

**VERIFIED, SIMPLIFIED:
EVERYTHING YOU SHOULD KNOW ABOUT VETBIZ
VERIFICATION**

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Why this Publication Exists

As a veteran attorney and advocate who specializes in applications to the VA's Veterans First Contracting Program (the CVE's VetBiz registry), I know how baffling this process can be. The eligibility requirements are nuanced, the CVE's guidance can be confusing and/or inconsistent, and the document requests are tedious.

From going through the process so many times, it's now second nature. I know the answers to questions that have veterans scratching their heads, and I thought it would be beneficial to consolidate them all in one spot for easy reference. I hope this saves veteran business owners a lot of time and headache.

This guide isn't designed as step-by-step instructions for getting verified – every situation is different, and it would be misleading to represent that every business can follow steps 1, 2, 3, and TADA – verified! Rather, this guide is intended to contain information with practical value to the veteran business owner seeking verification or reverification who likely has specific questions. Take what you need/what is relevant to you, and leave the rest.

About the Author

I am an attorney whose practice is dedicated to helping veteran-owned small businesses grow. My work is almost entirely in the field of federal procurement, with a focus on assisting businesses obtain verification in the VA's VetBiz Verification Program. I have spoken on this subject for a number of national veteran organizations, including the National Veteran Small Business Coalition and the National Veteran-Owned Business Association. I also routinely handle contracts disputes, draft corporate documents, represent companies in claims before contract appeals boards, litigate/defend bid protests and status/size protests, and prepare/negotiate legal documents related to federal government contracts (such as teaming agreements, subcontracts, non-disclosure agreements).

Table of Contents

General Facts About the VA’s VETBIZ Verification Process	5
What is the VA’s Veterans First Contracting Program?.....	5
What are the VA VetBiz Vendor Information Pages (VIP)?	5
What is VA VetBiz verification?.....	5
Is VA VetBiz Verification required for non-VA contracts?	5
If my business is denied verification, will a contracting officer be able to see that?.....	5
What are the eligibility requirements for a business to become verified?	6
What does “veteran-owned” mean?	6
What does “veteran-controlled” mean?	6
What are some common “control” issues that can prevent verification?.....	7
What are the benefits to VA VetBiz verification?	8
Are there are prerequisites requirements to applying for verification?	8
Where do I apply for verification?.....	8
What documents must I submit with my VA VetBiz application ?.....	8
Where can I go for assistance with VA VetBiz verification?	9
Isn’t the SBA supposed to take over the verification process?	9
What Do the VetBiz Stages Entail?.....	11
Owner information	11
Filling out the VetBiz portal information	11
What are the formal stages of the verification process, and what do they entail?	11
After I submit my application, will the CVE ask for additional documentation?	11
How long will I wait for a verification determination?	12
What are my chances for a successful verification?	12
What is the Post-Review Findings program?.....	12
If verification is denied to my business, what are my options?	13
Legal Meets Practical’s Tips for Getting Verified	14
Assess your situation	14
Look at your corporate documents	14
Be organized	14
Less is more	14
Letters of explanation versus the text box	15
Clearly label your documents	15
Redact, because no one else will do it for you	15
Promptly reply to any requests for documentation	16
Put important dates on your calendar	16
Be sure before you hit “submit”	16
Reporting Changes to a Verified Business	17
What changes are businesses obligated to report?	17
When must a business report any changes?	17

How must a business report changes?	17
What are the penalties for not promptly reporting changes?	17
Reverification.....	18
How long does verification last?.....	18
When can I reverify my business?	18
What is the general reverification process?	18
What documents do I have to submit for reverification?	18
Does reverification take less time than verification?	18
VetBiz Cancellation Procedures.....	19
What is cancellation?	19
What are the procedures for cancellation?	19
Can a business appeal the CVE’s decision to cancel its verified status?.....	19
What happens to the Vets First contracts a cancelled business is performing?	19
VetBiz Audits (Site Visits).....	20
When may the CVE audit a VetBiz-verified business?.....	20
Why will the CVE audit? (ie, should I panic?)	20
What is the audit process?	20
Can I prepare?.....	20
What happens if I don’t provide documentation in time?	21
What happens if the CVE finds eligibility issues?	21
Will the verification period start over upon successful completion of an audit?	21
Common Eligibility Issues	22
Corporate documents: the big problem areas	22
Full-time employment (outside employment)	22
Delegation of authority	23
Control by non-veterans	23
Working remotely	23
Veteran as highest-compensated.....	24
Special Issues	25
Veterans with multiple businesses in the VetBiz registry	25
Trusts	25
Caregivers	26
Affiliation and Control	27
Joint ventures	27
Franchises	27

General Facts About the VA's VetBiz Verification Process

1. What is the VA Veterans First Contracting Program?

The Veterans First Contracting Program within the Department of Veterans Affairs (VA) is a contracting program created for both Veteran-Owned Small Businesses (VOSBs) and Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Approved businesses are eligible to compete for VOSB and SDVOSB set-asides issued by VA. They are also eligible to subcontract with VA's large prime contractors in acquisitions where additional evaluation credit is given for such subcontracting relationships.

2. What are the VA VetBiz Vendor Information Pages (VIP)?

The VA VetBiz Vendor Information Pages (VIP) is a database that lists all businesses that have been verified as VOSBs and/or SDVOSBs by the Center for Verification and Evaluation (CVE), which is the VA office charged with the verification process. A business must be listed in the VIP database in order to compete for a VA set-aside opportunity for veteran businesses. VA contracting officers will check this database in order to determine whether a business is eligible for an issued set-aside contract. You can search the VIP yourself at: <https://www.vetbiz.va.gov/basic-search/>.

3. What is VA VetBiz verification?

Verification is the process by which the CVE determines whether a business is eligible to participate in the Vets First Contracting Program. (A business deemed eligible is "verified" as opposed to "certified," which is the terminology used for other Small Business Administration programs such as HUBZone and 8(a) BD).

4. Is VA VetBiz verification required for non-VA contracts?

As of now, VetBiz verification is **not** required to compete for VOSB and SDVOSB set-asides issued by federal agencies other than the VA. To compete for SDVOSB set-asides for agencies other than the VA, only self-certification on Sam.gov is required. That website can be accessed here: <https://sam.gov/content/home>. (Note that a Duns and Bradstreet number must be obtained first; this is the main identifier the government uses for firms).

5. If my business is denied verification, will a contracting officer be able to see that in the VetBiz Registry?

No. Contracting officers will only be able to confirm whether or not a business is listed and the date of the verification's expiration.

6. What are the eligibility requirements for a business to become verified?

Businesses eligible to participate in the Veterans First Contracting Program must meet the VA's definition of a "service-disabled veteran-owned small business" or a "veteran-owned small business." An SDVOSB is a business that is:

- Not less than 51%...**owned** by one or more service-disabled veterans, or in the case of any publicly owned business, (has) not less than 51% of the stock owned by one or more service-disabled veterans; AND
- The management and daily business operations is **controlled** by one or more service-disabled veterans, or, in the case of a veteran with a severe and permanent disability, a spouse or permanent caregiver of the veteran; AND
- It is "**small**" under the applicable NAICS codes. (Keep in mind that the VA only permits those NAICS codes where the business is "small" to be listed in its VetBiz profile).

A VOSB meets substantially the same definition, with the absence of the provisions referring to service-disabled veterans.

7. What does "veteran-owned" mean?

"Ownership" is defined at 13 CFR § 125.12: for a business to be "veteran-owned," the veteran must unconditionally and directly own at least 51% of the business. Applicants should review the regulation at: <https://www.law.cornell.edu/cfr/text/13/125.12>.

Points to keep in mind include:

- A firm owned by a veteran *firm* does not meet this requirement because the ownership must be direct (i.e., a veteran doesn't "directly" own the firm).
- Nothing in the corporate documents can provide that the veteran's ownership could go to another (other than 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.
- The veteran must be entitled to receive 51% of the firm's annual distributions of profits.

8. What does "veteran-controlled" mean?

"Control" is set forth at 13 CFR § 125.13. This is a nuanced definition with many compartmentalized requirements. These require the veteran to:

1. Control the firm's management and daily business operations;
2. Hold the highest office position;
3. Work full-time for the firm during normal working hours of a firm of its nature;
4. Either have the technical expertise or license required by the firm OR have managerial and supervision of the person who has the expertise/license; and
5. Serve as the managing member (or equivalent, depending on entity type) with control over all decisions of the firm.

In determining whether a business is veteran-controlled, the CVE will scrutinize the business's corporate documents, which must clearly demonstrate veteran control. The CVE will also look into the business's dynamics to ensure that the veteran is working full-time to manage the day-to-day and long-term operations of the business, and that any delegation to other employees is not an abdication of these management responsibilities. Ultimately, the veteran must have ultimate authority over the inter-workings of the business.

9. What are some common “control” issues that can prevent my business from being verified?

Even if your corporate documents are written perfectly, there are still some issues that can prevent a company from being verified. Common issues include:

- Dependence on non-veterans or non-veteran-owned entities - This can come up in a number of ways. Two common examples are if the business is sharing equipment or office space with another business; or if it is using resources or money furnished by a non-veteran owner.
- Outside Employment – There is a rebuttable presumption that the veteran does not control a firm when he is not able to work for the firm during the normal working hours that businesses in the industry normally work (basically, when he has outside employment).
- Delegating Authority – If a veteran delegates “management” tasks, this might impede his ability to control the business. Examples include if non-veterans are listed on the bank's signature card or if a non-veteran manages an office location or has responsibilities that reflect control over important managerial functions.
- Acting Remotely – If a veteran does not live within a “reasonable commute” of the office location, there is a rebuttable presumption that he does not control the firm. This can be overcome by showing how alternate modes of communication are employed and how, **based on the individual facts**, the veteran controls his business. See *KWV, Inc. v. U.S.*, 12-882C (2013).

10. What are the benefits to VA VetBiz verification?

Approved firms are eligible to participate in VOSB and SDVOSB set-asides issued by VA. They are eligible to subcontract with VA's large prime contractors in acquisitions where additional evaluation credit is given. Also, being able to claim SDVOSB or VOSB status may be an effective marketing tool as it relates to pursuing both teaming opportunities and civilian contracts.

11. Are there any prerequisite requirements to applying for verification?

Keep in mind that to participate in the Veterans First Contracting Program, a company must be registered in the D&B database (ie, have a D-U-N-S number), and in the SAM.gov database. A business must have its D-U-N-S number before it can register in SAM. Access these websites at:

<https://iupdate.dnb.com/iUpdate/viewiUpdateHome.htm>(D&B) and <https://www.sam.gov> (SAM).

12. Where do I apply for verification?

Businesses may apply for verification in the VA VetBiz Verification Program at: <https://www.vip.vetbiz.va.gov>. Keep in mind that each owner must submit their own resume, one year of tax returns, and signed 8077 form; accordingly, each owner must have their own login into the system.

13. What documents must I submit with my VA VetBiz verification application?

Required documents include three years of business tax returns, corporate documents (Articles of Formation/Organization, Bylaws/Operating Agreement), required licenses, payroll information (last year and current YTD), last five contracts/proposals (commercial or government), bank signature card, last ten cancelled checks, lease agreement, and last three rent checks. If any required documents are missing, or not necessary, the online application includes a text box where this can be explained.

If the documents submitted raise an issue with eligibility (for example, if a resume reflects outside employment, or if the bank signatory card reflects that a non-veteran is a signatory), the CVE will ask for a signed letter of explanation. As a rule of thumb, it is best to keep an LOE as simple and as concise as possible.

In addition to these documents, which are submitted on behalf of the firm, each business owner is required to create a VetBiz account and upload the following: completed 877 Form, resume, and the most recent federal personal tax return filed (including schedules and W2s).

The CVE may request additional documents, as it may request any documents it finds

necessary for purposes of assessing eligibility. For example, the CVE might ask for a DD-214 (if it can't find the veteran's information in BIRLS), Certificates of Good Standing, 1099 tax information, and IRS Form 941.

Further, be aware that there is no recourse for someone who is uncomfortable with providing certain information to the CVE. Some veterans have successfully redacted certain tax/financial information if they properly follow (**and cite to**) the guidance of NIST Special Publication 800-122, IRS Publication 1075, and OMB M-10-23 and OMB Memorandum M-07-1616. CVE examiners are supposed to follow these guidelines.

14. Where can I go for assistance with VA VetBiz verification?

The VA offers a number of resources and training tools to assist with the verification process. These include:

- The VA's Verification Assistance Briefs, which clarify the rules associated with 38 CFR Part 74. These briefs are based on an analysis of issues that cause the majority of denials. Access the briefs at: <http://www.va.gov/osdbu/verification/assistance/briefs.asp>, but please exercise caution when using them, as some are too general to be helpful. Also, some have been identified to contain poor phrasing and even mis-quoted or incorrect law.
- The VA's Verification Counseling Program, which was developed to assist business owners to understand 38 CFR Part 74, guide them through the Verification Self-Assistance tool, answer general questions, and help them address issues in their application. **They will not draft anything for applicants, to include Letters of Explanation or corporate documents.** These individuals are all with local Procurement Technical Assistance Centers (PTACs). Access the listing of counselors by state at: <http://www.va.gov/osdbu/verification/assistance/counselors.asp>.
- An experienced attorney or consultant, who can draft corporate documents and Letters of Explanation (LOE) and act as a representative.
- LinkedIn, public forums, and vet groups. Many firms have gone through the process and have insight. If you have a specific question, someone may be willing to help you based on personal experience. But know that though their experience might sound analogous to yours, there might be a factual distinction that makes a difference in eligibility. Always take any such advice with a grain of salt.

15. Isn't the SBA supposed to take over verification?

The VA and the SBA have announced that the SBA will he functions of its Center for Verification and Evaluation (CVE) will be fully transferred to the U.S. Small Business Administration (SBA) on January 1, 2023. This transfer will eliminate the VA's

separate SDVOSB and VOSB certification program and eventually eliminate self-certification for non-VA SDVOSB procurements.

Section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 provided for the elimination of the VA's certification program altogether, requiring that all SDVOSBs working with the VA or any other federal agency eventually be certified through SBA. SBA was given two years to consolidate the VA's database of certified SDVOSBs with its own. Per the FY 2021 NDAA, once the transfer of the database to SBA has occurred, SDVOSBs and VOSBs that are not currently verified will have a one-year grace period to file an application for certification with SBA. These firms may then rely on this self-certification until the SBA renders a decision on their application (thereby confirming and extending their status, or denying eligibility into the program). SDVOSBs and VOSBs that are currently verified by VA will maintain their status after the transfer, as the VetBiz VIP database will be transferred from the VA to the SBA (i.e., they will be "grandfathered in" to the SBA's new database, but will be applying via the SBA's new platform upon expiration of their current status period).

What do the VetBiz Stages Entail?

1. Owner Information

All of the business owners (regardless of ownership percentage) must submit three items themselves (by logging in to their own account): their resume, one year of personal tax returns, and the 877 Form. No other user will be able to see these items.

2. Filling Out the VetBiz Portal Information

The new (and much improved) VetBiz system requires the inputting of detailed information pertinent to your business, as well as uploading of required documents. You will also fill out a Prequalification Questionnaire before you start. The main value to this is you can use it to consider and mitigate any eligibility issues before you submit your application. (For instance, if your bylaws don't clearly say the veteran is the highest-ranked, you can fix them; if he isn't the highest-compensated, you can think about why this benefits the business, which is an exception to the general rule and not an uncommon one). Each page of the VetBiz portal relates to a different area of consideration, where you will upload required documents or explain why these don't exist/are inapplicable. All fields must be filled out, all documents uploaded, and all veterans have submitted their required information, for an application to be submitted and the intake process to begin.

3. What are the formal stages of the verification process, and what do they entail?

Once a business is submitted for verification, an intake analyst will determine what additional information is needed to make the application "complete." Information will be requested via document requests (where the applicant will upload the documentation to the VetBiz portal). The applicant must also submit a Business License Declaration, which attests to having fulfilled the business licenses requirements.

Then, the application goes to a case analyst that will ask questions and request more documents. This is done to assess veteran ownership and control. That individual will make a recommendation as to approval/denial before sending the application to the Federal Review team, which quality control checks the review and issue a final determination. Once the application reaches Federal Review, there is nothing more for the business to do other than check its email for its approval letter or directions regarding participating in the Post-Review Findings program (discussed below).

4. After I submit my application, will the CVE ask for additional documentation?

Yes, so don't be alarmed. The CVE will always (*always*) ask for more information during the intake and assessment stages, and this isn't an indication that anything is wrong. In

the intake stage, the CVE will examine your application for thoroughness and ask for anything that is missing. In the assessment stage, where the CVE audits for veteran and ownership and control, it will ask clarification questions and for follow-up documents. Keep in mind that with these requests, the CVE will give you a time to respond (ie, upload the documents). When the CVE is waiting on you for documentation, their clock stops, so responding quickly will/should quicken the process. However, if you need additional time to respond to a document request, the CVE is generally good about granting extensions.

5. How long will I wait for a verification determination?

This depends in part on you. If you fail to submit required documentation or delay in responding to document requests, this will lengthen the processing time. Keep in mind that every time the CVE is waiting on documentation from a firm, their clock stops for purposes of processing. Under regulation (38 CFR 74.11), the CVE is to process applications within 90 days “when practicable;” this timeframe is feasible even accounting for the clock stopping provided the veteran is reasonably quick to respond to document requests and there are no major eligibility hiccups.

6. What are my chances for a successful verification?

Your approval chances truly depend on your individual circumstances. If your business is a one-man band and you have no outside employment, your process will be smoother than a three-man venture where the veteran works full-time elsewhere.

The VA used to claim that it had a 97% approval rate, conveniently not mentioning in its posted statistics that this approval rate did not include businesses that withdrew their applications. Withdrawals can be done at any stage of the process, including when the business realizes it won’t be able to provide a mandatory document, that it can’t meet the eligibility criteria, and at the end of the line when the VA informs the business that it has found to be ineligible and gives it the opportunity to withdraw (which is, in effect, a denial, though this fortunately no longer comes with the six-month wait period that used to apply).

7. What is the Post-Review Findings program?

The Post-Review Findings program is the process by which the VA provides options for firms where eligibility issues have been identified to preclude an outright Approval. These may be drafting issues in the business’s corporate documents, an issue not adequately or clearly addressed for the CVE to make a finding of eligibility, or a genuine eligibility issue. In that instance, the CVE will provide the business with two business days to do one of three things: 1) withdraw its application; 2) accept the determination as is (i.e., a denial); or 3) participate in the Post-Review Findings program.

If the business elects to participate in the Post-Review Findings program, it then has five

business days to correct the eligibility issues, which may include amending its corporate documents or providing a more robust explanation to address identified eligibility issues (which should have already been addressed, to some degree, during the eligibility process). From there, the business will either receive an Approval determination, or it will be required to withdraw because it could not overcome all eligibility issues.

8. If verification is denied to my business, what are my options?

If verification is denied to your business (which occurs if you either do not respond to the PRF and receive an adverse determination, or if you respond and receive a Final PRF where the CVE confirms its finding of ineligibility), you have two options: 1) wait six months to reapply; or 3) appeal the decision to the SBA OHA (which now considers VetBiz denials). This must be done within 10 business days of receipt of the denial.

Legal Meets Practical's Best Practical Tips for Getting Verified

1. Assess your situation.

There are a number of basic eligibility problems that pose a big hurdle to being verified. These are discussed above – like when a non-veteran contributes a lot of capital or holds a necessary license, or when the veteran has outside employment. These eligibility issues can be dealt with in one of two ways: 1) drafting a carefully-drafted Letter of Explanation that includes “buzz words” from the regulations to adequately explain away the issue; or 2) not applying for verification (if the eligibility issue is a true deal-breaker, which hopefully isn't the case) until/if the eligibility issues can be resolved. If you do your homework beforehand, you'll prevent yourself from wasting your time one way or the other.

2. Look at your corporate documents.

Issues with corporate documents are a big reason why businesses have issues with obtaining verified status. These are the multi-member LLCs or multi-owner corporations, because specific provisions of corporate documents have to read a certain way in order to prevent eligibility issues. ***When you apply, do not use corporate documents you got on the Internet if yours is a multi-owner business.***

This may be frustrating, given that many small businesses (especially family-run) don't really *use* their corporate documents, but the fact of the matter is that they must be written in a certain way or you'll find yourself in the Post-Review Findings program (where you have five days to figure out and fix the problem, or go through the process all over again).

3. Be organized.

For those going through the VetBiz process, being organized will save you a lot of headaches. This will help you identify any gaps in your application so you don't get an overwhelming document request from the CVE. Before you begin, take a look at the documents required for your business type. Make a list of what you need, along with what you have and what you don't have. With what you ***have***, put it in a folder and label it appropriately.

4. Less is more.

A lot of veterans with good intentions find the need to explain more than what is necessary, answer questions in greater detail than what is asked of them, or provide documents that are not specifically asked for. Do not do this, because it will clutter up your VetBiz portal (ie, your examiner will be bogged down with irrelevant documents), and you might make a statement that will get you in trouble. I have seen situations where veterans have unknowingly used terminology that has a “loaded” meaning by the

CVE. Even though their business was truly eligible, because they phrased a statement a certain way, it gave the impression that they had eligibility issues and they were denied on this basis.

On a similar token, answer the question. If the CVE asks you a question that bears on affiliation (ie, “what is your relationship with X business?”), answer it carefully, clearly, and fully. If you don’t, you might find yourself in the Post-Review Findings program because you didn’t explain yourself well enough.

Last, keep in mind that the CVE does not assess capability of success. It is only looking to determine whether a business is “veteran-owned” and “veteran-controlled” under its definitions. As such, you don’t need to submit information that bears on capabilities.

5. Letters of Explanation Versus the Text Box

It used to be that if you were missing a document, you would include a simple Letter of Explanation that explained why it was inapplicable (for instance, not having a lease if your business operates from your home, not having ten cancelled checks because your financial transactions are done electronically). To a degree, you can still do that – if you’re missing documents, you’ll input your explanation into the text box in the appropriate page of your VetBiz Profile. However, the number of characters are limited, so you can’t go into too much detail. It’s also not an uploaded document; once you hit “no” in response to “do you have a document to upload?,” you get the text box. If you want to go into more detail, or if you’re submitting a Letter of Explanation on an eligibility issue, go ahead and draft your own document and upload it as a document to your portal. The CVE will see it.

6. Clearly label your documents.

When you upload your documents to your VetBiz portal, each one goes in a specific section. Make sure your documents are: 1) included in the right section; and 2) are clearly labeled. If you don’t, you risk the examiner missing the document and therefore asking for it again; and you’ll find yourself either on the phone with the CVE or re-uploading a document.

7. Redact, because no one else will do it for you.

If you upload your tax returns with your social security number, while the CVE states that this is a “secure” portal, the fact of the matter is that you have uploaded your tax returns with your social security number to an electronic portal. And once you hit “submit,” there’s no removing a document. Hopefully there will never be a security breach of documents uploaded to VetBiz portal, but one should always be careful. Remove social security numbers and other identifying information from tax returns and other sensitive documents.

8. Promptly reply to any requests for documentation.

The CVE will ask for more information. Always. I have never seen an application where the CVE did not ask for more information, regardless of how great a job the business did with compiling its information. When this happens, the CVE will give you a date by which you must comply with their request. Comply with it, or your application may be administratively withdrawn. Also, for every extra day you spend pulling together information to comply with a document request, that's an extra day added to your processing time.

9. Put important dates on your calendar.

This mainly has to do with reverification. 150 before your VetBiz listing expires, you should get an email from the CVE telling you that you can begin the reverification process. However, sometimes these emails go to spam, and if you wait too long to reverify, your listing could either expire (if you forget entirely and you don't initiate the process before the end of your verification period), or you'll have a gap between when your old verification expires and when your new verification period begins.

10. Be sure before you hit "submit."

Once you hit "submit," you can't take it back. Everything that you've put in your portal since you've last hit "submit" is submitted and can never be deleted by you.

Reporting Changes to a Verified Business

1. What changes are businesses obligated to report?

Verified businesses are required to “inform CVE of any changes or other circumstances that would *adversely* affect their eligibility.” This is extremely generally-worded; however, the list of changes that can be reported via a Change Request (explained below) include: adding a NAICS code, address change, business name/DBA change, change business relationship, change primary NAICS code, change primary operating location, legal structure change, owner name change, ownership change, remove verified business status, SDVOSB to VOSB, and VOSB and SDVOSB.

2. When must a business report any changes?

Any *adverse* changes must be reported within 30 days of the change; however, the only change enumerated in the VA’s regulations as *required* to be reported is a change in ownership. A firm must report a change in ownership within 30 days of such change. (See 38 U.S.C. 74.21(d)(7)).

3. How must a business report changes?

If you log into your profile, there is a button to initiate a “Change Request.” Follow the prompts to submit (and also hit “edit application” and follow those prompts; note that this second step is **not** intuitive). A case analyst will contact you with next steps (which depend on the nature of the change). If you do not get an email confirmation, the change request was not submitted.

4. What are the penalties for not promptly reporting changes?

Eligibility changes not reported to the CVE within 30 days could result in a referral to the Office of Inspector general (OIG), a referral to the Debarment and Suspension Committee, and the initiation of cancellation proceedings.

Also, in the event you are awarded a VA set-aside contract after the change, but before your eligibility is confirmed by the CVE, you risk losing a contract in the event of a protest. This is because under 38 C.F.R. § 74.3(e)(4), the CVE must verify that all eligibility requirements have been met despite a change in ownership or business structure. (Accordingly, this raises a unique situation – your “verification” period will not have expired but you won’t be eligible for new contracts until the CVE validates the change). In other words, if you are actively pursuing VA work, report changes immediately!

Reverification

1. How long does verification last?

Verification is good for three years from the date of approval.

2. When can I reverify my business?

You can begin the process within 120 days of expiration. The CVE will send out reminders 150, 120, 60, and 30 days before the expiration of verification. If you initiate the process well ahead of time and are successfully verified before your expiration, your new verification period begins as of the date you successfully renewed rather than three years being added to your expiration date (ie, you technically “lose” that time).

3. What is the general process?

The steps are effectively the same as they are for an initial verification. You will still need to upload a document or explanation for each section; however, for those sections where you know a relevant and up-to-date document is already uploaded, you should be able to note as such instead of provide the document again.

4. What documents do I have to submit for reverification?

You must submit the exact same documents submitted during your last verification process. This means that you must go through every section of your application and update your documents. If documentation has remained the same (for instance, bank signature card or corporate documents), reply “no” when the section asks if you have a required document and note that the documentation on file is current.

5. Does reverification take less time than verification?

No. Reverification might be a bit easier on your end because you will have a better idea of what to submit and what needs to be updated, but your application will still go through the same stages of examination and is put in the same queue as the initial applications.

VetBiz Cancellation Procedures

1. What is “cancellation?”

Cancellation is rare, but it happens. This is when something happens to prematurely yank a business from the VetBiz registry before the end of its three-year verification period. This might happen because a size/status protest revealed an eligibility problem, because a veteran died or abandoned the company (and the CVE finds out about it), a site visit dug up some “dirt” (*or where the business simply failed to provide requested information*), or because some other event suggested that a business was ineligible for the Veterans First Contracting Program (and further inquiry confirmed ineligibility).

2. What are the procedures for cancellation?

First, 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 (via its VetBiz portal).

Second, following the 30-day response period, the Director of the CVE will consider any information submitted by the participant. Upon determining that cancellation is *not* warranted, the CVE will notify the participant in writing.

If cancellation *is* warranted, the CVE makes a decision (signed off on by the Director) to cancel the participant's verified status. The CVE will issue a Notice of Verified Status Cancellation, which sets forth the specific facts and reasons for the decision. The Notice will advise the concern that it may re-apply after it has met all eligibility criteria. At this point, the business will be withdrawn from the Program and its VetBiz Registry listing removed. It may reapply once it meets all eligibility criteria.

3. Can a business appeal the CVE’s decision to cancel its verified status?

A participant may file an appeal with the Small Business Administration Office of Hearings and Appeals. This must be done within 10 business days of receipt of the notice of cancellation.

4. What happens to the Veterans First Contracting Program contracts a cancelled business is currently performing?

A cancelled business may (and is obligated to) finish the set-aside contracts it is currently performing. However, the business’ cancellation may affect the VA’s decision to exercise an option year.

VetBiz Audits (Site Visits)

1. When may the CVE audit a VetBiz-verified business?

Verified businesses may be audited following 90 days of the last verification. The CVE will not audit within 90 days of the end of a verification period. In general, the CVE has the right to audit any business within the VetBiz registry; however, the VA most often audits businesses performing VA contracts.

2. Why will the CVE audit? (ie, should you panic?)

As long as you are a legitimate VOSB or SDVOSB, you shouldn't panic. If you're non-conventional (such as if you are a veteran with two companies in VetBiz), just know that it might raise an eyebrow, and the CVE might flag you as "high risk" when it verifies you and make a note to check in on you later.

More commonly, the VA will audit if a business is performing VA set-aside contracts. The VA can only audit so many businesses, so it invests its time and resources in those businesses that are utilizing and benefiting from the Veterans First Contracting Program. If you hold a VA contract, expect to get audited, and make sure you still meet the eligibility criteria. This includes promptly reporting changes.

3. What is the audit process?

The audit process is fairly simple. The CVE will send an examiner to your place of business. He will ask you questions about your business, its operation; and he will also ask for a number of documents that would be submitted in a re-verification application. (He most likely won't ask for every single document on the Required Documents List). If the auditor shows up at your business and no one is there (for example, if it is a home-based business and you're running errands at the time), he will try to get in touch with you.

Almost always, the business will not have all of the documents necessary to conduct the audit. If this is the case, the auditor (called an "on-site examiner") will send a follow-up email asking that certain documents be uploaded to the VetBiz portal. Clearly label the documents and place them in the appropriate section. If you have the examiner's email, it's a good idea to follow up and spell out exactly what he requested and what you provided.

4. Can I prepare?

Actually, yes. When the examiner shows up, have every document ready that you would need if you were going through re-verification that very day. This effectively means to keep a file folder on your computer labeled "VetBiz Audit" with your current documentation. If that's too tedious – which it may be – just make sure the information

is readily on-hand so it can be pulled for the examiner when he's there (or after).

5. What happens if I don't provide documentation in time?

An auditor will not give you much time to provide documentation, generally only a few days. If you fail to meet the deadline, the CVE will issue you a Notice of Proposed Cancellation that effectively states that you failed to comply and gives you one last chance to provide the required documents. If you provide the documents at that time, you're in compliance; however, if you fail to do so, the CVE will issue you a Notice of Verified Status Cancellation.

Long story short, you'll have some time to "cure," but don't put yourself in that position.

6. What happens if the CVE finds eligibility issues during an audit?

This is similar to what happens during the verification process. If an eligibility issue is uncovered, the auditor will ask additional questions. If these questions are not answered satisfactorily, the CVE may initiate Cancellation Procedures.

7. Will the three-year period start over upon successful audit completion?

No. An audit is not a "full" examination for eligibility, so the verification period will not start over upon the successful completion of an audit.

Common Eligibility Issues Every Business Should Consider Before Running the Gauntlet

1. Corporate Documents: The Big Problem Areas

First and foremost, if you are a veteran solo member owner/member of a business, you don't need to worry much about corporate documents. The main problems with corporate documents occur when a non-veteran is in the mix; in that case, the corporate documents must be carefully crafted to ensure that no eligibility issues emerge.

Keeping in mind that while there is some flexibility regarding how your business is structured and organized, your corporate documents absolutely must contain the following elements:

Highest Ranked Officer – The veteran must be in the highest-ranked office, and the corporate documents should ideally note that it is the highest-ranked. Also, in the position description, it is helpful if it states that the veteran is tasked with “managing the day-to-day operations and long-term strategy.”

Quorum and Voting Requirements – When it comes to company action, the documents must read in a way that this cannot happen without the veteran's presence and/or consent (with the exception of five “extraordinary actions,” which can be found at 13 CFR § 125.11).

Requisite Ownership - For a business to be “veteran owned,” the veteran must own 51% or more of the business. This can be done by reflecting in the stock ledger (corporation) that the veteran has 51% of all outstanding stock; or by reflecting in the operating agreement (limited liability company) that the veteran has 51% of all interest.

Transfer of Interest – Because the veteran ownership must be unconditional, there can be no limits on a veteran's ability to transfer ownership (other than death, incapacity, or by law). A right of first refusal is now permissible (allowing the company the right to buy out the veteran first, before he sells his interest) so long as it follows normal commercial practices.

2. Full-Time Employment (Outside Employment)

Outside employment is perhaps the most problematic issue because of the lack of substance to define the CVE's bright-line “full-time” requirement. The regulations do not state that “full-time” means 40 hours, but this is effectively what the CVE needs in order to approve an established business. The veteran must also work full-time during the “normal” working hours that businesses in that industry normally work.

A Letter of Explanation addressing this should address the days of the week and hours spent at the applicant concern and an explanation for why the outside employment

doesn't interfere with responsibilities to the applicant concern. It may also justify why working odd hours is "normal" for a business of that nature (assuming the veteran is engaged elsewhere during "regular" office hours). For instance, if the business is a construction company and the veteran spends his days at another job, the Letter of Explanation could detail how it is "normal" for a startup construction company to have only afternoon/evening and weekend hours, as this is the timeframe during which clients are available for appointments and for services to be performed. The CVE has also been requiring letters from outside employers that proves that the employer provides the flexibility that enables the veteran to manage the applicant concern. **Again, whether the explanation will pass muster is fact-specific.**

3. Delegation of Authority

In business, it makes sense for a business owner to delegate responsibilities to senior staff members. However, when a business operates this way, it is important to be cognizant of how this can be perceived by the CVE. If an employee other than the veteran signs proposals, is included on the bank signature card, acts in an executive function, and/or makes long-term decisions, the CVE might take this to mean that the veteran is not "controlling" the company. Accordingly, Letters of Explanation may be required to show how delegation of tasks is done for the benefit of the business and "under the veteran's direction, authority, and approval, with the veteran always retaining authority and control over all daily and long-term business decisions." (The excerpt in quotes is key language to use, but again, whether a delegation of authority passes muster is fact-specific. You may be noticing a theme here...).

4. Control by Non-Veterans

The CVE will scrutinize whether a non-veteran's involvement hurts a veteran's ability to control his business. For example, if a company is a father-son enterprise where the father is a non-veteran, if he allows the son to use his commercial space and equipment to start up his new business, the CVE may find undue influence by a non-veteran (the father) unless an explanation is given that adequately explains how the help doesn't impair the son's ability to exercise independent business judgment. **Always, the determination is fact-specific.**

5. Working Remotely

In the electronic age, and especially because so many companies use virtual offices, many company members work remotely. If this is the case, the veteran will need to explain how the practice of members working remotely does not interfere with the veteran's ability to control the company and the means of communication he uses to manage the business remotely. Again, this is a fact-specific determination. However, both the CVE and the United States Court of Federal Claims (CoFC) have held that there is substantial leeway in allowing veterans to operate remotely: in *KWV, Inc. v. U.S.*, 12-882C (2013), the CoFC upheld the CVE's determination that a veteran controlled his

Rhode Island-based company even though he spent six months of the year in sunny Florida. In that case, the CoFC noted that the veteran had no other jobs, was able to conduct work electronically and via telephone, and traveled to Rhode Island when face-to-face meetings were necessary.

6. Veteran As Highest-Compensated

The veteran must be the highest-compensated. 13 CFR § 125.13(i). If this is not the case, the business must submit a Letter of Explanation detailing why another managing individual earning more compensation “helps the concern.” This might be because that individual is working many hours, is employed on a government contract that postures the business for growth, or another fact-specific reason.

Special Issues

1. Veterans with multiple businesses in the VetBiz registry.

As an initial matter, there is no rule against a veteran owning more than one business that is listed in the VetBiz registry. In drafting its final regulations relating to control, the VA specifically determined that two companies owned and controlled by the same veteran may be listed in VetBiz. As stated by the VA when publishing the final rule in the Federal Register on January 19, 2011: “We agree that restriction of only one business participant may have the unintended effect [of running contrary to White House policy statements in support of small business and would stifle job creation and economic development]. . . Accordingly, the rule has been modified to allow more than one VOSB participant so long as the veteran can demonstrate the requisite requirements of ownership and control.” Access the Federal Register publication here: <http://www.gpo.gov/fdsys/pkg/FR-2011-01-19/pdf/2011-983.pdf>.

Even though there is no blanket prohibition on one veteran having two companies in the VetBiz registry, proceed with extreme caution in attempting verification of two companies. With respect to each, you will have to show that your involvement with the one does not interfere with your ability to control the other on a full-time basis. It is possible for a veteran owner to successfully verify one business, only to potentially face cancellation procedures when he later attempts to verify a second business and asserts he is managing it “full-time.” Luckily, if you are your own boss, you can generally give yourself the flexibility needed to run two firms.

2. Trusts

To be listed in the VetBiz registry, a business must be *directly* owned by a veteran. Under the applicable regulation, “an applicant or participant owned...by a trust 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.” 13 CFR § 125.12(a).

With as minimal legalese as possible, this means that in order to pass muster with the CVE, trusts must meet the following requirements:

- The trust must be revocable (It can be undone.).
- The veteran must be: 1) the grantor, 2) a trustee, 3) 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 or incapacity does not conflict with the regulation, as the firm would no longer be eligible in the event either scenario occurs.

3. Caregivers

A “service-disabled veteran-owned small business concern” can be a business where the management and daily business operations are controlled by the caregiver of a severely disabled veteran. 13 CFR 125.13(a). A “permanent caregiver” is “the spouse, or an individual, 18 years of age or older, who is legally designated, in writing, to undertake responsibility for managing the well-being of the service-disabled veteran with a permanent and severe disability. . . to include housing, health and safety.” (See 13 CFR § 125.11).

At any rate, this means that when applying for listing in the VetBiz registry, a veteran business owner must show that:

1. A spouse or another individual is legally designated, by VBA or a court or administrative agency authorized to make such designations, to undertake responsibility for managing the veteran's well-being;
2. The spouse or other individual is the sole permanent caregiver; and
3. The veteran has been determined by the VA, in writing, to have a permanent and total service-connected disability as set forth in 38 CFR §3.340 (the same as for purposes of receiving disability compensation or a disability pension).

Keep in mind that when a caregiver is the individual managing the business on a daily and long-term basis, that individual “steps into the shoes” of the veteran for purposes of showing “control” in the corporate documents. This caregiver must be the highest-ranking official, and his or her presence must be necessary to establish a quorum to vote and to pass any company action.

All of the provisions relating to ownership, however, remain the same (ie, the corporate documents must show that the veteran, not the caregiver, unconditionally and directly owns 51% of the business). It is unclear whether the veteran must still be the highest compensated, but this can be addressed by explaining how the caregiver receiving a higher salary is beneficial to the business. 13 CFR § 125.13(i)(2).

4. Affiliation and Control

In general, businesses seeking verification must be careful when they are receiving some form of support from a non-veteran or non-veteran business, such as equipment, facilities, resources, shared contracts, and same employees. **The CVE will look at this support with scrutiny, and if the VetBiz applicant does not explain how the support does not enable the non-veteran or non-veteran business to exercise leverage over the applicant or participant, the CVE will find that the VetBiz applicant's ability to exercise independent business judgment is compromised.**

As a note, in its Verification Assistance Brief published on its website, the CVE enumerates a number of examples of evidence that will support a finding of dependence on a non-veteran or entity. These are as follows:

- The applicant is receiving business resources necessary to operate, such as employees, equipment, office and/or warehouse space, at little or no cost to the applicant, and absent a VA-approved mentor-protégé agreement (*See* VA Acquisition Regulation 48 CFR Chapter 8, Subpart 819.71).
- The Veteran is a current employee or recent former employee of a minority owner; or, the Veteran lacks experience/knowledge with respect to controlling the applicant compared to minority ownership.
- 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 business franchise.

The CVE has separate regulations for control (13 CFR § 125.13) and affiliation (13 CFR § 125.15). If an applicant/participant has affiliates, this is okay, but know that the size of the firms will be aggregated. There are also exceptions to affiliation, such as if two businesses are in a joint venture or share a mentor-protégé relationship under the SBA's All Small Mentor Protégé Program.

5. Joint Ventures

First and foremost, know that joint ventures must be verified with the CVE as a separate legal entity. If you have a VetBiz-verified business and want to team up with a non-veteran business to form a joint venture, you must go through the VetBiz process all over again. You will form the joint venture, get a D-U-N-S number, register in SAM, and go through the VetBiz process anew.

Under the CVE's definition, a "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.” Two basic requirements must be met for a joint venture to be VetBiz-verified: 1) the SDVOSB (or VOSB) concern must meet the eligibility criteria (which shouldn’t be a problem since it’s already been verified); and 2) the joint venture must have a joint venture agreement that meets all of the content requirements set forth at 13 CFR § 125.18. Make sure that you review these carefully and ensure that your joint venture agreement hits every regulatory requirement. Even more importantly, know that the joint venture agreement the CVE approves is ultimately a template. If you bid on a set-aside contract as a joint venture, you will need to execute an addendum that sets forth the responsibilities of the parties (equipment, resources, facilities, etc). ***It is the failure to do this that generally sinks SDVOSB/VOSB contracts won by joint ventures, so be careful.*** This must be done ***before*** the proposal due date.

Also keep in mind that unless the joint venture partners are participating in the SBA’s ASMPP Program, *both* partners to the joint venture must be small under the relevant NAICS code.

6. Franchises.

In general, franchises are not successful in applying for VetBiz verification. (There used to be a VA verification brief on this issue, but it has since been removed). The issue with franchises is that by nature, in order to be a franchise, a firm must abdicate a significant degree of liberty in exchange for franchise benefits, resulting in the owner not being able to “control” his or her firm per the meaning of the VA’s regulations. While there may be some room for firms that are not franchises themselves, but franchise a product or service for use in their operations, I am not aware of any franchise that has been VetBiz-verified. For more information on this subject, it may be helpful to review the following SBA OHA appeal of the CVE’s decision to deny verified status to a franchise: [*CVE Appeals of: The Hope Cos, LLC, SBA No. CVE-204, 2021.*](#)

*That’s all for now! The VetBiz verification process is constantly changing, and this Guidebook will be updated accordingly. To stay up to date on these changes – and other topics of interest to veteran small business owners - sign up for my blog at: <http://www.legalmeetspractical.com>. Also, contact me with any questions about VetBiz verification at: (703) 552-3220 or via email at scs@legalmeetspractical.com.