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BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS and
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SUBCOMMITTEE ON CONTRACTING AND THE WORKFORCE
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Chairman Coffman, Chairman Hanna, Ranking Member Kuster, Ranking Member Takai, and Members of the Subcommittees, thank you for inviting me to testify on an examination of continued challenges in VA's Vets First Verification process.

Overview

Since its inception, the VA Verification program has faced challenges balancing the need to prevent ineligible firms from taking improper advantage of VA's "Veterans First" program, while making it easier and faster for Veteran-Owned Small Businesses (VOSB) and Service-Disabled Veteran-Owned Small Businesses (SDVOSB) that meet the requirements of 38 Code of Federal Regulations (CFR) Part 74 to gain greater access to VA procurement opportunities. VA has made substantial progress in improving the Verification program.

Early in its history, both VA's Office of Inspector General (OIG) and the Government Accountability Office (GAO) reported on issues with backlogs and operational challenges. VA's Center for Verification and Evaluation (CVE) addressed all of the recommendations identified in the 2011 reports, as well as the GAO report of 2013. In February 2015, GAO began its newest audit of the program. Their Statement of Facts indicates that CVE has made even greater improvements in the program since the 2013 report. CVE's risk team now reports applications are being processed within the regulatory timeframe 99.8 percent of the time, with an error rate of less than one percent.

In fiscal year (FY) 2013, 77 percent of initial applications were approved with an average processing time of 42 days. By the end of FY 2015, 94 percent of initial applications were processed in an average of 41 days. For those applications that had been denied, and where Veterans requested reconsideration, 61 percent were subsequently approved in an average of 94 days in FY 2013, and in FY 2015, 59 percent were subsequently approved in an average of 34 days.

In May 2015, CVE earned ISO 9001:2008 certification of its processes. This means that CVE's processes are codified and replicable, ensuring standardization of application processing across the board. Where it had nine codified processes in 2012,

it now has 31. CVE also implemented an internal audit and continuous improvement process and has taken action to close 96 percent of all internal audit findings of instances of non-compliance with the codified work instructions since its inception. Those that remained open at the time GAO examined the findings were classified by the CVE internal audit team as administrative findings that have no effect on the process. In addition to the codification of its processes, CVE applied best practices of the National Archives and Records Administration (NARA), and GAO found that all of CVE's records are now secured, controlled, and filed in compliance with NARA's standards.

Risk Referrals

As a part of the oversight of the program, CVE has partnered with VA's Office of Enterprise Risk Management to conduct a three-phase study to review outcomes of site visits, determine the optimal number of site visits needed to ensure compliance with the program, and develop a more accurate risk assessment for use in determining which companies should receive an on-site examination. In the first phase, we reviewed the results of 1,144 firms visited in FY 2014. The results showed that there was a 4.7 percent non-compliance rate. This conclusion allowed CVE to reduce the number of yearly site visits without compromising the integrity of the program. Part two of the study is ongoing, and will present a statistical review of the on-site examination program to assist with determining the number of visits required without increasing risk to the Department. Phase 3 will review risk factors, such as industry type and business structure, associated with non-compliant firms that will also assist with determining the number and which firms should be visited. This three-phase study will be complete in January 2016.

CVE also often receives referrals from various stakeholders regarding program ineligibility or possible fraudulent activity. As a result of these referrals, CVE has implemented a process for responding to allegations and conducting investigations where specific allegations of program non-compliance are provided. We have updated our website with information on what constitutes CVE's span of control on eligibility compliance, and have provided a form that stakeholders can use to submit allegations of ineligibility for the program. All allegations of fraud are handled by VA's OIG, and links to their hotline are also provided.

Regulations

In the last hearing on the Verification Program in 2013, I discussed that many of the issues Veterans have with the program are now rooted in the regulation that covers the program, 38 CFR Part 74. It was the general perception that the CVE regulation differed considerably from the Small Business Administration (SBA) regulation on the SDVOSB program—13 CFR Part 125. CVE explored the differences between the two regulations and found very few differences. CVE also made considerable outreach to Veteran business owners to explore the areas that they found most objectionable and looked for ways to clarify the regulation and to make it more in line with standard business practices.

Comparison of Rules Governing Verification Program

We believe the most significant difference between VA and SBA's programs lies in the volume of status determinations made by each program. By statute, VOSBs and SDVOSBs must be listed in the VetBiz VIP database before they are eligible for set-aside contracts with VA. As SBA notes, this process is inherently more labor-intensive than a protest-based self-certification program. This statutory requirement resulted in VA making about 4,500 status determinations in FY 2015 alone. Because SBA only determines SDVOSB status and only when a protest is filed, the SBA made only 40 status determinations over the past fiscal year.

The regulation that governs VA's Verification program, 38 CFR Part 74, was derived in large part from the ownership and control portions of the SBA regulations that cover the SDVOSB set-aside contracts outside of the VA's Vets First Verification program, codified in 13 CFR Part 125, as well as the regulation that covers the section 8(a) business development program, 13 CFR Part 124. As previously reported, there are two statutory differences between the programs due to the provisions of Public Law (P.L.) 109-461, as codified in 38 United States Code (U.S.C.) Sections 8127 and 8128. The two statutory differences are:

1. Application to Veteran-Owned Small Businesses: Section 8127(f) states: "Database of Veteran-Owned Businesses. - (1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns." VA's authority includes both SDVOSBs and VOSBs; whereas the government-wide SBA program only addresses SDVOSBs.
2. Surviving Spouse: Section 8127(h): "Treatment of Businesses After Death of Veteran-Owner. - (1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans." This currently applies to Veterans that were 100 percent service-disabled or who died as a result of a service-connected disability. SBA's program has no surviving spouse exception.

Our comparison of the regulations revealed four differences between VA's Verification regulation and SBA's SDVOSB regulation.

1. VA added a requirement for a VOSB to notify the CVE of a change of ownership in 38 CFR 74.3(e). This requirement is not present in the SBA SDVOSB regulation due to the self-certification nature of the program.

2. VA added a provision when the final rule was published, based on public comments, which is specific to Employee Stock Ownership Plans (ESOP) that does not appear in either the SDVOSB or the 8(a) regulations. VA included a provision that would consider certain ESOP's to meet the requirements of direct ownership by the Veteran(s).
3. 38 CFR 74 specifically mentions community property laws to be taken into account.
4. Additional prohibitions on non-Veteran participation are codified in 38 CFR 74 but are not explicitly outlined in 13 CFR 125 (ex. Full-time devotion, highest paid).

Rule Change

In order to identify potential changes to the rule, CVE examined the lessons learned from the implementation of the current verification regulation and conducted considerable stakeholder outreach. We received a number of recommendations worthy of consideration. Changes to the rule have been drafted to provide clarity and to more closely align with common business practices. The draft of the rule is currently under final review, and we expect it to be published as an Interim Final Rule shortly.

The changes to VA verification requirements will impact the regulatory differences between the VA and SBA programs. In particular, VA removed the Community Property restrictions and references to ESOP bringing its regulation back into alignment with SBA, but modified the "unconditional" ownership requirements to align verification more closely with commercially reasonable business practices; allowed supermajority or unanimity voting for extraordinary business decisions (e.g., acceptance of new capital contributions, addition of new members of an LLC or partnership, material amendments to bylaws, issuance of additional shares of stock); deemed the Board of Directors of a corporation to be controlled by Veterans when Veterans owning 51 percent of the voting stock are able to either unilaterally or through block voting remove any director at any time and for any reason; and increased the waiting time after the issuance of a denial or other negative finding on an application for verification from 6 months to 1 year.

Improved Communications

Since 2013, our efforts to reduce the time and difficulty of achieving verification have focused on educating applicants regarding the application of the regulation and helping them understand what their business model needs to be to fit the requirements of the program. Our Verification Assistance Program currently consists of several elements:

1. Realizing some applicants need extra assistance, we established a counseling program in partnership with the Procurement Technical Assistance Centers to provide counseling services to Veterans preparing to apply for verification. All counselors now receive the qualification training

- from CVE of a similar quality and depth that our examiners, evaluators, and site visitors receive. To ensure transparency and consistency in interpretation, we have integrated our counselors into the same qualification training and testing that our examiners, evaluators, and site visitors receive. At this time, there are 331 counselors located all across the country.
2. A series of 18 Verification Assistance Briefs that explain the requirements and give examples of why firms were denied. These briefs address issues that cause more than 80 percent of all denials allowing potential applicants to preemptively uncover possible issues with their business documentation or structure. CVE has also developed FAQs and a number of fact sheets that cover most issues encountered by Veterans in addition to a specialized contact center where Veterans can speak with CVE representatives.
 3. An online self-assessment tool that takes a Veteran through each section of the regulation and all the required documents and explains how they relate to the regulation.
 4. CVE hosts a number of live webinars each month, including ones on the specialized topics of pre-application, preparing for re-verification, how to stay verified, and a monthly Town Hall. During the months of September and October 2015, the Pre-Application Brief and Town Hall webinar experienced a discernable increase in registration and subsequent participation. The Pre-Application Brief and Town Hall webinars provide training and information for Veterans interested in submitting their first CVE Verification application. It also provides verification application information to Veterans inactive in the process for a period who have a current desire to submit an application.
 5. CVE also sends out expiration notices at 120, 90, and 30 days prior to verification expiration to encourage firms to apply for re-verification prior to the expiration of their eligibility. Additionally, the 30 and 90 day reminder emails are accompanied by a follow up phone call from CVE to ensure participants are aware of their upcoming expiration.

Although these communications and education initiatives have been in place for two years or more, they have been improved and expanded to support Secretary McDonald's MyVA initiative. Even though the current application process has been successful at eliminating the backlog of applications and reducing the total processing time for applications, CVE has begun to focus on the precepts of the MyVA initiative by creating a more Veteran-centric application process.

MyVA Verification Trial

In June 2015, CVE conceived a radical change in the production line method of processing verification applications, and began to test the newly conceived process. During a series of focus group discussions, CVE noted a number of "pain points" in the verification process. Two of the largest "pain points" were: 1) every time a Veteran would contact CVE about an application's status, a different person spoke to the Veteran; and 2) having to upload all required verification documents before an application could be submitted. The new process is a sea change for CVE, in that

applications coming in are now routed to a Case Management team that oversees the process from submission to recommendation, and the Veteran speaks only with a case manager or assessor. The second substantial difference is the insertion of a pre-qualification phase where firms submit a limited portion of the required documents that CVE has identified, through years of implementing the program, constitute the basis for a significant portion of denied applications. An assessor reviews these documents and conducts an interview with the Veteran owner to discuss any issues found in the documents and the likelihood the company will receive a favorable determination should it proceed with the application process.

Using this process, the Veteran gets to speak directly with the person who performs the assessment, and can better understand any issues found. If issues are found, they can be addressed after only a few days into the process, rather than toward the end of the process. This pre-qualification review and increased personal interaction between the Veteran and the processing team has resulted in a marked reduction in withdrawals, and the virtual elimination of denials to date within the trial.

CVE continues to hold focus group sessions to find additional issues faced by participants in the trial and to any necessary changes.

Staffing

In reference to staffing issues, CVE filled its vacancy for Deputy Director in September 2015, and the announcement for last remaining vacancy for a permanent Director closed on November 2, 2015.

New Case Management System

GAO has reported that CVE's case management data system had shortcomings that hindered our ability to operate, oversee, and monitor the verification program. In 2013 GAO recommended that the department refine and implement a strategic plan with outcome-oriented long-term goals and performance measures, and integrate efforts to modify or replace the program's data system with a broader strategic planning effort to ensure the system addresses the program's short- and long-term needs. VA has plans to replace the Verification program's case management system, and is currently updating the business plan for developing and implementing a new system. The department has established a working group to plan and manage the project in accordance with VA's internal guidelines for managing new information technology projects.

Conclusion

In conclusion, VA has made significant progress in its Vets First Verification program. We have overcome many of the challenges and vulnerabilities that were originally raised by the GAO and OIG reports, but we seek continuous improvement and

a more Veteran-centric process that fully aligns with Secretary McDonald's MyVA initiative.

Mr. Chairmen and Members of the Subcommittees, this concludes my statement. I am pleased to answer any questions you may have.