

Congress of the United States
Washington, DC 20515

Memorandum

To: Members, Subcommittee on Investigations, Oversight, and Regulations, Committee on Small Business
Members, Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs

From: Committee Staff

Date: July 16, 2018

Re: Hearing: "Achieving Government-Wide Verification of Service-Disabled Veteran-Owned Small Businesses"

On Tuesday, July 17, 2018 at 2:00 p.m., the Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations and the Committee on Veterans' Affairs Subcommittee on Oversight and Investigations will meet in Room 2360 of the Rayburn House Office Building for the purpose of examining the progress of the Department of Veterans Affairs (VA) and the Small Business Administration (SBA) in harmonizing definitions and regulations related to service-disabled veteran-owned small businesses (SDVOSBs). The hearing will also examine SBA's readiness to assume the remaining verification functions and the benefits of extending verification of SDVOSBs government-wide.

I. Background

Both the SBA and the VA operate procurement programs for SDVOSBs. The VA's program verifies small businesses eligible to compete for VA contracts, while SBA's program allows small businesses to compete for contracts at other federal agencies.¹ Each year, the federal government sets spending goals for small business contracting preferences such as SDVOSBs, which has remained at 3 percent over recent years.² To qualify as a SDVOSB, a company must be: 1) a small business, and 2) majority owned and controlled by a service disabled veteran (SDV), or in some circumstances, the surviving spouse of such a veteran. With a few important exceptions, SBA and VA use the same definition for SDVOSBs, relying on the VA's definition of a service-disabled veteran and the SBA's definition of a small business concern.

With 18,808 SDVOSBs registered with the SBA, and 10,340 SDVOSBs verified by VA, there are nearly 30,000 businesses attempting to use the service-disabled veteran contracting programs established by Congress.³ As a result of the two separate programs, there are effectively two classes of SDVOSBs—those verified by VA pursuing VA contracts, and those which self-certify and pursue contracts in all other agencies. The current procurement

¹ 38 U.S. Code § 8127; 15 U.S.C. § 36.

² SBA's small business contracting scorecard, including a list of the small business categories, their goals, and federal agencies' performance in FY 2017 is available [here](#).

³ SBA data from Dynamic Small Business Search tool (dsbs.sba.gov). VA data from VA's Vendor Information Pages (www.vip.vetbiz.gov).

environment for SDVOSBs can create inconsistent outcomes, such as a business qualifying as a SDVOSB for VA contracts, but not other federal agency contracts, or vice versa. Due to criticisms among the veteran business community, the Small Business Committee and Committee on Veterans' Affairs have held multiple joint hearings on the differences between these procurement programs and their duplicative, overlapping natures.⁴ Although both serve the purpose of helping SDVOSBs succeed in the federal marketplace, these two contracting programs possess numerous differences that have created confusion among the veteran community.

1. Small Business Administration

Congress created the SDVOSB procurement program at the SBA by establishing section 36 of the Small Business Act through the Veterans Benefit Act of 2003.⁵ To qualify as a SDVOSB, SBA requires that the small business concern is at least 51 percent owned by one or more SDVs or, in the case of any publicly-owned business, not less than 51 percent of the stock is owned by one or more SDVs.⁶ In addition, SBA requires that the SDV, or in the case of a permanent or severe disability, the spouse of permanent caregiver of such SDV, must manage the daily business operations of the business and must hold the highest officer position within the business.⁷ To become certified, SBA utilizes a self-certification process, meaning that no front-end verification process is currently required. However, individual contracting officers may require documentation before the award of a contract and awards are subject to protest.⁸ The SBA writes regulations governing business size and regulatory definitions concerning ownership and control affecting self-certified SDVOSBs. Protests regarding SDVOSB status for self-certified firms are directed to the Office of Hearing and Appeals (OHA).

2. Department of Veterans Affairs

The SDVOSB procurement program at the VA was established by Congress through the Veterans First Contracting Program (Vets First) in the Veterans Benefits, Health Care, and Information Technology Act of 2006.⁹ Unlike SBA, the VA does recognize veteran-owned small businesses (VOSBs) for the purposes of certification,¹⁰ and in awarding small business contracts, Vets First places the highest priority on SDVOSBs, followed by VOSBs.¹¹ To qualify for Vets First, businesses must certify through the VA's Center for Verification and Evaluation (CVE). CVE mandates a more rigorous certification process than SBA, requiring a small business to prove its claimed status before competing for contracts. Once VOSBs and

⁴ *An Examination of Continued Challenges in VA's Vets First Verification Process: Joint Hearing of the Subcomm. on Contracting and Workforce, Cmte. on Small Bus. and the Subcomm. on Oversight and Investigations, Cmte. on Veterans' Affairs*, 114th Cong. (2015); *Consistently Inconsistent: Challenges for Service-Disabled Veteran-Owned Small Businesses: Joint Hearing of the Subcomm. on Contracting and Workforce, Cmte. on Small Bus. and the Subcomm. on Oversight and Investigations, Cmte. on Veterans' Affairs*, 113th Cong. (2013).

15 U.S.C. §657(f).

⁶ Small Business Act, § 3(q)(2)(A); 38 U.S.C. § 8127(k)(2).

⁷ Small Business Act, § 3(q)(2)(A).

⁸ Small Business Act, § 36(d).

⁹ codified at 38 U.S.C. §§8127-8128.

¹⁰ *Id.*

¹¹ 38 U.S.C. § 8127(i).

SDVOSBs are certified by VA, they are registered in a database maintained by the VA Secretary.¹² Like SBA, CVE requires that the veteran or SDV have direct ownership of at least 51 percent of the business, manage the daily business operations, and hold the highest officer position.¹³ However, the extension to a spouse or caregiver in the case of a permanent or severe disability is not included in statute for VA.¹⁴

II. National Defense Authorization Act Reforms

The National Defense Authorization Act for Fiscal Year 2017 (NDAA)¹⁵ took the first step in alleviating much of the confusion surrounding the two programs by directing SBA and VA to unify the definitions applicable to both of the SDVOSB programs and moving regulatory responsibility for defining ownership and control from VA to SBA.¹⁶ It also made the SBA's OHA responsible for hearing all related protests and appeals.¹⁷ Prior to this, appeals of CVE protest decisions were decided by CVE, the governmental body that made the initial decision, which many felt was a conflict of interest and a denial of the due process of law. The NDAA further directed the VA and SBA to issue joint regulations conforming with these statutory changes.

As a result, the VA issued a proposed rule concerning ownership and control of SDVOSBs on January 10, 2018.¹⁸ SBA issued their proposed rule on January 29, 2018.¹⁹ On March 30, 2018, SBA issued a final rule amending the rules and practices for OHA overseeing CVE-issued SDVOSB and VOSB protests to become effective on October 1, 2018.²⁰ A final rule concerning the definitions for SDVOSBs and ownership and control regulations has not yet been issued.

III. Administration's Reform Plan

On June 21, 2018, the Administration released its reform plan and reorganization recommendations, "Delivering Government Solutions in the 21st Century."²¹ Regarding small business contracting programs, the report cites "inconsistent standards and processes for eligibility and participation" and suggests streamlining the small business programs.²² The report advocates for a "one-stop shop" for federal contracting certifications for both the

¹² 38 U.S.C. § 8127(f).

¹³ 38 U.S.C. § 8127(l). Like SBA, VA also recognizes any publicly-owned business in which not less than 51 percent of the stock is owned by one or more SDVs.

¹⁴ 38 C.F.R. §74.1. The extension is addressed in VA's regulations.

¹⁵ Pub. L. No. 114-328, STAT. 2000.

¹⁶ Pub. L. No. 114-328, 130 STAT. 2658 – 2660.

¹⁷ Pub. L. No. 114-328, 130 STAT. 2660.

¹⁸ 83 Fed. Reg. 1203.

¹⁹ 83 Fed. Reg. 125.

²⁰ 83 Fed. Reg. 13,626.

²¹ GENERAL SERVICES ADMIN. AND THE OFFICE OF MANAGEMENT AND BUDGET, DELIVERING GOVERNMENT SOLUTIONS IN THE 21ST CENTURY (June 2018), available at <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>.

²² *Id.* at 93.

participating small businesses and the federal agencies seeking to meet their small business contracting goals.²³

SBA has already been taking steps to streamline the rules governing and administration of other small business contracting programs. The website certify.sba.gov currently certifies 8(a) economically disadvantaged small businesses and HUBZone small businesses. Women-owned businesses, like SDVOSBs, are currently using a self-certify system, but SBA aims to eventually mobilize both certification programs through the website as well.

IV. Conclusion: Government-Wide Verification for SDVOSBs

It has been a longtime goal of Congress to achieve one verification system for SDVOSBs government-wide, simplify the verification process for small businesses, and increase federal contracting opportunities. As such, the Small Business Committee and the Committee on Veterans' Affairs have begun drafting legislation to create a government-wide verification system for SDVOSBs. The legislation would also abolish the CVE and permanently house the verification program at SBA. However, a number of questions still exist for SBA, VA, and the Committees, mainly surrounding funding for the program at SBA and timing for its enactment.

Currently, the CVE operates with an annual budget between \$15 and \$20 million.²⁴ That figure covers the 10,340 verified SDVOSBs, not the nearly 18,000 self-certified SDVOSBs. In comparison, SBA spends \$1.5 million annually to manage the Woman Owned Small Business program (which is also currently self-certified), \$9.9 million annually on the HUBZone program (for businesses located in economically-depressed areas), and \$16.6 million annually to assist small businesses of all types to obtain prime contracts.²⁵ However, SBA does have many resources that VA does not in order to effectively operate this program. SBA's Office of Veterans Business Development educates veterans in entrepreneurship and the SBA personnel working in these offices are well situated to educate SDVOSBs on the process of verification, and potentially to perform the verifications. In addition to the CVE and its parent organization, the Office of Small and Disadvantaged Business Utilization, which is relatively small, VA does not have any small business-focused organizations. SBA also has a substantial network of small business development centers and regional offices located throughout the country. VA CVE is based in Washington, DC and does not have any field offices.

This hearing seeks to answer a number of the questions regarding the progress made by both agencies in the transfer of the verification process, options available for funding, and a timeline for enactment, all while ensuring proper Congressional oversight.

²³ *Id.* at 94

²⁴ CVE is funded by the VA Supply Fund and does not have a line item in their budget.

²⁵ SMALL BUS. ADMIN, FY 2019 CONGRESSIONAL JUSTIFICATION AND FY 2017 ANNUAL PERFORMANCE REPORT (January 2018), p. 18.