

# THE VOSB SUMMARY: NEWS YOU NEED TO KNOW

## (A Quarterly Publication for VOSBs)\*



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## Raise Your Voice! VA Seeks Comments for Proposed Amendments to VOSB Regulations

On May 13, the Office of Small and Disadvantaged Business Utilization (OSDBU) announced that it is reviewing its regulations governing the Department of Veterans Affairs (VA) Veteran-Owned Small Business (VOSB) Verification Program (referred to as "Vetbiz"). OSDBU intends to improve the regulations to provide greater clarity, to streamline the program, and to encourage more VOSBs to apply for verification. By providing advanced notice of this proposed rulemaking, OSDBU seeks comments on how best to approach this undertaking. If you are a veteran business owner and have something to say about VetBiz, make sure your comments are received by the VA by the deadline of July 12!

In amending the regulations governing VetBiz, the VA seeks to find the appropriate balance between preventing fraud in the Veterans First Contracting Program and making it easier for more VOSBs to become verified. So far, this has proved difficult - fraud has received much attention due to Government Accountability Office reports on the subject, while legitimate veteran-owned small businesses have not received verification due to the cumbersome (and often confusing) VetBiz application process.

Accordingly, to find this balance, the VA is considering ways to improve the VA VOSB Verification Guidelines. The VA has already collected suggestions from a wide range of sources for changes to the regulations, and has compiled them into a single document available on the Vetbiz site (Compilation Document).

From my professional relationships with veteran business owners, as well as participation in veteran advocacy groups, I know that this is an opportunity many veteran business owners have waited for. Especially if you have been through the VetBiz process and have suggestions for ways to simplify the process for other veterans, I urge you to submit constructive comments that will help fulfill the purpose of the Veterans First Contracting Program: to help veteran-owned businesses. Such comments may be submitted in writing through [www.Regulations.gov](http://www.Regulations.gov); or to the VA by mail or hand-delivery.

For more information and links to the notice of proposed rulemaking, the existing regulations, and the Compilation Document, access the VA's press release at: <http://www.va.gov/osdbu/pressreleases/news20130513.asp>.



## VETERANS BENEFITS MANAGEMENT SYSTEM (VBMS) SCHEDULED FOR COMPLETION AT END OF 2013

As of January 2013, 18 VA Regional Offices have switched over to the digital, paperless system (VBMS) for disability compensation claim processing. According to the VA, the VBMS is a way for it to cut down the average processing time for claims, on average from 240 days to 119.

The \$537 million system is not without its problems. In order to go completely paperless, the VA will have to scan and extract data from the current paper claims. (97% of all claims received by the VA are in paper form, as are all of the various forms of information necessary to develop the claims). A detailed plan for this process has not yet been issued.

Also, many veterans have issues understanding the meaning of entries on the electronic system. Older veterans may not even be interested in the VBMS, preferring instead to process and review their claims through a strictly paper system.

According to the VA, it is on track to have the VBMS implemented in all ROs by the end of 2013. But implementation, and workability, are two very different things.

### The Fully Developed Claims Program: A Lesson for VSOs

On May 21, the Department of Veterans Affairs (VA) and two of the largest veterans service organizations (VSOs) announced a partnership designed to move claims quickly through the new Fully Developed Claims (FDC) Program. VSO members have gone to VA Regional Offices (ROs) to identify best practices for FDCs and to receive training.

Every year, the Disabled American Veterans (DAV) and the American Legion assist thousands of veterans in applying for disability benefits. Now, with the introduction of the FDC Program, it is crucial these VSOs are trained to properly present claims under this Program.

A claim is considered to be "fully developed" when a veteran submits all available

supporting evidence, like private treatment records and notice of federal treatment records, when he files a claim. He must also certify he has no more evidence to submit. The VA can then process the claim in half the time it takes for a traditionally-filed claim.

While the FDC Program sounds attractive, submitting a claim through it does not necessarily ensure quick resolution. If a claim is not submitted properly, it is plucked from the FDC Program and tossed into the standard claims queue. Because of that extra step, the veteran ends up waiting even longer for a decision than he would have if he had submitted his claim through the standard claims queue in the first place. Thus, it is important the VA works with VSOs to make sure they properly present claims through the FDC Program. Veterans will rely on them to

know the Program's requirements, and if a VSO steers the veteran in the wrong direction, the veteran suffers.

The VA's partnership with these VSOs is part of the VA's Strategic Plan to Eliminate the Compensation Claims Backlog (the "Plan"). Published in January 2013, the Plan outlines the VA's intention to "end the backlog by 2015 and process claims within 125 days with 98% accuracy."

Considering there are nearly one million pending claims, and some currently ROs take up to a year to process an initial claim, one wonders how the VA can stand by this goal with a straight face.

Still, it's good to know the VA is working with the VSOs to make sure the FDC Program claims are done properly and therefore out of the system. After all, a broken system can't be fixed all at once.

## VA Implements Initiative to Expedite Oldest Disability Claims

On April 19, the Department of Veterans Affairs (VA) announced it is implementing an initiative to expedite disability compensation claims that are over one year old. VA claims raters will make provisional decisions, first on the oldest claims in inventory, as well as order and expedite any medical examinations necessary to decide claims. Veterans will have one year from the date of a provisional decision to provide additional evidence in support of their claim. If the VA determines the additional evidence warrants an increase in the provisional rating, that increase will be backdated to the date of the original claim.

As part of its effort to end the backlog, on May 15 the VA announced that it is mandating overtime for claims processors in its 56 regional offices. This surge will be implemented through the end of fiscal year 2013.

While the news of the initiative is wonderful news, it is important that veterans know it does not apply to all claims. Claims pending in appeal to the Board of Veterans' Appeals, or on remand, are not included in the initiative.

Also, it is important to note that this initiative will impact wait times for newer claims. As noted in a VA press release, "the focus on processing the oldest claims will cause the overall measure of the average length of time to complete a claim - currently 286 days - to skew, rising significantly in the near term because of the number of old claims that will be completed." The VA contends that once the backlog is cleared and more claims are processed electronically, the processing time will decrease significantly, but it has not provided a time frame for this.

Last, the push to process the vast amount of backlogged claims quickly may result in claims being resolved inaccurately. VA claims adjusters are under enormous pressure to meet quotas by issuing provisional decisions

quickly. This pressure, combined with working long overtime hours, may result in a higher error rate for these claims adjusters.

In the months and next few years to come, I'm curious to see the effects of this initiative, relating to both the wait times for newer claims and the appeal rate and submission of new evidence for provisional decisions. The wait times on other claims may be mitigated due to the overtime mandated on regional offices and other programs such as the Fully Developed Claims Program. I do, however, think the VA may be setting itself up for some pain in the future as it relates to the backlog initiative. If the error rate is high, veterans will appeal; and you can count on veterans who have waited years for a decision to submit additional evidence in the hopes their rating may be increased. That essentially calls for double time for the ROs - time to spend on the provisional decision, and time to spend on reviewing additional evidence.

Stay tuned...



## CVE REVERSES POSITION ON TRANSFER RESTRICTIONS

Reacting to the *Miles* decision (the February CoFC decision that held a right of first refusal transfer provision was permissible under the VA's VOSB verification guidelines at 38 CFR Part 74), the CVE has reversed its position on transfer restrictions. This is reflected in a recently-posted verification assistance brief posted on the VetBiz website.

In a May news release, the CVE announced a "priority" reconsideration process for businesses denied verification *only* on this ground and prior to March 1, 2013. These companies should have a determination within 30 business days. Access the press release at: <http://www.va.gov/osdbu/pressreleases/news20130503b.asp>.

### VetBiz Now Offers Second Chance for Small Flaws

For the first time, the Center for Veterans Enterprises (CVE) now offers veteran business owners a true second chance when it comes to applying to its VetBiz Vendor Information Pages (VIP) Program. This second chance, however, does not apply to all applicants.

Beginning on May 1st, the CVE allows applicants to correct *minor* deficiencies before an initial denial is issued. This opportunity is aimed at companies that would not be verified due to a single point of failure in their applications, such as an impermissible provision in an operating agreement. These companies will receive a preliminary finding before a

determination letter of eligibility is issued. They will then have 48 hours to respond with their intent to correct and resubmit the documents within a specified timeframe.

This is the most recent initiative designed to improve the verification process, following the recent publication on the VetBiz website of a number of new Verification Assistance Briefs. The CVE expects this to greatly reduce the number of its initial denials and subsequent requests for reconsideration. The process will also increase wait times in general because the CVE officials will have to look at some applications twice.

It is also unclear as to how long it will take for problematic applications to be resolved. What is the process for pulling these applications?

And once the correction is received, does it go to a separate queue than non-reviewed applications? Regardless of the answers to those questions, however, the additional wait will likely still be less time than that required to process a request for reconsideration (around four months) or a re-application (around seven months).

The overall success rate will also be positively impacted. A second chance before denial will make a huge difference, as many veteran business owners complain of being denied VetBiz verification due to a minor issue they weren't given the opportunity to correct.

We all know the VetBiz Program is still undergoing growing pains. Hopefully this new second chance will push it closer towards full development.



## VA SINKS 22 MILLION INTO VETERAN HOMELESS PROJECT

The VA is in the middle of a five-year initiative to end veteran homelessness by 2015. Under its Grant and Per Diem Program, the VA provides community-based organizations with funding to develop and operate transitional housing and supportive services for homeless veterans. The program has over 15,000 operational transitional housing beds nationwide. Now, approximately \$22 million in funds will be available to current grantees, with the expectation the money be used to rehabilitate their current project locations. A maximum of \$250,00 will be available per award.

### Jail Time for Liars: Stolen Valor Act Becomes Law

This June, President Obama signed the new version of the Stolen Valor Act into law. This criminalizes the act of lying about having earned certain military honors.

Not every combat award is covered, but the ones most worn by wannabe heroes are. These include the Medal of Honor, service crosses, Silver Star, Purple Heart, and combat badges such as the Combat Infantryman's Badge, Combat Action Badge, Combat Medical Badge, Combat Action Ribbon and Combat Action Medal. The maximum punishment under the bill is a \$100,000 fine and up to one year in jail for each offense.

This comes after the United States Supreme Court struck down a 2005 version of the Stolen Valor Act, in *Alvarez v. U.S.* (2012). There, a man was convicted under the Stolen Valor Act for claiming he had received the Medal of Honor. In a 6-3 decision, the Supreme Court held that the Stolen

Valor Act was an unconstitutional abridgment of free speech. In penning the majority opinion, Justice Kennedy expressed his concern that upholding the law would permit the government to "start a list of subjects about which false statements are punishable."

The new Stolen Valor Act was written to be less sweeping than its predecessor, mitigating constitutional challenge by targeting fraudulent representation of military service for profit.

When I learned about the Stolen Valor Act, I was an instant supporter. As veteran small business owners know, both the Small Business Administration and the Center for Veterans Enterprise have encountered issues with individuals lying about veteran status in order to obtain federal government contracts. I hoped that the publicity surrounding the Stolen Valor Act, and its penalties, would deter individuals from misrepresenting veteran status. There's nothing like the

possibility of a jail sentence to inspire honesty.

Unfortunately, upon reading the actual bill, I realized its language criminalizes lying about medals and honors only, not veteran status in and of itself. This means that individuals who misrepresent veteran status to obtain federal government contracts are not covered by the Stolen Valor Act. I would like to know more about what the legislative history of the Stolen Valor Act says on this topic, because it was likely addressed. As the nature of the Stolen Valor Act addresses military decorations, perhaps this was beyond the scope of the bill. At any rate, the Stolen Valor Act should be celebrated for protecting the honor and integrity attached to military accolades.

For further reading, those of you reading an electronic version of this newsletter may access the Stolen Valor Act [here](#).



## VA ANNOUNCES NATIONAL VETERANS SMALL BUSINESS CONFERENCE IN ST. LOUIS

The National Veterans Small Business Conference will take place from August 6th through August 8th at America's Convention Center in St. Louis. In those three days, veteran small business owners will network with potential teaming partners, as well as rub elbows with the 300 VA procurement officials present. These officials are not only required to attend the conference, but they are mandated to conduct a follow-up meeting with at least three veteran business owners.

I attended a VetForce meeting in Washington, D.C. in May, where Tom Leney (the executive director of the Center for Veterans Enterprise) provided valuable information not included on the conference's website. He noted that 86% of conference attendees are there to meet the procurement officials who have requirements to fulfill. This is an opportunity to use your elevator pitch, make connections, and make sure procurement officials know who you are and what your business has to offer.

Another reason small business owners attend is to connect with potential prime contractors, as many large businesses are sponsoring

booths. Some of these companies may even be interested in teaming with small businesses on commercial opportunities. (Mr. Leney mentioned that AT&T is one such company).

Also, while a Midwestern town may not sound particularly exciting, I have to put in a shameless plug for St. Louis. A native of the town, I can vouch that Lotawata Creek of nearby O'Fallon, Illinois is the best restaurant in the world. Also, there is plenty to do in Forest Park (golf course, museums, outdoor plays), at the City Museum (fantastic for kids), and Union Station (a converted railroad station). Please reach out to me if you need any suggestions.

For more information (and to sign up for updates), visit the conference's website at <http://www.nationalveteransconference.com>. Registration is open.

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



## LEGAL MEETS PRACTICAL, LLC

### ABOUT

My legal practice, based in Arlington, Virginia, is designed to help growing VOSBs. 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>.

### CONTACT:

Sarah Schauerte at:  
[scs@legalmeetspractical.com](mailto:scs@legalmeetspractical.com)  
or (703) 552-3220.