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June 24, 2013

VIA FIRST-CLASS MAIL

Director, Regulation Policy and Management (02REG)
Department of Veterans Affairs
810 Vermont Avenue NW
Room 1068
Washington, DC 20420

Re: RIN 2900-A063-VA Veteran –Owned Small Business Verification Guidelines

Dear Sir or Madam:

My name is Sarah Schauerte, and I am a veterans lawyer and veteran advocate. I write to provide comments in response to the questions posed in RIN 2900-A063, and I thank you very much for this important opportunity. Please note I have addressed only those questions where I believe my practical and legal experience can provide the most valuable input:

A. Suggested Changes to the Regulations (Question #1)

Several specific provisions of the regulations could be changed to read more clearly, and there are also areas of the regulations where more detail is necessary in order to clarify the eligibility requirements. In my opinion, *the most important* include the following:

- i. Control (38 CFR Part 74.4). Dependence on Non-Veteran Entities. This regulation should clarify that even if the other entity on which a VetBiz applicant is dependent is veteran-owned, a dependence issue will arise if that other entity is not listed in VetBiz. This is not noted in either the regulation or the Verification Assistance Brief.
- ii. Control (38 CFR Part 74.4). Full-Time Requirement. Under the current regulations, there is confusion as to whether the veteran owner upon whom eligibility is based is required to work full-time in the business. This is because (c)(1) of this provision provides that “owners need not work full-time but must show sustained and significant time invested in the business.” In (c)(3), however, it states: “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...” These provisions, taken together, mean that an owner of the company need not work full-time; however, the veteran owner upon whom eligibility is based must work full time. These two provisions should be

revised for clarity, as I have seen this not only cause confusion for veteran business owners, but also be applied inconsistently by CVE. Also, I believe it would be helpful for the Center for Veterans Enterprise (CVE) to provide examples of permissible involvement in outside employment.

- iii. Requests for Reconsideration (38 CFR Part 74.13). The current regulation provides little insight as to how the request for reconsideration process works. I have heard several veteran business owners complain that they fixed one eligibility issue, only to be denied upon reconsideration on an entirely different issue. As I understand it, requests for reconsideration are processed de novo by the Office of General Counsel. This needs to be clearly communicated in this provision so veteran business owners know their entire application will be re-reviewed in an impartial process.
- iv. Pre-determination Process. The current regulation does not provide guidance on the predetermination process, which is new to VetBiz. A provision should be added to explain this process and define what constitutes a “minor deficiency.” It should also include any applicable timelines or delays that apply due to this process.

B. Verification Process Improvements (Question #5)

i. Help Buttons – Letters of Explanations

I have heard numerous complaints from veteran business owners relating to having to respond to requests for more information and the additional delay that creates. I believe it would incredibly helpful if the online system included help buttons for each relevant document, addressing common issues that require the submission of a Letter of Explanation. For example, if they clicked on the button over “resume,” it could note that a Letter of Explanation is needed if the resume uploaded listed outside employment.

ii. Substituting “N/A” for Certain Letters of Explanation

Some Letters of Explanation are instrumental in proving ownership and control, but I believe some are unnecessary and create additional work. Specifically, the letters as it relates to bylaws, voting agreements, shareholder agreements, and stock for LLCs are unnecessary. If these simply do not apply, a Letter of Explanation does not “explain” this. In certain circumstances, a veteran business owner should be able to designate a document as “N/A” rather than submit a Letter of Explanation.

iii. Process Tracker

Veteran business owners would like more of a roadmap in knowing where their application stands. If feasible, it would be helpful if veterans could track the progress of their application online and view time estimates. That would minimize the number of calls CVE receives, from veterans requesting this same information.

iv. Removing Old Documents

If a veteran business is denied verification and later reapplies, all of the old documents remain in its VetBiz portal. This is confusing, and to a degree, unfair because these businesses are required to wait six months for a new shot at the application process.

It would be helpful if documents from old applications could be deleted yet stay in an archive. This would prevent CVE employees from having to sift through old, no longer applicable, documents, while allowing them to look at old documents if there is concern that the applicant is attempting to hide an eligibility issue that was discovered with the first application.

v. Modifying “Submit Button”

It is much too easy for veteran business owners to accidentally click the “submit” button before they are truly ready to submit their application. The size and font is similar to the “next” button on prior screens, and there is no way to confirm that yes, the veteran business owner is ready to submit. I suggest the color of the “submit” button be changed, and upon clicking, the veteran business be asked if he is sure he is ready to submit his application, and also be reminded that clicking “yes” will submit his application for verification.

C. Additional Training Tools or Assistance (Question #6)

i. Verification Counselor Webinars

It would be extremely helpful if part of the VA’s Verification Counselor Program included bi-monthly training sessions offered for free to veteran business owners considering verification. A VA verification counselor (or counselors) could host a webinar that provides a practical overview of the process. These counselors are already trained and in the CVE’s database, so these volunteers will be easy to find.

The best part about this is once the materials are developed and one webinar is held, it will render it easier for future webinars to be held. Also, this will give veteran business owners the opportunity to ask specific questions via a chat box on the webinar (also reducing calls to counselors and the CVE hotline in the future), and it may make them aware of potential issues prior to their application (as opposed to receiving a denial and not understanding why).

ii. Additional Examples

The CVE could provide examples of corporate document provisions to show the difference between acceptable and impermissible provisions. The main “problem” areas where this would help are as follows: voting (ensuring the veteran has majority voting interest and a majority voting interest is necessary for quorum), transfer provisions, and officer position descriptions.

With corporate documents, an errant detail can make the difference between eligibility and ineligibility. Veterans may argue that they followed examples provided by the VA, but they were nonetheless denied. Thus, if examples are provided, it will need to be made very clear that eligibility is very fact-specific, that examples provided are examples only and may not affect other impermissible areas of corporate documents.

iii. Verification Assistance Briefs

It is very helpful that the CVE has posted additional Verification Assistance Briefs. These are, however, a bit difficult to navigate. On the webpage listing the verification assistance briefs, it should list the regulation that each brief addresses. This would encourage veteran business owners to take a closer look at these nuances.

D. Documents, Records, and Other Materials Used to Distinguish Legitimate VOSBS (Question #7)

In addition to the documents already required by CVE, several documents would prevent “shell” companies from circumventing the system. In general, the CVE should require companies to submit any documentation evidencing financial support from another company in the last year (or two, based on judgment). For example, if another company has donated equipment in excess of \$XXX (specified amount), or provided capital or anything else of value, the veteran business should be required to disclose that. If no such donation/contribution was made, the veteran business owner should be required to sign a letter to this effect.

E. Hotline (Question #8)

I agree with this suggestion in spirit, but I strongly advise against establishing a *hotline* to report suspected ineligible companies. If a hotline is established, the end result would be a phone line flooded with complaints, some of which may be unfounded. Also, those calling in would inevitably have to stay on hold, which may deter some individuals from calling in.

I believe there should be an *electronic* means to reporting suspected ineligible companies, which will both save time and ensure these reports are done so more clearly (as opposed to relaying concerns verbally). Individuals could complete required fields, upload any supporting documentation, and receive a confirmation number. CVE employees could then sift through the reports to find those that should be followed up on.

F. Conclusion

Thank you very much for the opportunity to comment on this important proposed rulemaking. I look forward to seeing the results of your efforts and thank you for your support of our nation's veterans.

Sincerely,
Sarah Schauerte /s/

Sarah Schauerte