interest of a limited liability company, the transfer of Stock interest of a corporation or the transfer of any other ownership interest that results in that Veteran or service-disabled Veteran becoming majority owner (51% or greater) of the applicant.
- This also includes a transfer of “control”, as defined by 38 CFR § 74.4, from a non-Veteran family member to a Veteran or Service-Disabled Veteran. Control includes “both the strategic policy setting exercises by

boards of directors and the day-to-day management and administration of business operations.” 38 CFR § 74.4 (b)

- The presumption that the family member is deemed to still be in control of the firm may be rebutted by showing that the Veteran or service-disabled Veteran has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.

Excerpt from a Current Letter

38 CFR § 74.4(h) states that, “Non-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm.” The Amended Operating Agreement dated May 24, 2011 lists XXX as having 66% voting interest and XXX 34%. The document is signed by XXX, CEO and XXX, COO. Amended Operating Agreement dated September 22, 2011, states XXX has 51% voting interest and XXX has 49% voting interest. In the September, 2011 Agreement, XXX is CEO and XXX is President and COO. XXX non-Veteran just transferred majority stock ownership and control of the firm to his child XXX service-disabled Veteran, on September 22, 2011, and XXX, non-Veteran, is still on the Board of Directors and the CEO of the applicant. Therefore, the control requirements of 38 CFR § 74.4(h) have not been satisfied.

Board Governance

Documenting Control – Corporation Board of Directors' Governance

Issue: Demonstrating control. Board of Directors governance rules, usually found in Corporate Bylaws, is the number one reason why corporations are found to be ineligible for the Veterans First Procurement Program under Public Law (P.L.) 109-461.

The Regulation – 38 CFR § 74.4 38 CFR Part 74 is the regulation that implements P.L. 109-461 and establishes eligibility requirements.

38 CFR § 74.4(f) states that “One or more Veterans must control the board of directors of a corporate applicant or participant.”

38 CFR § 74.4(f)(1) states that “CVE will deem Veterans or service-disabled Veterans to control the Board where: (i) A single veteran owns 100 percent of all voting stock of an applicant or participant concern; (ii) A single veteran owns at least 51 percent of all voting stock of an applicant or participant, the individual is on the board of directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where supermajority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by State law, the veteran must own at least the percent of the voting stock needed to overcome any such supermajority voting requirements; or (iii) No single veteran owns 51 percent of all voting stock but multiple veterans in combination do own at least 51 percent of all voting stock, each such veteran is on the board of directors, no supermajority voting requirements exist, and the veteran shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has supermajority voting requirements, the veteran shareholders must own at least that percentage of voting stock needed to overcome any such supermajority ownership requirements.”

38 CFR § 74.4(g) allows non-Veterans to be involved in the management of the applicant.

38 CFR § 74.4(g)(1). states that “no non-Veterans may “exercise actual control or have the power to control the applicant or participant.”

38 CFR § 74.4(i) provides a non-exhaustive list of circumstances in which non-Veterans or entities may be found to control or have the power to control the applicant. “(i) Non-veterans or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

- Non-veterans control the board of directors of the applicant or participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-veterans effectively to prevent a quorum or block actions proposed by the veterans or service-disabled veterans.
- A non-veteran or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or participant which directly or indirectly allows the non-veteran significantly to influence business decisions of the participant, unless an exception is authorized by the Office of Small and Disadvantaged Business Utilization.
- A non-veteran or entity controls the applicant or participant or an individual veteran owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-veteran or entity the power to control a firm.
- Business relationships exist with non-veterans or entities which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk.

What This Means

- It is very important to understand that compliance with 38 CFR § 74.4(f) is necessary but not wholly sufficient to demonstrate control of an applicant. Firms must also demonstrate that non-Veterans do

not have the ability to control the applicant. Firms must comply with 38 CFR § 74.4(g) to include, but not limited to the examples provided in 38 CFR § 74.4(i) that addresses how non-Veterans or entities may be found to have the power to control the company, thus making it ineligible for Vet First. Eligibility for the program is dependent on a board governance structure and process that meets both 38 CFR § 74.4(f) and 74.4(g), particularly as illustrated in 74.4(i).

- 38 CFR § 74.4(a) requires that the Veteran(s) must have control over the day-to-day operations and strategic direction of the company. It states that “[c]ontrol means both the day-to-day management and long-term decision-making authority for the VOSB.” 38 CFR § 74.4(a). However, having control of the Board of Directors does not necessarily mean that the Veteran wholly satisfies the control requirement. The Veteran must also be in control of the day-to-day management of the applicant (as well as the long-term strategic decision-making authority for the VOSB/SDVOSB). Furthermore, the applicant must demonstrate that non-Veterans do not control or have the power to control the applicant in accordance with 74.4(g) and (i).
- A non-Veteran owner(s), manager or board member must not have the ability to overrule any decision made by the Veteran owner(s) under any circumstances.
- The ability to hire and fire board members is not sufficient if the Bylaws give the board the ability to make legally binding decisions without approval of the Veteran owner(s).
- A firm is not verifiable if non-Veterans have the possibility to out vote the Veteran(s), can be deemed a quorum without the presence of the Veteran(s), can prevent the attainment of a quorum by their absence or in any way preclude the Veteran owner(s) from making any and all decisions on the firm.
- Veteran owners must always have the majority vote, either by representation on the board of directors or by weighted voting. A corporation with two directors (one a non-Veteran) may use weighted voting to show that the Veteran has the majority vote. Weighted

voting is defined as a system in which the participants have varying numbers of votes, typically by the number of shares of stock held.

Examples of Lack of Control

Quorum Negative control by lack of quorum

- “According to Bylaws, the Board of Directors manages the corporation. A quorum for Board meetings consists of the majority of Directors, and the act of a majority of Directors present at a meeting constitutes Board action. Non-Veterans have the ability to exert negative control, as defined in 38 CFR § 74.1, when their absence from a Board meeting prevents the attainment of a quorum. Therefore, it is unreasonable to conclude that you control the business as required by the regulations.”
- “According to Bylaws the majority of Directors constitutes a quorum for a Board of Directors meeting, and the act of a majority of Directors present constitutes a Board act. Both Veteran and non-Veteran must be present for Board meetings, and you both must agree to make a Board act. Thus non-Veteran can exert negative control by preventing a quorum or blocking Board action, as prohibited by 38 CFR § 74.4(g) (1). Therefore, it is unreasonable to conclude that you control the business as required by the regulations.”

Negative control by lack of Veteran in a quorum

- “According to Bylaws, the Board of Directors manages the corporation. A quorum for Board meetings consists of the majority of Directors, and the act of a majority of Directors present at a meeting constitutes Board action. According to corporate documentation, there are 3 Directors of the corporation: Veteran, non-Veteran, and non-Veteran. Since only a majority is needed for a quorum, the Veteran can be excluded entirely from Board meetings and Board action. Non-Veteran and non-Veteran have the ability to exert negative control, as defined in 38 CFR § 74.1. Therefore, it is unreasonable to conclude that you control the business as required by the regulations.”

- “CVE is unable to conclude that you satisfy the control requirements set forth in 38 CFR § 74.4. According to your Bylaws, the Board of Directors manages your corporation. A quorum for Board meetings consists of the majority of Directors, and the act of a majority of Directors present at a meeting constitutes Board action. According to your corporate documentation, there are 3 Directors of your corporation: you (Veteran), Jane Doe, and John Doe, both non-Veterans. Since only a majority is needed for a quorum, you can be excluded entirely from Board meetings and Board action. Ms. Doe and Mr. Doe have the ability to exert negative control, as defined in 38 CFR § 74.1. As such, it is unreasonable for CVE to conclude that you satisfy the control requirements of the regulations.”

Lack of Weighted Voting

- Corporate Bylaws states that, business of a corporation shall be managed by its Board of Directors. In the case where there are only two directors of the company: Veteran and non-Veteran, and there is no provision for weighted voting, or other provision that in the event of a deadlock that the Veteran’s decision prevails, the firm fails to meet the requirements of 38 CFR § 74.4(i)(1) as the non-Veteran director can exercise negative control as defined by 38 CFR § 74.1 by blocking corporate action. Therefore, it is unreasonable to conclude that the Veteran controls the business as required by the regulations.
- “You supplied Corporate Bylaws for your company. Article II Section 1 states that, “...all corporate powers shall be exercised by or under the direction of, and the business and affairs of the corporation shall be managed under the direction of, the Board of Directors.” Article II, Sections 6 and 7, state that a quorum will be a majority of the directors and that the vote of a majority of the directors present when a quorum is established will be the act of the Board of Directors. The supplied Articles of Incorporation dated 08/27/2010 list you and Mr. John Doe, a non-Veteran, as directors of the company. There is no provision for weighted voting. Therefore, you fail to meet the

requirements of 38 CFR § 74.4(f) as the non-Veteran director can exercise negative control as defined by 38 CFR § 74.1 by blocking corporate action. Therefore, it is unreasonable to conclude that you control the business as required by the regulations.”

Limitation on transfer of control

- This applies when a non-Veteran either puts stipulations on control based on an equity interest in the company or when non-Veterans transfer a majority of the stock ownership or control to the Veteran within two years prior to applying for verification and remain involved in the firm. The stipulations on equity interest are stated in 38 CFR § 74.4(i)(2) “[a] non-veteran or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or participant which directly or indirectly allows the non-veteran significantly to influence business decisions of the participant.” The transfer of control is spelled out in 38 CFR § 74.4(h), “[n]on-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm,” but can be overcome by providing proper documentation that the Veteran has the requisite independent management experience and is actively participating in the firm.
- “A corporation is typically owned by its stockholders. The Articles of Incorporation state “the number of shares which the corporation is authorized to have outstanding is 950 shares”. The Stock Ledger showed on 5/05/07, John Doe and Jane Doe were each issued shares; however, the number of shares are not available. A cancelled Stock Certificate, dated 5/14/07 showed Jane Doe was issued 575 of 950 shares and held 50% ownership of the applicant. The 2010 Schedule K-1 showed Catherine Doe held 50% ownership and John Doe held 50% ownership. The Stock Power, dated 2/1/11 showed Jane Doe transferred 8 shares to John Doe. The Stock Ledger showed that on 2/1/11, John Doe was issued 583

shares represented by Stock Certificate 3 and Jane Doe was issued 567 shares represented by Stock Certificate 4. Since Jane Doe, non-Veteran, recently transferred some stock to John Doe, confirmed service-disabled Veteran, in order to make him 51% owner of Doe Consulting, Inc.; your company does not meet the minimum 51% service-disabled Veteran ownership requirement set forth by the Code of Federal Regulations.”

Trusts

Issue: How can a firm be eligible if the Veteran owner establishes a Trust?

The Regulations 38 CFR § 74.3

- An applicant or participant must be at least 51 percent unconditionally and directly owned by one or more veterans or service-disabled veterans.
- (a) Ownership must be direct. Ownership by one or more Veterans or service-disabled Veterans must be direct ownership. An applicant or participant owned principally by another business entity or by a trust (including employee stock ownership plans [ESOP]) that is in turn owned by one or more veterans or service-disabled veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust. For employee stock ownership plans where 5 or fewer persons who are individuals, estates, or trusts own 50 percent or more of the total combined voting power of the corporation, the employee plan will be determined to be “excluded stock” and eligible parties must control 51 percent or more of the combined voting power of the corporation. For employee stock ownership plans where greater than 5 persons who are individuals, estates, or trusts own 50 percent or more of the total stock, eligible parties

must control 51 percent or more of the combined voting power of the corporation, including the ESOP stock.

- (b) Ownership must be unconditional. Ownership by one or more veterans or service-disabled veterans must be unconditional ownership. Ownership must not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. In particular, CVE will evaluate ownership according to the following criteria for specific types of small business concerns.

What This Means

- In order for a trust to satisfy the ownership requirements of 38 CFR § 74.3, the trust must meet certain legal requirements:
- The trust must be revocable.
- The Veteran or service-disabled Veteran must be the grantor, a trustee, and the sole current beneficiary of the trust.
- Documentation must be provided which makes it clear that all of these requirements have been met. The Trust Agreement must be provided, if ownership is based on a Trust.
- Because the trust must be revocable, the Veteran must be able to take back full control of the trust property at any time. While there can be more than one trustee, the Veteran must be a trustee and the sole current beneficiary. To be the sole current beneficiary, the Veteran must receive the full income or other distributions from the trust property.
- Having named beneficiaries who will receive benefits or distributions from the trust property only after the Veteran’s death does not conflict with the regulation, as the firm would no longer be eligible.

Excerpts from Current Denial Letters

- “CVE is unable to conclude that you satisfy the ownership requirements of 38 CFR Part 74. You supplied the “First Amendment to the Declaration of Trust Establishing The XXX. Revocable Trust”. You did not supply the original trust agreement. The amendment identifies you as the Grantor and Trustee, but the document does not identify you as the sole current beneficiary of the trust. 38 CFR § 74.3(a) does allow for ownership through a trust, but only when the trust is, “revocable, and the Veteran or service-disabled Veteran is the grantor, a trustee, and the sole current beneficiary of the trust.” The supplied documentation indicates that your children shall be the beneficiaries, and without the original document, CVE is unable to conclude that you meet the requirement of direct ownership outlined in 38 CFR § 74.3(a).”
- “According to corporate documentation you own your percentage of the company through a trust. 38 CFR § 74.3(a) states that, “...a...trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust.” You supplied a document entitled “First Restatement of the YYY Revocable Trust Agreement.” This document shows that the trust is revocable, and that you are the grantor and the trustee. However, you are not the sole current beneficiary. The trust lists ZZZ and AAA as the beneficiaries of the trust. For these reasons CVE is unable to conclude that you meet the ownership requirements set forth in 38 CFR § 74.3.”
- “You supplied an Operating Agreement for your company. Exhibit A of the Operating Agreement states that The VVV Irrevocable Trust owns 51% of the company. While 38 CFR § 74.3(a) does allow for ownership through a trust it requires that the trust be “...revocable, and the Veteran or service-disabled Veteran is the grantor, a trustee, and the sole current beneficiary of the trust.” This trust is not revocable. Therefore CVE is unable to conclude that the trust

meets the requirements, and that you own 51% of the company as is required by 38 CFR § 74.3.”

Transfer Restrictions

Issue: Can there be any restrictions on the veteran owner’s ability to transfer ownership of the firm?

The Regulations

38 CFR § 74.3 – As relating to the ownership requirements:

- (b) Ownership must be unconditional. Ownership by one or more veterans or service-disabled veterans must be unconditional ownership. Ownership must not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. In particular, CVE will evaluate ownership according to the following criteria for specific types of business concerns.
 - o (b)(1) Ownership of a partnership. In the case of a concern that is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more veterans or service-disabled veterans.
 - o (b)(2) Ownership of a limited liability company. In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more veterans or service-disabled veterans.
 - o (b)(3) Ownership of a corporation. In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more veterans or service-disabled veterans.

- (c) Stock options' effect on ownership. In determining unconditional ownership, CVE will disregard any unexercised stock options or similar agreements held by veterans or service-disabled veterans. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-veterans will be treated as exercised, except for any ownership interests that are held by investment companies licensed under part 107 of title 13, Code of Federal Regulations.

- (e) Change of ownership. (1) 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.

- (3) 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. Existing contracts may be performed to the end of the instant term. However, no options may be exercised.

38 CFR § 74.4 – As relating to the control requirements:

- (h) Non-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.

What This Means

- The Veteran owner must be able to transfer any or all of his ownership interest, to anyone, at any time, he/she pleases.

- Ownership must be unconditional. Ownership must not be subject to conditions that allow transfer of ownership benefits to another. Restrictions may not be placed upon the ownership interests of the Veteran owner. Owners should avoid the creation of any business structure which includes conditions or limitations on the Veteran owner's present or immediate right to exercise the full range of ownership rights. The existence of such provisions will prevent the applicant from receiving verified status.

- One common restriction on ownership which will prevent an applicant from receiving verified status (due to ownership not meeting the "unconditional" requirement) is requiring approval of other shareholders/members or a right of first refusal to purchase the Veteran's shares/interest for the Veteran owner to transfer his shares/interest.

- A business may remain eligible for Verification if after the ownership is transferred, another Veteran or service-disabled Veteran owns and controls the applicant and files a new VA Form 0877 application identifying the new Veteran owners or their new business interest and this change is reported to CVE within 60 days...

- If a transfer occurs based on incapacity or death, the concern must file a new VA Form 0877 application with the contracting officer and CVE within 60 days of the change.

- If a transfer in ownership from a non-Veteran to a Veteran has occurred within the past two years, and the non-Veteran remains a stockholder, officer, director, or key employee, the non-Veteran will be presumed to remain in control of the concern. Supporting documentation reflecting management experience of the Veteran and evidence of the Veteran's current participation in the management of the applicant must be provided to refute this presumption.

Excerpts from Current Denial Letters

- "You supplied a Shareholders' Agreement for your company. This Agreement states that, "[t]o accomplish the purposes of this Agreement, any transfer, sale, assignment, hypothecation, encumbrance, or alienation

of any of the shares of the Corporation, other than according to the terms of this Agreement is void and transfers no right, title, or interest in or to those shares to the purported transferee, buyer, assignee, pledgee, or encumbrance holder. Each Shareholder shall have the right to vote shares held of record and to receive dividends paid on them until the shares are sold or transferred in accordance with this Agreement.” A subsequent section goes on to state that, “A Shareholder may transfer all or any part of his or her shares to: [a spouse, ancestors or lineal descendants or the spouses of any of such persons, or to any trust solely for the benefit of the Shareholder or any of the foregoing persons,] provided that each such permitted transferee shall first agree in writing to be bound by the terms and provisions of this Agreement.” The agreement does not indicate any other instances where transfer of shares would be permitted. 38 CFR § 74.3(b) requires that the Veteran’s ownership interest must be unconditional. These types of restrictions, placed on the ownership rights of the shareholders, violate the requirements. For these reasons CVE is unable to conclude that you meet the ownership requirements of 38 CFR § 74.3.”

- “You supplied an Operating Agreement for your company. The pertinent Articles state that a Member shall not transfer his membership interest unless all of the Members approve of the transfer. The Operating Agreement identifies you, Jane Doe, and John Jones as Members of the company. Mr. Jones is not a Veteran. 38 CFR § 74.3(b) requires that the service-disabled Veterans own their shares of the business unconditionally. Because Mr. Jones, a non-Veteran, must approve of any transfers, a restriction is placed upon the ownership interests of you and Ms. Doe. For these reasons CVE is unable to conclude that your company meet the ownership requirements set forth in 38 CFR § 74.3.”

Joint Ventures

Issue: How can a Joint Venture be eligible for verification?

**The Regulations
38 CFR § 74.1**

- Joint venture is an association of two or more small business concerns to engage in and carry out a single, specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. For VA contracts, a joint venture must be in the form of a separate legal entity.

38 CFR § 74.3

- (d) Profits and distributions. One or more veterans or service-disabled veterans must be entitled to receive:
 - (2) At least 51 percent of the net profits earned by a joint venture in which the applicant or participant is the lead concern;

38 CFR § 74.4

- (c)(1) An applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the applicant which demonstrates that such activities will not have a significant impact on the owner’s ability to manage and control the applicant concern. Applications from joint-ventures are exempt from the requirement to submit a supplemental written statement.

The Joint Venture also must meet the requirements of VA’s SDVOSB and VOSB set-aside clauses in the VA Acquisition Regulation (VAAR) reference SBA’s regulation on the character of a joint venture, substituting VOSB for this type of set-aside.

13 CFR § 125.15 (b) Joint ventures.

An SDVO SBC may enter into a joint venture agreement with one or more other SBCs for the purpose of performing an SDVO contract.

- (b)(1) Size of concerns to an SDVO SBC joint venture.

- (b)(1)(i) A joint venture of at least one SDVO SBC and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:
 - (A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or
 - (B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million;
- (b)(1)(ii) For sole source and competitive SDVO SBC procurements that do not exceed the dollar levels identified in paragraphs (b)(1)(i)(A) and (B) of this section, an SDVO SBC entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the SDVO contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVO contract.
- (b)(2) Contents of joint venture agreement. Every joint venture agreement to perform an SDVO contract must contain a provision:
 - (i) Setting forth the purpose of the joint venture;
 - (ii) Designating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the SDVO contract;
 - (iii) Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the SDVO SBC(s);
 - (iv) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the SDVO contract;
 - (v) Obligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member;
 - (vi) Requiring the final original records be retained by the managing venturer upon completion of the SDVO contract performed by the joint venture;
 - (b)(3) Performance of work. For any SDVO contract, the joint venture must perform the applicable percentage of work required by §124.510 of this chapter.”

What This Means

In order for a Joint Venture to be eligible for verification, it must meet the following standards:

- A joint venture must be a separate legal entity
- A joint venture must be controlled by a verified VOSB or SDVOSB concern
- A joint venture must be separately verified
- The SDVOSB or VOSB must earn at least 51% of the profits earned by the joint venture
- In every joint venture, at least one of the businesses must be a verified SDVOSB, in accordance with the Verification Program requirements found in 38 CFR Part 74.
- The verified SDVOSB must be the Managing Venturer of the applicant and have control over all decisions of the joint venture.
- Additionally, all joint venture agreements must contain the provisions stated in 13 CFR § 125.15(b)(2).

Excerpts from Current Denial Letters

- “In order for a Joint-Venture to qualify as a SDVOSB the management and control of the Joint- Venture must be handled by the SDVOSB firm. In this instance, your business, XXX, LLC is a verified SDVOSB, but the supplied documentation for the Joint-Venture shows that it is not in control of the management as is required by the regulations.

You supplied a Joint-Venture Agreement. CVE found in your Articles that, [t]he business and affairs of the Venture shall be managed by an executive committee composed of two persons who shall be responsible for the management of the Venture (the “Executive Committee”). This executive committee is made up of two members, one from each business comprising the Joint-Venture- and according to subsequent provisions - requires unanimous consent of the members to take action. As only one of the two representatives is from the verified SDVOSB member of the Joint Venture, CVE is unable to conclude that you meet the control requirements set forth in 38 CFR § 74.4 and 13 CFR § 125.15.”

- “In order for a joint venture to be included in the VA VetBiz Vendor Information Pages (VIP) Verification Program as a verified SDVOSB one of the businesses forming the joint venture must be a verified SDVOSB. You applied for SDVOSB status with YYY, LLC, however, this business was denied inclusion in the database as it failed meet the eligibility requirements of 38 CFR Part 74. Because neither of the businesses that form the joint venture is verified as a SDVOSB, CVE is unable to conclude that ZZZ Joint Venture meets the requirements of the regulations.”
- “CVE is unable to conclude that XXX, Inc. has complete control of the management of the joint-venture. One section of the Joint-Venture Agreement assigns primary and alternate representatives for each business. You are designated as the primary representative for XXX, Inc. and Mr. John Doe, a non-Veteran, is designated as the primary representative for YYY LLC. The pertinent section goes on to state that, “[t]he representative of XXX and the representative of YYY shall comprise the “Committee” of the Joint Venture. The Committee shall be responsible for making decisions for and on the behalf of the Joint Venture.” A subsequent section of the Joint-Venture Agreement states that, “...all decisions, commitments, agreements, understandings and other matters pertaining to the performance of the Contract shall be decided by mutual agreement.” This indicates that both you and Mr. Doe have an equal say in the decisions pertaining to the joint-venture.

For these reasons CVE is unable to conclude that you meet the requirements of the regulations.”

Full Time Control

Issue: Must I work full-time for the applicant firm? Can I hold outside employment?

The Regulations 38 CFR § 74.4

- (c)(1) An applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the application which demonstrates that such activities will not have a significant impact on the owner’s ability to manage and control the applicant concern.
- (c)(3) One or more veterans or service-disabled veteran owners who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business.

What This Means

- While other outside employment is not necessarily a bar to establishing control of the applicant, the applicant must demonstrate that a Veteran owner’s employment in another business will not interfere with his/her control of the applicant business, per 38 CFR § 74.4(c)(1). The applicant must provide a written statement clearly demonstrating how the other employment does not impact the ability to manage and control the applicant company. It is important to note that the burden of proof lies with the applicant and the ability to control the applicant firm while employed by another entity will not be presumed.
- The Government Accountability Office has flagged this issue, and it issued a report which found that a

Veteran cannot control a business when he concurrently has a separate full-time job which operates during the same normal business hours as the applicant firm. See U.S. Government's Accountability Office, Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts, GAO-10-108 (Oct. 2009). This example often results in a denial because of the high standard for control by the Veteran owner required by the Vet First program. , The Veteran must provide CVE with a written explanation as to how this outside employment does not affect his/her ability to control the applicant. This statement should be extremely detailed providing examples of how the Veteran is able to show responsibility without delegating material elements of control. Failure to provide any explanation will result in denial.

- The determination as to whether outside employment will bar inclusion in VIP based upon lack of control is decided on a case-by-case basis, evaluating the particular facts and circumstances presented.
- One common example that will prohibit an applicant from receiving verified status: if the Veteran lists on his/her résumé that he/she currently holds a position other than that in the applicant, and the Veteran has not provided a written explanation to CVE regarding this employment.

Excerpts from Current Denial Letters “During the site visit and document review, it was determined that you are engaged in a number of other businesses. You were asked to provide a statement which demonstrates that your other business activities do not have a significant impact on your ability to manage and control the applicant concern. Since you have not provided this statement along with other requested documentation, CVE cannot conclude that you “show sustained and significant time invested in the business.” Therefore, CVE finds that you are not in compliance with 38 CFR § 74.4(c)(1).”

Community Property

Issue: How do Veterans in community property states demonstrate ownership and control?

Definition: Community Property: All property or income acquired by either spouse during marriage is considered equally owned by both spouses for purposes of the division of the property upon death or divorce or for purposes of business transacted by either spouse.

The Regulation – 38 CFR § 74.3

- (f) Community property laws given effect. In determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.

What This Means

- Community Property States include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Puerto Rico is a Community Property Territory.
- If a Veteran or service-disabled Veteran owner resides in any of the community property states or territories and is married, the Veteran or service-disabled Veteran is presumed to only own an undivided half, i.e., 50%, of the community property. The Veteran or service-disabled Veteran can submit evidence that this is not the case, i.e., the property is legally treated as separate property. o For example, Veteran John Smith owns 100% of Example, LLC; he is married to a non-Veteran; and he lives in Arizona. According to community property laws, he would only be regarded as holding an undivided 50% interest in Example, LLC. He would not meet the ownership requirements of 38 CFR § 74.3.
- What Veteran John Smith could do in order to meet the ownership requirements is to provide CVE with documentation proving that he owns his interest in

Example, LLC as his sole and separate property (for example, by having his spouse provide a notarized letter disclaiming her interest in the community property) or that his interest in Example, LLC is not subject to the community property laws for another reason (for example, it was acquired prior to marriage, spouse disclaims ownership interest in accordance with state law).

- In the case of multiple veteran owners, ownership percentages are combined to determine eligibility. Example: In the case of two Veteran owners, one being single, and one married, each owning 50% of the applicant. The single Veteran owner’s percentage will remain intact at 50%, whereas the married Veteran owner’s percentage will be 25%, totaling 75% Veteran ownership.

Excerpts from Current Denial Letters

“The VA Form 0877 Verification Application you submitted lists you, the service-disabled Veteran, as 51% owner of XXX, Inc. Your business is in the state of Arizona. Arizona is a community property state. This means that property owned by one spouse in a marriage is jointly the property of both spouses. 38 CFR § 74.3(f) states that, “[i]n determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.” This would mean that you and Ms. YYY, a non-Veteran, each own an undivided 50% interest in the company. You have not provided any evidence to support that the ownership interest in the applicant is separate or non-community property. Therefore, CVE is unable to conclude that you meet the 51% ownership requirement of 38 CFR § 74.3.”

“In response to a document request from the CVE examiner you stated that your business is a sole proprietorship. The VA Form 0877 Verification Application you submitted lists you as 51% owner. A sole proprietor owns 100% of a sole proprietorship. Your supplied tax documents list you as the proprietor

of the business. California is a community property state. These laws make it so that property owned by one spouse in a marriage is jointly the property of both spouses. 38 CFR § 74.3(f) states that, “[i]n determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.” This would mean that you and Mrs. ZZZ each own an undivided 50% interest in the company. While both of you are Veterans, only you are a service-disabled Veteran. Therefore, CVE is unable to conclude that you meet the 51% ownership requirement of 38 CFR § 74.3.”
Center for Veterans Enterprise Verification Assistance Brief - Community Property

Center for Veterans Enterprise Verification Facts Sheet

*For Informational Purposes Only *
This information has been provided by CVE for general informational purposes and should not be construed as providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. In addition, CVE makes no representation as to the accuracy or whether the above information is currently up-to-date.

END OF SECTION

Reasons For Verification Denials

Category Reasons

Transfer Restrictions
Quorums Restrictions
Dependence With Other Entities
Managerial Experience
Management of Daily Business
Weighted Voting Requirement
Control of Strategic Policy
Highest Position
Community Property
74.3(d)(1) Highest Compensation
51% of compensation

Reasons For Verification Application Delays

Submission of documents outside the accepted VCMS process
Not checking the appropriate box for “Veteran status” i.e. SDVOSB or VOSB) on the VA Form 0877
Not indicating percentage of ownership for each individual owner
Ownership percentage total does not equal to exactly 100%
Failing to list all owners on the VA form 0877
Business name in Name of Company on VA Form 0877 doesn’t match the business name listed in the Vendor Information Pages profile (i.e. using dab name)
Veteran’s name doesn’t match Veterans Benefit Administration (BIRLS) records (Veteran record hasn’t been updated with VBA, i.e., name change due to marriage)
The applicant does not provide complete/correct documentation and/or is not timely in submitting documents
The applicant has known or documented “non-veteran” affiliations
The Veteran is unavailable or unresponsive to requests for further information

Glossary Of Terms And Acronyms

Applicant	A business concern that has submitted an application with CVE to be verified as a Veteran-owned or service-disabled Veteran-owned small business.
BIRLS	Beneficiary Identification Records Location Subsystem
C Corp	Chapter C Corporation
CCR	Central Contractor Registration
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CFRS	Control Folder Review Sheet
Chr of Svc UNK	Character of service unknown
CIV	Civilian
CO	Contracting Officer
COO	Chief Operations Officer
CVE	Center for Veterans Enterprise
D&B	Dun and Bradstreet
Denial	One of three possible final protest decisions in which OSDBU determines that the status protest does not satisfy the regulatory procedural requirements. The substantive allegations contained in the protest are not assessed on their merits. A protest dismissal decision has no impact on a verification decision.
Determination Letter	Letters of Approval or Denial
DIS	Dishonorable
Dismissal	One of three possible final protest decisions in which OSDBU determines that the status protest does not satisfy the regulatory procedural requirements. The substantive allegations contained in the protest are not assessed on their merits. A protest dismissal decision has no impact on a verification decision.
DOB	Date of Birth
DUNS	Data Universal Numbering System
EPLS	Excluded Parties Listing System
Evaluation Team	The team of clerks, paralegals, and federal employees that process and track all files which have been recommended approval, denial, or additional review by the Examination Team.
Examination Queue	The queue in VCMS that contains all applications that are currently undergoing Examination by the Examination Team.
FAR	Federal Acquisition Regulation
FINAL DENIAL LETTER	Refers to denial after review of the applicant's Request for Reconsideration
GAO	Government Accountability Office

GENERAL ACCOUNTABILITY OFFICE (GAO) PROTEST	A protest challenging a bid decision by the Contracting Officer. All such protests are processed and handled by the GAO.
HON	Honorable
HVA	Honorable for VA Purposes
IDL	Initial Denial Letter
INITIAL DENIAL LETTER	Refers to denial on initial application
INVFORM	Invalid Form
IRS	Internal Revenue Service
JV	Joint Venture
LEVEL 2 QUEUE	The queue in VCMS that contains all applications that have been recommended denial by the Examination or Evaluation Team.
LLC	Limited Liability Company
LLP	Limited Liability Partnership
NAICS	North American Industry Classification System
NODOCS	No documents submitted
OGC	Office of General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
ORCA	Online Representations and Certifications Application
OSDBU	Office of Small and Disadvantaged Business Utilization
OSDBU	Office of Small and Disadvantaged Business Utilization
OSDBU STATUS PROTEST	A protest made by an interested party against the apparently successful offeror on a VA VOSB/SDVOSB set-aside solicitation which challenges the Veteran-owned or service-disabled Veteran-owned status of the protested party.
OTH	Under Other Than Honorable Conditions
P.L.	Public Law
PART	Partnership
PII	Personally Identifiable Information
POC	Point of Contact
PROTESTED PARTY	The subject of a status protest; the party whose status as a Veteran-owned or service-disabled Veteran-owned small business is being challenged by the protesting party
PROTESTING PARTY	The initiator of a status protest; the party who is challenging the Veteran-owned or service-disabled Veteran-owned small business status of the protested party.
PSG V	Office of the General Counsel Professional Services Group V (5)
PTAC	Procurement Technical Assistance Center
QC	Quality Check
QR	Quality Review
QR QUEUE	The queue in VCMS that contains all applications that have been recommended approval by the Examination or Evaluation Team.
R4R	Request for Reconsideration

REVIEWER	Paralegal on the Reconsideration Team who conducts an initial review and/or drafts decision letter
SAM	System for Award Management
S CORP	Chapter S Corporation
SAT	Satisfactory
SBA	Small Business Administration
SBA SIZE PROTEST	A protest made by an interested party against the apparently successful offeror on a federal small business set-aside solicitation which challenges the size of the protested party (i.e. alleging that the company is other than small).
SBA STATUS PROTEST	A protest made by an interested party against the apparently successful offeror on a non-VA, VOSB/SDVOSB set-aside solicitation which challenges the Veteran-owned or service-disabled Veteran-owned status of the protested party.
SBDC	Small Business Development Center
SCIF	Sensitive Compartmented Information Facility
SDV	Service-disabled Veteran
SDVOSB	Service-disabled Veteran-owned small business
SDVOSB	Service-disabled Veteran-owned small business
SEP REASON	Separation Reason Code
SET-ASIDE CONTRACT	A federal contract that is only available to be awarded to a particular type of company (i.e. a SDVOSB set-aside contract may only be awarded to a SDVOSB company).
SITE VISIT	Onsite examination and evaluation of applicant performed by a site visit contractor.
SITE VISIT QUEUE	The queue in VCMS that contains all applications that have been recommended for site visit by the Examination or Evaluation Team.
SOLE PROP	Sole Proprietor
SOLICITATION	An invitation to bid on an upcoming federal contract
SSN	Social Security Number
SUSTAINMENT	One of three possible final protest decisions in which OSDDBU determines that the protested party does not satisfy the requirements to be considered a Veteran-owned or service-disabled Veteran-owned small business under 38 CFR Part 74. A protest sustainment decision is the equivalent of a verification denial decision
U.S.C.	United States Code
UHC	Under Honorable Conditions
UNK	Unknown
UPS	United Parcel Service
UR	Under review
URLVL2	Additional Review (recommend denial)
V	Veteran
VA	Department of Veterans Affairs
VA0877	Vetbiz Vendor Information Pages Verification Program form. Veterans give consent for VA to access and verify veteran(s) owner(s)/veteran(s) stockholder(s) record(s).
VAAR	Veterans Affairs Acquisition Regulation
VAF	VA Form
VAIQ	VA Internet Quorum

VBA	Veterans Benefits Administration
VCF	Verification Control Folders
VCMS	VetBiz Case Management System
VCS	Veterans Canteen Service
VET	Veteran
VIP	Vendor Information Pages
VIP-VCMS	Vendor Information Pages VetBiz Case Management System
VOSB	Veteran-owned small business
WOSB	Woman-owned small business
8127 CMTE.	Debarment and Suspension Committee

Verification Process Training Assessment and Survey Links:

Baseline Assessment

<https://adobeformscentral.com/?f=UsbnENj%2AE-t15y90VstIbg>

OGC Case Review Section:

<https://adobeformscentral.com/?f=MfGh3JSRn3NcfBqKGnci0A>

Knowledge Assessment:

<https://adobeformscentral.com/?f=b%2AV3%2AI3GVelsmpxodXIOAQ>

Training Evaluation Survey:

<https://adobeformscentral.com/?f=KgnwYavN0qNw6tA0007ihg>

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