

# THE VOSB SUMMARY: NEWS YOU NEED TO KNOW

## (A Quarterly Publication for VOSBs: Winter Holiday Edition)\*



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### Future Government Shutdowns: Lessons Learned (?)

In wake of the recent 16-day Government shutdown, lawmakers are fighting to ensure that VA benefits such as disability compensation, pension, and educational assistance are more insulated in the case of a repeat event.

Many people seem to think that the VA is completely protected from a Government shutdown. This isn't entirely true. In 2009, a law was passed to fund VA healthcare one year in advance. This means that when the government shuts down, veterans don't have to worry about losing a doctor's appointment or not being able to obtain a prescription.

As it relates to other VA benefits, however, these can be in jeopardy if a government shutdown is prolonged. With the recent shutdown, the VA relayed that if the shutdown had lasted longer than three weeks, it might not have had enough money to cover November benefits. The shutdown also brought disability compensation claims processing to a screeching halt, resulted in the close of VA hotlines, and reduced services at military bases.

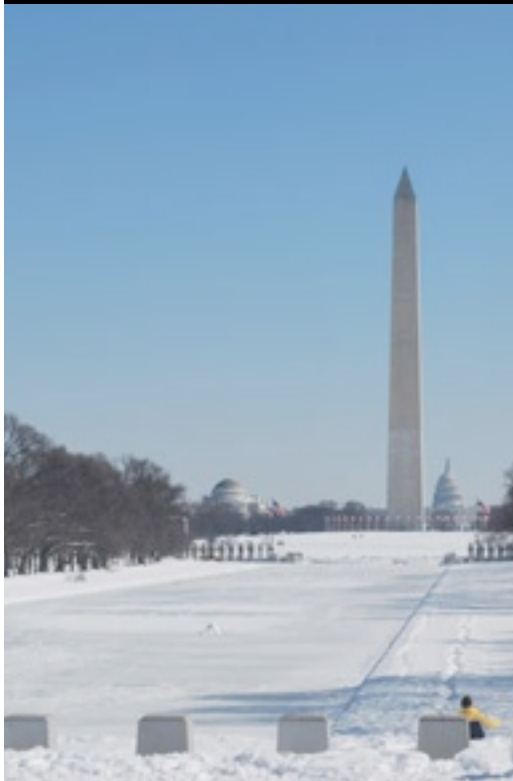
The reason for this boils down to one term: "non-essential." If a service is non-essential, it can be cut during a government shutdown. This is because the government doesn't have legal

authority to spend money on services not deemed "essential" during a shutdown.

Because of the delay in resolving the Government shutdown, many veterans were stressed, to say the least. They rely on their compensation and pension benefits, and the prospect of these being in jeopardy is extremely concerning because it affects their ability to meet their basic needs.

Prompted by veterans service organizations (and basic common sense), lawmakers are seeking to extend safeguards to disability compensation, pension, and educational assistance that are similar to those applied to healthcare. The Putting Veterans First Funding Act of 2013 (HR 813) would require Congress to fully fund the VA's discretionary budget a year ahead of schedule, ensuring that all VA services will have timely, predictable funding in an era where continuing resolutions and threats of government shutdown are all too frequent.

As stated by the House Committee on Veterans' Affairs, this bill is important because it helps fulfill a simple promise. Veterans have paid their debt to our nation. In return, our nation promised them care and benefits to help readjust back to civilian life. This is one promise we cannot break.



## CONTRACTORS EXPERIENCE DIFFICULTY IN VETBIZ REVERIFICATION PROCESS

Contractors who are reverifying their VetBiz status at the two-year mark are finding this isn't as easy as the CVE made it out to be. While many contractors are eligible for "simplified renewal - " a process where contractors reverify by confirming through a series of questions that no changes to the business have occurred - contractors with changes to report have run into obstacles. These are due to an upgraded system causing technical glitches and a lack of detailed protocol for reporting changes.

I'm not implying that contractors need to worry about having their VetBiz status taken away. I'm simply saying they need to be cognizant of the fact that they're participating in a fledgling program and should reverify as soon as they receive notice that their status will expire in 120 days.

You worked hard for your status. Don't do anything to jeopardize it!

## VA Errors Force More Vets Into Appeals on Disability Claims

In Spring of this year, the VA announced an initiative to reduce the backlog of almost one million pending initial disability claims. The VA has self-generated a lot of press on its progress, announcing milestones and releasing details on overtime and long hours worked by Regional Office (RO) claims adjusters.

When this initiative was announced, I immediately thought of the risk of error. If VA claims adjusters are working long hours and are under pressure to meet a quota, the natural result is that accuracy suffers.

Sure enough, veterans service organizations have confirmed the high error rates of claims resolved at this level. Veterans are receiving the decisions they've been waiting for, but

many decisions have been either denials or insufficient ratings. Accordingly, in recent months, the number of appeals has skyrocketed. This undermines the goal of the disability backlog initiative. Veterans want a timely decision, but they want it to be accurate.

It is also easy for the VA to play with the numbers. Only claims where a decision has never been rendered count as "initial claims." Appealed claims are not included in this number...and these claims can literally take years to resolve. (Right now, it takes on average 42 months to get a decision from the Board of Veterans' Appeals). Accordingly, if the VA says it is reducing its backlog, it is only counting those claims it has "expedited" to reach an initial decision to remove them from its numbers. Other factors aren't taken into account or publicized - whether the

decision is favorable, or accurate, or whether the veteran has appealed. And who knows? if the decision hadn't been pushed through as part of the backlog initiative, perhaps more time would have been invested in it and the decision would have ultimately been more favorable to the veteran.

Further, this initiative comes at a cost to other departments. A representative at the Indianapolis RO relayed to me that during the backlog initiative, appeals are not being processed. Since many, many disability compensation claims end up in the appeals bucket, this impact is huge. These are veterans who feel (often rightly) that they have not received the compensation they deserve.

I'm curious to see where the backlog initiative is a few months from now. Stay tuned for the next newsletter...

## **VA ABRUPTLY CANCELS CONTRACT CRUCIAL TO VETBIZ APPLICATION PROCESSING**

On November 27, the *Washington Business Journal* relayed that the VA had ended a three-year contract with Alexandria company, Ardelle Associate, a federal contractor that has been processing applications submitted to the Center for Veterans Enterprise (now "Center for Verification and Evaluation").

The current VA contract held by Ardelle had already been extended twice since September 2010. The VA had planned to extend it a third time, through the end of February to allow time to compete a follow-on contract but - for reasons unexplained - did not. Ardelle President Art Forcey was told on November 22 that the contract would extend until December 18th. Four days later, he was told it would end December 2nd.

Now that the contract is in limbo, the VA's plan is to put into place a short-term contract for five months until a long-term solution can be implemented.

The work will be competed under the VA's IPT blanket purchasing agreement, giving an opportunity to bid

to about half a dozen companies with no current role processing applications. A solicitation was released earlier this week, with bids due only a week later (December 3). The VA somehow expects that it will be able to kick off a new contract by December 6.

In an effort to potentially speed up the process of filling the contracted positions, the names of Ardelle employees supporting the current contract were provided to the IPT contracting officer. That contracting officer will "make a determination about what is appropriate and legal to forward to offerors and awardees."

The problem with this, for Ardelle, is that if these workers jump ship to work for this short-term contractor, when the time comes to bid on a long-term contract, Ardelle will be missing employees necessary to be a viable competitor. Mr. Forcey shared with the *Washington Business Journal* that he thinks this move is political - to keep Ardelle out of the picture for the re-compete. As he said: "I think delays in getting a new competition started caused infighting about what to do and people took some heat for extending our contract. But this wasn't the right way to go."

This development has numerous implications, none of them positive. First of all, the VetBiz application process is not an enjoyable experience. Many contractors have had to apply numerous times, often due to unclear criteria and errors committed by evaluators. Part of this can be attributed to the fact that the process is still developing...and now the VA is going to potentially bring in an entirely new team of evaluators? They will have to be trained, which can (and *should*) take weeks or months.

Second of all, this may delay application processing. Given the gap in contract performance and the training necessary for new contract workers, VetBiz application processing will slow or halt in the weeks to come. For some businesses waiting on verification for a pending contract, this wait may impact the financial viability of their businesses.

I have a feeling that the *Washington Business Journal* grabbed hold of this story because it was contacted by Ardelle. If so, kudos to Ardelle, as this kind of press could pressure the VA to extend its contract and eliminate any gap in contract performance and subsequent delay in processing VetBiz applications.



## CVE FLEDGLING PROCESSES REPLACE REQUESTS FOR RECONSIDERATION

Fairly recently, the CVE instituted two different processes as alternatives to requests for reconsideration: pre-decision and pre-determination. The **pre-decision process** is reserved for applications with eligibility issues, such as a lack of full-time control by the veteran or dependence on a non-veteran entity. Rather than receive a denial, the applicant firm is allowed to withdraw.

In the event the CVE reviews an initial application and finds only “minor correctable errors,” the applicant can participate in the **pre-determination process**. Basically, this means the applicant has five days to fix its corporate documents and resubmit.

While these new processes are a big step to improving the VetBiz application process, they are still in the incubation stage. Read one veteran business’s Halloween horror story at: <http://legalmeetspractical.com/2013/10/31/vetbiz-pre-determination>.

### **Kingdomware Decision Kicked Up to Federal Circuit**

Many veteran-owned small businesses (VOSBs) are aware of the fairly recent *Aldevra* and *Kingdomware* decisions. The GAO held consistently in 2012 that pursuant to the Veterans Benefits, Health Care, and Information Technology Act of 2006 (the “Act”), the VA must make an award to a VOSB if the “rule of two” is met - if two or more responsible VOSBs can submit an offer at a fair and reasonable price.

On several occasions, contractors Kingdomware and Aldevra brought protests before the GAO,

citing the Act and arguing that the VA failed to follow the requisite “rule of two.” Specifically, the contractors averred that the VA failed to perform market research to determine whether two or more VOSB/SDVOSB concerns could satisfy the requirements of numerous solicitations and/or failed to set contracts aside for such concerns when market studies indicated that two or more such companies existed. Instead, in multiple instances, the VA opted to simply select contractors from the Federal Supply Schedule. The contractors argued that doing so violated the Act.

The GAO agreed with the contractors and sustained

protests brought on these grounds. When the protest was brought to the U.S. Court of Federal Claims, however, the Court held that the Act was “goal setting” in nature, and that the VA is not required to set aside such awards to VOSBS/SDVOSBs. This is despite the fact that the language used is mandatory in nature: “a contracting officer *shall...*”

Now, however, contractors have appealed this decision to the Federal Circuit, where the matter presently sits. Veterans Service Organizations such as the American Legion have joined the fight by filing *amicus curiae* briefs, and the new fight begins.



## Spotlight on Fraud: Another Rent-a-Vet

In November, Max Tafoya, the owner of an Albuquerque-area construction company, as well as his son-in-law Tyler Cole, pleaded guilty to defrauding the VA set-aside program. The lesson here? Don't use your step-brother as a rent-a-vet.

In his plea agreement, Tafoya admitted that between 2009 and 2010, Tafoya Construction was awarded five contracts valued at an aggregate amount of \$10,984,189 that required the company to hold SDVOSB status. Tafoya was a veteran, but he wasn't service-disabled. He obtained the lucrative contracts by paying his step-brother, Andrew Castillo, a service-disabled veteran, for use of his name and service-disabled status in its bids for SDVOSB contracts.

Tafoya acknowledged that he asked Cole to complete certifications stating that Tafoya Construction was a SDVOSB and to submit them to the VA. Tafoya also admitted to drawing up a number of false documents (on which he forged Castillo's signature) designed to create the appearance that Castillo was the majority owner and controller of Tafoya Construction, when in fact

he did not own or operate the company (and lived in another state).

According to Tafoya's plea agreement, in Feb. 2011, Tafoya lied to a VA investigator to support the fraudulent claim that Tafoya Construction was a SDVOSB. Tafoya admitted making the following false statements to the investigator: (1) that Castillo paid \$100,000 to purchase 51% of Tafoya Construction; (2) that Castillo worked in Tafoya Construction's Albuquerque office; (3) that Castillo was working at a VA construction site in Santa Fe that day; and (4) that Castillo personally signed the VA contracts and bonding paperwork on the SDVOSB contracts awarded to Tafoya Construction. Tafoya also admitted to meeting with Castillo for the purpose of creating fraudulent documents in an attempt to cover up their scheme. Tafoya later submitted these fraudulent documents to a federal grand jury in July 2011.

In his plea agreement, Cole admitted to serving as the manager of Tafoya Construction from 2008 to 2011, and participating in Tafoya's illegal scheme.

As a result of Tafoya's and Cole's fraudulent scheme, the VA awarded Tafoya Construction five contracts

for work at different national cemeteries.

Tafoya and Cole remain on conditions of release pending their sentencing hearings, which have yet to be scheduled.

Castillo, the service-disabled veteran who made this plot possible, entered a guilty plea in Oct. 2011, to a conspiracy charge. He remains on conditions of release pending his sentencing hearing, which has yet to be scheduled.

Acting U.S. Attorney Steven C. Yarbrough said, "Contracts under the SDVOSB Program are supposed to go to small businesses that are actually owned by service-disabled veterans, and not to imposters who break the rules and scheme to beat the system. This prosecution is part of a nationwide effort to protect service-disabled veterans who own small businesses by tightening controls to prevent fraud and abuse. Today, Max Tafoya and Tyler Cole are being held accountable for abusing a program that seeks to fulfill our moral obligation to provide disabled veterans with benefits designed to ease the losses and disadvantages they have incurred as a consequence of disabilities they sustained while serving our country."



## CORRUPTION IN CLEVELAND: FORMER VA DIRECTOR CHARGED WITH DEFRAUDING VA THROUGH BRIBERY, FRAUD AND KICKBACKS

William Montague, the former director of the Louis Stokes VA Medical Center in Cleveland, pleaded not guilty in early November to charges contained in an indictment alleging criminal involvement with a New York-based design firm.

The 65-count expanded indictment details Montague's acts of providing inside information to a company seeking more than \$1 billion in VA contracts at the same time Montague was secretly working as the company's consultant for \$30,000 a year and soliciting tens of thousands of dollars in gifts and cash.

The original indictment against Montague accused him of accepting bribes and kickbacks from crooked electrical contractor Michael Forlani in exchange for confidential information that helped Forlani receive VA contracts. Forlani is currently serving an eight-year sentence in federal prison for racketeering, bribery and other corruption-related crimes - but none involving the Cleveland VA project.

## GAO Scrutinizes Qualifications of VA Accredited Reps

Many veterans pursuing disability compensation claims before the VA rely on accredited representatives to help them navigate their way through the process. Because of the critical role played by these individuals, the GAO conducted a study to ensure that the VA's Office of General Counsel adequately ensures that these individuals have good moral character and program knowledge.

The GAO examined: (1) the extent to which VA's procedures meet program requirements; and (2) any obstacles that may impede the VA's efforts to implement its accreditation process. In general, the GAO report found these procedures insufficient.

Most notably, the GAO found that the VA relies on limited self-reported information to determine whether applicants have a criminal history or other background that might call their character into question. Further, the VA does not ensure that that reps have adequate program knowledge. VA's initial training requirements are minimal and the VA does not monitor whether reps meet additional program requirements.

To correct these issues, the GAO provided general recommendations to the VA: that it "explore options for strengthening knowledge requirements and addressing emerging threats, improve its outreach, and determine the resources needed to adequately carry out accreditation." Access the report at: <http://www.gao.gov/products/>

## [GAO-13-643](#).

As an accredited VA attorney, I concur that improvements are necessary. Much of the training and education I receive to assist me in defending disability claims is done at my own initiative, not per VA mandate. The disability claims process is nuanced, and representatives (and claimants) would benefit if more training was required.

Further, the "self-policed" nature of the representative pool does not adequately screen us. Random background checks would decrease the risk of misrepresentation, and an online reporting system for veterans to report incompetence would hold us accountable. And we should be held accountable. Veterans rely on us!



## SBA EXPRESS LOAN FEES WAIVED FOR VETERANS

Veterans will get a break on Small Business Administration loans beginning Jan. 1.

The SBA announced it will charge no upfront borrower fees on loans of up to \$350,000 made to veterans through its SBA Express program. This program is a popular source of smaller SBA 7(a) loans because of its streamlined paperwork and quick turnaround times.

Exempting veterans from paying fees on these loans "is part of SBA's broader efforts to make sure that veterans have the tools they need to start and grow a business," said Acting Administrator Jeanne Hultit.

## Piggy the Pug: I'm a Service Dog, Too!

*[I've run the numbers, and the following blog had more search hits than any other article I wrote in the last six months. And it's no surprise. Everybody loves puppies...]*

This summer, Robert Ragels, a veteran of multiple tours in the Persian Gulf, was denied access into Texas state legislature chambers by state troopers when he tried to enter with his service pug, Piggy. He was eventually allowed to enter after a state senator's aide helped, but the experience left him frustrated.

"A person like me that looks normal and I bring in a dog, they think, 'well that can't be right,' said Ragels. "When something like this happens it just drives me absolutely crazy because I just want to be the same, that's all I want."

It's ironic where the incident took place: where a Texas bill had been signed to put the state's laws regarding service animals more in line with the Americans With Disabilities Act (ADA).

Ragels has had Piggy for two years and trained with her through Train a Dog, Save a Warrior, a non-profit that train service dogs for veterans with post-traumatic stress disorder (PTSD).

"I understand she's not a big German shepherd carrying my stuff around because I can't walk or whatever but regardless she is a service animal," he said.

This incident illustrates that service dogs do not fit a cookie cutter definition, especially when it comes to veterans suffering from non-physical injuries. Dogs that are not "traditional" service dogs can provide valuable therapy and companionship to veterans suffering from the effects of disabilities such as PTSD (although providing emotional support alone does not qualify a dog as a "service dog" under the ADA).

Under the ADA, Ragels shouldn't have been required to jump through hoops to bring Piggy inside. Under the ADA, if it is not obvious that a dog is a service animal, a public entity or a private business may ask only two questions: 1) Is the animal required because of a disability? and 2) What work or task has the animal been trained to perform? Thus, the state troopers should have asked Ragels these questions, and, when reasonably satisfied, permitted entry.

Also, the state troopers could not have asked Ragels certain questions. Under the ADA, a public entity or private business may not ask about the nature or extent of an individual's disability. Nor may it require documentation, such as proof that the animal has been licensed as a service animal; or require the animal to wear an identifying vest.

While these requirements are etched into federal law, not all businesses and public places "in the moment" know what to do. Business owners and officials should take steps to learn the ADA's requirements. This way, they can spare veterans with service dogs embarrassment - and, in addition, prevent exposure to a potential lawsuit.





## Drastic House Bill Asks VA to Hand Over SDVOSB Verification to SBA

On August 1, House Small Business Committee Member Rep. Mike Coffman (R-CO) introduced the Improving Opportunities for Service Disabled Veteran-Owned Small Business Act of 2013 (H.R. 2882). The main thrust of the bill is a show-stopper: it requires the Department of Veterans Affairs (VA) to relinquish control over the verification of SDVOSBs to the Small Business Administration (SBA). In fiscal 2012, 42 percent of the 4,500 applicants were denied verification as SDVOSBs by the VA's Center for Verification and Evaluation.

The measure is a direct response to an outcry from the veteran community, which has accused the VA of having a "gotcha" mentality with a program created to weed out fraud...but ultimately affecting the wrong businesses. While targeted at pass-throughs and rent-a-vet type companies, the effect is that legitimate small businesses are frozen out of opportunities and in some cases branded as shams.

The bill would transfer to the SBA control and administration of the Veterans First Program — which verifies VOSB and SDVOSB status for the purposes of bidding on VA contracts.

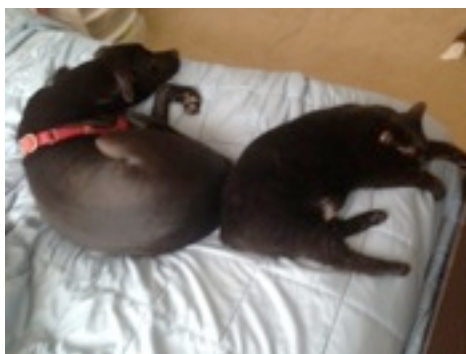
A copy of the bill can be accessed at: [http://smallbusiness.house.gov/uploadedfiles/improving\\_opportunities\\_for\\_service-disabled\\_veteran-owned\\_small\\_businesses\\_act\\_of\\_2013.pdf](http://smallbusiness.house.gov/uploadedfiles/improving_opportunities_for_service-disabled_veteran-owned_small_businesses_act_of_2013.pdf).

To track the bill's progress in Congress, go to: <https://www.govtrack.us/congress/bills/113/hr2882>. According to Congress' tracking system, it is still in the Congressional committee it was assigned to when introduced. It currently has a 67% chance of getting past its committee and a 10% chance of becoming law.

*THANKS FOR READING!*

*Below: Archer, the Legal Meets Practical, LLC Mascot*

(also, the cat)



## LEGAL MEETS PRACTICAL, LLC

### ABOUT

My legal practice, based in Arlington, Virginia, is designed to help growing VOSBs, particularly with the VetBiz verification process. I come from a family of both veterans and small business owners, and I understand the value in legal counsel who can clearly communicate while providing effective legal solutions. Hiring a lawyer should simplify your life, not complicate it.

### MISSION STATEMENT

My mission is to provide accessible, high-quality legal services to small business owners and to veterans.

### BLOG

If you found the information in this newsletter helpful, sign up for my weekly blog at: <http://www.legalmeetspractical.com>.

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