

**ACHIEVING GOVERNMENT-WIDE VERIFICATION OF
SERVICE-DISABLED VETERAN-OWNED SMALL
BUSINESSES**

JOINT HEARING

BEFORE THE

**SUBCOMMITTEE ON INVESTIGATIONS,
OVERSIGHT, AND REGULATIONS**

OF THE

COMMITTEE ON SMALL BUSINESS

AND THE

**SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS**

OF THE

COMMITTEE ON VETERAN'S AFFAIRS

HOUSE OF REPRESENTATIVES

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Questions for the Record: None.	
Answers for the Record: None.	
Additional Material for the Record: None.	

**ACHIEVING GOVERNMENT-WIDE
VERIFICATION OF SERVICE-DISABLED
VETERAN-OWNED SMALL BUSINESSES**

TUESDAY, JULY 17, 2018

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT, AND
REGULATIONS,
JOINT WITH THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION,
COMMITTEE ON VETERANS AFFAIRS,
Washington, DC.

The Subcommittees met, pursuant to call, at 2:05 p.m., in Room 2360, Rayburn House Office Building, Hon. Trent Kelly [chairman of the Subcommittee on Investigations,

Oversight, and Regulations] presiding.

Present from Subcommittee on Investigations, Oversight, and Regulations: Representatives Kelly, Marshall, and Adams.

Present from Subcommittee on Oversight and Investigation: Representatives Bergman, Arrington, Dunn, Poliquin, Kuster, and Lamb.

Chairman KELLY. Good morning. I call this hearing to order. I would like to welcome everyone to today's hearing. I am pleased to host Chairman Bergman and his fellow members of the Subcommittee on Investigations and Oversight to discuss a topic of great importance to both of our Committees. They have been a great ally to our Committee over the years in discussing many of the issues important to veterans small business owners.

We are here today to examine a challenge that many service-disabled veterans small business owners face in doing work with the Federal Government.

The service disabled veteran-owned small business or SDVOSB contracting program is crucial for veteran entrepreneurs and the Federal agencies they work with.

However, there are two similar yet separate and conflicting verification programs at two different agencies.

Both the Department of Veterans Affairs and the Small Business Administration operate procurement programs for SDVOSBs. There are number of differences between the two programs but the central issue is simple. VA proactively verifies SDVOSBs before they can compete for set-aside contracts while SBA allows SDVOSBs to simply self-certify.

This can create inconsistent outcomes, such as a business qualifying as an SDVOSB for VA contracts but not other Federal agency contracts or vice versa. And while SBA certified businesses awards are subject to protest, the lack of a front end verification also leaves the door open for fraud and abuse.

Since the creation of the SDVOSB preference, Congress has recognized the importance of streamlining the verification process for service-disabled veteran small business owners.

As the title of this hearing suggests, government-wide verification is a viable solution to this problem. Members of previous Congresses recognize this, too, and they began paving the way.

The National Defense Authorization Act for fiscal year 2017 instructed SBA and VA to unify the definitions for SDVOSBs and begin moving regulatory responsibility from VA to SBA.

I hope this hearing provides the opportunity to learn more about the progress both agencies have made.

I was pleased to see that the administration also recognizes the importance of streamlining these programs.

President Trump's reform plan for the Federal Government released just last month cites the need for a one-stop-shop for small business Federal procurement programs.

SBA has already made a head start through the launch of their website [Certified.SBA.Gov](https://www.certified.sba.gov), and we are committed to working with them to see it through.

While the concept may seem simple, we know developing a single government-wide verification system for SDVOSBs will require a lot of work on the part of the SBA, VA, and the congressional committees who will oversee it.

Past joint hearings between our committees have revealed many critiques of VAs verification program, and we must ensure that those mistakes are not repeated.

We also must make certain there is proper congressional oversight and that set-aside contracts are going to true service-disabled veterans small business owners.

I hope we can have a productive conversation today to answer many of the questions that still remain.

I am also pleased that representatives of SDVOSB community are here to bring their perspective into the conversation.

I now yield to our Ranking Member, Ms. Adams, for her opening statement.

Ms. ADAMS. Thank you, Mr. Chairman. Good afternoon.

Thank you for holding this important hearing. It is my pleasure to be here as we discuss a critical topic that impacts our nation's veterans and identify ways to improve their access to the federal contracting marketplace and entrepreneurial development.

These courageous individuals deserve not only our enduring gratitude, but also the opportunity to build a new life after their many years of military service.

One of the most important tools we currently provide is the contracting preference program to ensure greater participation of veterans in the Federal marketplace.

In fact, the service-disabled veteran-owned small business procurement program disbursed almost \$18 billion through over 170,000 contracts in fiscal year 2017.

SDVOSB awards accounted for approximately 4.05 percent of Federal contracts, which exceeded the 3 percent statutory goal.

Notably the government awarded 5.29 percent or \$23.4 billion of its prime contracts to veteran-owned small businesses.

With this accomplishment, it should be applauded, but it should also point out that these growing numbers show an increasing need for higher utilization of emerging veteran-owned small businesses throughout the government.

It is clear that the structure and resources of the program have not kept pace with its growth creating concerns that the contracts could be diverted from legitimate service disabled veteran-owned firms to non-veteran businesses including large corporations.

Fortunately, steps are being taken to address these anxieties. One step involves changing the certification process, specifically moving from self-certification to enabling SBA to certify all veteran-owned businesses alongside several disabled veteran-owned businesses, increases confidence around their certifications.

Such a simple modification can foster more participation of veterans in the Federal marketplace.

Previously, GAO has found that the less rigorous verification process has allowed ineligible nonservice disabled veteran firms to win contracts set aside for veterans through fraudulent front companies posing as veterans and pass-throughs. As a result, millions of dollars were diverted away from legitimate small business owned by veterans.

To prevent these abuses, VA complied with GAO's verification recommendations from a 2013 report, and the agency has seen significant improvements.

As our committees have heard, verification times decrease by more than 50 percent, and the VA has increased its number of cite visits to 606 in fiscal year 2015.

However, there are many areas that need work. Currently, it takes approximately 73 days to process certification applications and a sizeable backlog still exists.

For many reasons, the VA has proposed to move verification and certification responsibilities to SBA. The VA has also suggested revising program regulations to streamline and align requirements to reduce the burden on contractors.

So I look forward to discussing these changes today. Today's hearing will focus on the progress of the Department of Veteran Affairs and the Small Business Administration in implementing sections of fiscal year 2017, National Defense Authorization Act.

It is my hope that we will also establish SBA's ability to take on the remaining VA verification functions and discuss the need to authorize a veteran specified entrepreneurial education program.

Given that your entrepreneurship remains a viable career path for many veterans, we must ensure that they have the support they need to start and grow their business.

I think I can speak for all the Members today in saying that we do whatever it takes to help all veterans, including those disabled

in the line of duty to overcome the challenges they face in today's economy.

And with that, Mr. Chair, I want to thank the witnesses for appearing before the joint subcommittees this afternoon.

Thank you, and I yield back.

Chairman KELLY. Thank you, Ms. Adams. I now yield to the Chairman of the Subcommittee of Oversight and Investigations, Mr. Bergman, for his opening statement.

Chairman BERGMAN. Thank you, Chairman Kelly.

My colleagues from the Veterans Affairs Oversight and Investigation Subcommittee and I are pleased to join you today to discuss this important topic.

The service disabled veteran-owned small business, or SDVOSB, contracting preference program is a crucial element of the commitment of this country, of our country, and its government that we make to our veterans.

At least 3 percent of contract spending at every agency is set aside for SDVOSBs. VA gives even greater preferences in its Veterans First Program and extends those preferences also to veteran-owned small business.

The Veterans First Program is not without controversy. Chairman Kelly and Ranking Member Adams of the small business Committee has been a great partner for many years working to ensure the program lives up to its promise.

We have before us today a confusing bureaucratic oddity that should not exist. SDVOSBs contracting with the VA are vetted, inspected and verified. SDVOSBs contracting with the rest of Federal Government are not. They self-certify their status.

There are effectively two classes of SDVOSBs, and it can be hard to tell the difference. No one knows precisely how many self-certified SDVOSBs are fraudulent or otherwise improper, but all available evidence indicates that they do exist. Service-disabled veterans who under go VA's thorough, some would say, onerous screening of their small businesses deserve a level playing field.

It is unfair that companies that cannot pass muster move on to operate in less strict areas of the contracting world. Many other agencies recognize this and have attempted to require VA's verification, but current law and regulation do not allow that to happen.

The need for government-wide verification of SDVOSBs is a perennial issue that has existed since the SDVOSBs preferences were created. Achieving it has been a long-term goal of several VA secretaries, SBA administrators and the Congresses. It is high time that we made this change.

Frankly, it makes no sense that VA should be responsible for the SDVOSB program, while the small business administration is responsible for every other small business program.

The previous Congress recognized this and laid the ground work for government-wide verification.

The fiscal year 2017 National Defense Authorization Act harmonized regulatory definitions between VA and SBA and began transferring regulatory responsibility to SBA.

I was encouraged to see the administration highlighted this issue in its Government Reform and Reorganization Plan. It rec-

ommends, and I quote, “a one-stop-shop within SBA for all Federal contracting certifications.”

Another quote comes to mind, slightly paraphrased. President Reagan said that a government bureau is the nearest thing to eternal life that we will ever see on this earth.

This is too often true, but maybe not in this case. I credit the leadership of VA for their willingness to relinquish the verification function and eventually abolish the Center For Verification and Evaluation.

I also appreciate the leadership of SBA’s receptiveness to take on, perhaps, the largest and most complicated small business certifications program.

The concept of government-wide verification is simple, but there are numerous pitfalls in its implementation that we must avoid. As some might say, the devil is in the details.

VA has spent years, tumultuous years working the bugs out of the verification system, we should not reinvent the wheel. At the same time, SBA will be expected to eliminate unnecessary differences in eligibility rules and procedures between the SDVOSB program and other small business programs.

However, verifications cannot be interrupted while the transfer occurs. So business owners will see minimal impact.

Also, veteran-owned small businesses, or VOSBs, should know that they will not be forgotten. They will continue to receive the same preference in the Veterans First Program and they will continue to have access to verification.

My goal is to take VA’s lessons learned, SBA’s expertise and resources, and the veteran business community’s perspective as represented by the American Legion and put them together as the two committees craft bipartisan legislation in the coming weeks.

Is it important to start this process out in the open with all stakeholders represented.

We have to create a government-wide verification system that stands the test of time.

Thank you, Chairman Kelly. And I yield back.

Chairman KELLY. Thank you, Chairman Bergman.

I now yield to the Ranking Member of Subcommittee on Oversight and Investigations, Ms. Kuster, for her opening statement.

Ms. KUSTER. Thank you, Chairman Kelly, and Ranking Member Adams for your hospitality in hosting this joint hearing.

According to the Small Business Administration, over 2.52 million businesses in America are majority-owned by veterans. Approximately 80 percent of veteran-owned businesses employ less than 19 employees, meaning that a majority of these small businesses are actually very small.

In fact, 54 percent of all veteran-owned businesses employ less than four employees.

Based on these numbers, it is clear that veteran-owned small businesses are crucial to a healthy and vibrant business community. However, due to their incredibly small sizes, veteran-owned small businesses are especially impacted by our federal rules. They often can’t afford to have a dedicated contract officer to ensure that they are able to maximize the benefits offered by veteran pref-

erence programs, and therefore these programs must be as simple and accessible as possible.

In an effort to simplify access to the programs, Congress recently expressed support for the administration's desire to streamline the veteran-owned small business certification process.

The legislation being discussed today will prove to be a pragmatic next step in ensuring that both the interpretation and enforcement of various veteran preference programs are aligned.

Currently, both the Small Business Administration and the Department of Veterans Affairs have various roles and responsibilities throughout the certification process.

This has led to confusion and threatens the integrity of the service-disabled veteran-owned small business program.

By allowing the SBA to certify these small businesses for inclusion in the VA veteran-owned small business programs, we can address confusing and conflicting issues surrounding certification for various programs. All businesses will be certified as an eligible veteran-owned small business prior to applying for veteran preference programs at any federal agency.

No longer will a company have to satisfy different requirements just to apply for the preference. If you're certified, you can apply. At the end of the day, this is a commonsense solution and I look forward to our discussion. I am sure my colleagues across the aisle will agree that this is a viable solution to overburdensome regulation. And I appreciate the Small Business Committee's commitment to our nation's heroes. I look forward to a productive discussion, and I yield back.

Chairman KELLY. Thank you, Ranking Member Kuster.

If Committee members have an opening statement prepared, I ask that they be submitted for the record.

I would like to take a moment to explain the timing lights for you. You will each have 5 minutes to deliver your testimony. All of you are familiar with this, I think. The light will start out as green. When you have 1 minute remaining, the light will turn yellow. And, finally, at the end of your 5 minutes, it will turn red. I ask that you try to adhere as closely as possible to the time limit.

I would like to introduce our panel of witnesses today. Our first witness is Mr. Thomas Leney. Mr. Leney is the Executive Director of Small Business and Veterans Program at the Department of Veteran Affairs where he oversees the procurement programs for veteran-owned and service-disabled veteran-owned small businesses. He is also a veteran of the United States Army, having served 22 years. Thank you for your service and for testifying today.

Our second witness is Mr. Rob Wong. Mr. Wong is the Associate Administrator for the Office of Government Contracting and Business Development at the Small Business Administration. In this role, he oversees over \$500 billion in total government spending within the federal marketplace, and ensures that small businesses can compete for federal contracts. Thank you for testifying today, Mr. Wong.

Our third witness is Mr. William Gould, a Senior Advisor in the Office of the Administration at the Small Business Association. Mr. Gould has been active within an interagency Committee between the SBA and VA, and has played a leading role in the effort to

streamline the verification programs. Thank you for being here today.

I will now yield to the Ranking Member, Ms. Adams, to introduce our final witness.

Ms. ADAMS. Thank you, Mr. Chair.

It is my pleasure to introduce Mr. Davy Leghorn, Assistant Director of the National Employment and Education Division for the American Legion, the largest veteran service organization in the country. In his current capacity, Mr. Leghorn oversees the employment and small business portfolios, and administers the American Legion's National Veterans Hiring Initiative. Prior to joining the American Legion, he served in the United States Army as both a mortar infantry man and a civil affairs specialist.

Welcome, Mr. Leghorn, and thank you for your service.

Chairman KELLY. I now recognize Mr. Leney for 5 minutes.

STATEMENT OF THOMAS J. LENEY, EXECUTIVE DIRECTOR, SMALL AND VETERAN BUSINESS PROGRAMS, UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, WASHINGTON, D.C.; ROBB WONG, ASSOCIATE ADMINISTRATOR, OFFICE OF GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, UNITED STATES SMALL BUSINESS ADMINISTRATION, WASHINGTON, D.C.; WILLIAM GOULD, SENIOR ADVISOR, OFFICE OF THE ADMINISTRATOR, UNITED STATES SMALL BUSINESS ADMINISTRATION, WASHINGTON, D.C.; AND DAVY G. LEGHORN, ASSISTANT DIRECTOR, THE AMERICAN LEGION, WASHINGTON, D.C.

STATEMENT OF THOMAS J. LENEY

Mr. LENEY. Chairman Bergman and Chairman Kelly, Ranking Member Kuster, Ranking Member Adams, and members of the Subcommittees, thank you for inviting me to testify on the status of our efforts to implement a uniform standard for service-disabled veteran-owned small businesses in Federal contracting.

In my capacity as executive director for VA Small and Veteran Business Programs, I oversee the Center for Verification and Evaluation that verifies veteran ownership and control of small businesses participating in VA's Veteran First Contracting Program, as part of the statutory mandate set forth by you in 38 USC 8127. This legislation directs VA to prioritize veteran-owned small businesses above all other categories when the VA seeks to buy goods and services.

CVE carries out its mission to verify ownership and control of SDVOSBs and VOSBs and to maintain a database of those firms that is used by our contracting officers to determine whether a veterans' first set-aside is appropriate.

As of June 30, there are more than 14,000 VOSBs in our VIP database. The growth and the number of verified VOSBs has made VA more likely to use the Veterans First Program as its principal means to provide access for small businesses. In fact, the VA has been able to increase its procurement award to VOSBs to more than \$5.38 billion in fiscal year 2017.

In response to the National Defense Authorization Act for fiscal year 2017, the VA and the SBA as worked together to create uni-

form standards for the VA and SBA programs for contracting with SDVOSBs. After extensive collaboration, these efforts are approaching completion. VA has published a proposed rule on January 10, 2018, and SBA published its proposed rule on January 29.

The commencement period for both proposed rules—or the comment period, excuse me, for both proposed rules ended in March, and we anticipate publishing final rules before the end of the fiscal year 2018 to be fully compliant with your guidance to establish a joint rule.

The NDAA also amended the statutory language to provide an appeal right for denied applicants and status protest of set-aside awards to SBA's Office of Hearing and Appeals. These replaced appeal and protest procedures formally conducted by my office.

SBA and VA, again, have collaborated to implement this guidance, and SBA published a final rule amending the Office of Hearing and Appeals rules on 30 March, 2018. This piece of the implementation is complete, and the new rules will take effect on October 1st, 2018. In addition, SBA and VA have reached an inter-agency agreement to cover the Office of Hearing and Appeals costs in deciding these matters for the VA.

In addition to making the improvements mandated in NDAA 2017, the VA is working closely with SBA to carry out the proposal to consolidate all business contracting program into the SBA. That was contained in the administration's proposal for reorganization of the executive branch.

VA and SBA formed a joint Committee reporting to the deputies of VA and to examine how we can support the President's proposal by moving the VA verification program to the SBA as part of a government-wide certification program for SDVOSBs.

The Committee meets monthly to address resource, technology, and process implications of such a move. We recognize that such an action will require authorizing legislation, and the VA stands ready to assist the SBA and the Committees in that effort. And we believe that based on the work that we are doing today with the SBA, we will enable us to implement this legislation promptly once passed.

Mr. Chairman, I will be pleased to answer any questions you or the members may have.

Chairman KELLY. Thank you, Mr. Leney. And I now recognize Mr. Wong for 5 minutes.

STATEMENT OF ROBB WONG

Mr. WONG. Thank you, Chairmen, Ranking Members. I appreciate the opportunity to talk to you today about the service-disabled veteran-owned small businesses. There appear to be two aspects to today's hearings, one is SBA's progress with implementing NDAA provisions related to single uniform standards, and the other is SBA's future role in certifying SDVOSB businesses.

As head of the SBA's program office for GCBD, which is Government Contracting and Business Development, both areas fall under our program office and my leadership. I will be speaking to the first topic this afternoon. On the second topic, I will yield to my colleague, Bill Gould, who will be leading our agency's engagement with the VA.

As you know, the 2017 NDAA created a single uniform definition of service-disabled veteran-owned small business in the Small Business Act, and deleted the former VA provision. The law also directed SBA and the VA to develop a joint rule. Over the course of 2017, SBA collaborated with the VA, and in January of this year both agencies published proposed rules. The comment periods for both closed in March. SBA continues to consult with the VA and is on track to issue a final rule before the end of this fiscal year.

The 2017 NDAA also provided an avenue for protests and appeals involving the VA, the VA's CVE program. These are now being decided by SBA's Office of Hearings and Appeals, or OHA. SBA published a final rule implementing these provisions at the end of March. This has an effective date to coincide with the SBA's anticipated issuance of the ownership and control rule discussed previously. With this change, the VA will reimburse OHA for deciding the matters related to the VA's program.

Let me next briefly preview the second topic, certification. Currently, SBA certifies businesses in the 8(a) Business Development program and the HUBZone program. And we have a legislative mandate to establish the certification program for a third program, which is the Women-Owned Small Businesses. At this time we are in the exploratory phase with the VA of considering whether SBA should also certify the SDVOSBs.

This is an idea and an opportunity that Administrator McMahon has discussed personally with then acting VA Secretary Wilkie. Through their leadership, the agencies have been engaged in regular discussions for which SBA has been led by my colleague, Bill Gould. For further detail, I will allow him to outline our activity and interactions with the VA. For my part, let me say that this is an idea that we like. We are moving forward, but we are also—we also need to get this one right.

This is a huge task with new authority and responsibility and also potential new benefits. For the communities that we serve through this program, continuity of business operation is critical for veterans, and also their ease of use in applying. We also understand that we need to make this process easy for the government to get to a quality solution that supports our veterans and our government.

Thank you for the opportunity to testify today. I look forward to your questions. Thank you.

Chairman KELLY. Thank you, Mr. Wong. And I now recognize Mr. Gould for 5 minutes.

STATEMENT OF WILLIAM GOULD

Mr. GOULD. Thank you for allowing me the chance to update you on SBA's collaboration with the VA on certification of service-disabled veteran-owned small businesses or SDVOSBs.

On behalf of the agency and the SBA administrator, I have been leading the SBA team on our engagement with the VA. The SBA and VA formed a working group in December of 2017. The group consists of six members each from the VA and SBA from different parts of the organizations. We meet monthly to discuss progress, address questions, and plan next steps.

Among the areas that we have been reviewing are certification process details, IT system discussions in and around compatibility and data migration, and legislative, regulatory, and funding implications. As Robb mentioned, this is a good opportunity for the Federal government and our customers. However, we have many items to work through before we get there.

To give you a sense of the size and scale of this proposal, SBA processes around 3,500 applications a year for our current certification programs. The 8(a) program and the Historically Under-utilized Business Zone program, also known as the HUBZone program. The VA, on the other hand, is processing around 15,000 applications per year. SBA's future lies in a single unified certification program with consistent terminology, similar documentation requirements, and the same timelines. All operating on a single information technology system. Each of the current certifications will require changes to the rules and regulations governing it. Some legislative, some regulatory, and some just procedural.

SBA's currently in the process of unifying the full certifications into the newly launched Certify.SBA.gov system. This will have two major benefits. A simplified user experience, and a synchronized process and single dataset for SBA to manage.

The small business owner will be able to log in and see her certifications and status. She will be able to apply for additional certifications by only having to submit the additional documents, not starting from scratch. For the SBA, this will have the major benefit of having certification data in a single system, allowing personnel access to small business's data across all its certifications. With processes consistent across the certifications, personnel should be able to analyze and process any application received rather than be specialized in a particular program.

The Women-Owned Small Business or WOSB program will be the next certification to go into the certified system. This will happen during the next fiscal year. Taking advantage of the processes established by the previous two certifications, making it a government-wide—and thereby making WOSB a government-wide recognized certification.

Because of the similarity between WOSB and the SDVOSBs certifications, we will have set the groundwork for the migration of the SDVOSB certification from the VA. The biggest factor in WOSB and SDVOSB certification is estimating the volume of applications, and having the personnel and system capability to digest the potentially huge numbers.

Remember, 3,500 is what we are currently doing now, another 15,000 from SDVOSBs and 15,000 WOSBs. So we are moving from 3,500 to over 35,000 per year. When we establish the WOSB process and requirements, which we estimate to be a similar number to the VA, the VA volunteered to adjust its current certification process to more closely align with the SBA's process to help ease the transition. This is currently still being discussed between the organizations in our working group.

Additionally, the working group is developing plans for marketing the new government-wide certification across government and business community to increase awareness and the opportunities for SDVOSBs. Government contracting officers and program

managers need to have a solid understanding of the new certification in order to issue contracts to these newly certified entities. And small business owners need to understand the process and value of this new certification.

I hope that this gives you a broad sense of the discussion perimeters between our two agencies as well as an appreciation for the scope of this project. There will be a lot of work to be done, but we are making good progress. We certainly welcome your continued interest and engagement as part of this progress.

Thank you again for the opportunity to testify today, and we look forward to addressing any questions you may have.

Chairman KELLY. Thank you, Mr. Gould. And we now recognize Mr. Leghorn for 5 minutes.

STATEMENT OF DAVY G. LEGHORN

Mr. LEGHORN. Chairman Bergman, Chairman Kelly, Ranking Member Kuster and Adams, and distinguished members of both Subcommittees on behalf of our national commander, Denise Rohan, and the 2 million members of the American Legion, we thank you for the opportunity to testify this afternoon.

We are privileged to present our position on the Small Business Administration's ability to assume the functions of the Department of Veteran Affairs, Center for Verification and Evaluation. Currently, 13 CFR, Part 125, and 38 CFR, Part 74, outline similar rules and regulations for service-disabled veteran-owned small businesses applying for certification.

Earlier this year the Federal Government initiated an alignment of regulations governing SDVOSB definitions, however, as the American Legion noted in previous testimony, the regulations have always been similar. Problems arise from inconsistent enforcement between VA and SBA. Despite maintaining similar regulations, VA requires businesses applying for SDVOSB status to address size, ownership, and control issues prior to agency certification.

In contrast, SBA allows businesses to self-certify that they meet the requisite regulatory threshold to be considered SDVOSBs. Self-certification permits businesses to qualify for all Federal contract awards with the exception of the Veterans First Contracting Program within VA. SBA does not have a front-end process to verify the authenticity of SDVOSBs and relies on community policing and status protests to maintain programmatic integrity.

The problem with having two SDVOSB identification processes is simple. It creates confusion for contracting officers seeking to award contracts to SDVOSBs, and it creates confusion for veteran companies attempting to gain certification. Absent statutory requirement, many state and federal agencies often inquire whether a veteran business is certified by VA-CVE, as such, many veteran companies acquire CVE certifications when they do not need it.

Deconflicting SDVOSB certifications goes beyond the move towards a single set of regulations. It also requires the consolidation of accrediting processes to a singular certifying agency. The Federal Government's reevaluation of the SDVOSB certification will likely shift verification responsibilities from VA to SBA. The American Legion supports the administration's plans to consolidate the verification process to the SBA.

SBA has a proven workflow platform that can potentially handle SDVOSB certifications. VA will likely continue validating veteran and service-connected disability status, but SBA will verify size, ownership, and control standards.

The American Legion makes the following recommendations. In soliciting comments, SBA proposed to amend the definition in 13 CFR, Part 125.11 by incorporating the language from VA's regulations, and also from SBA's 8(a) Business Development program regulations. Currently, the SDVOSB is a set-aside program and not a business development program. The alignment of the regulations will in essence hold SDVOSBs to the same standard and rigor of the BD programs, but they will receive none of the benefits.

The American Legion believes the incorporation of BD assistance into SDVOSB program is the logical next step and consistent with the regulatory merging of 13 CFR, Part 125.11, with 8(a) language, and the perspective move of current CVE responsibilities to SBA.

Lastly, the American Legion believes that moving the verification program is not a punitive measure. VA has done much to establish SDVOSBs as a credible workforce. VA invested in the implementation of the Vets First, and a verification program with agency-generated funds.

CVE overcame many programmatic hurdles since its inception, and VA's investment proved to State and Federal agencies the value of veteran businesses as a preferred contracting group.

However, the veteran and small business industrial base—however, for the veteran and small business industrial base to grow beyond just the Vets First program, verification must leave the confines of the VA. With the move towards a singular standard for SDVOSB definition, the shifting of appellate cases to the SBA's Office of Hearing and Appeals, and SBA's successful integration of Certify.SBA.Gov, this is the right time to hand verification off to the SBA and sunset the system of self-certification.

Chairman Bergman, Chairman Kelly, Ranking Members Kuster and Adams, and distinguished members of both Subcommittees, we thank you for the opportunity to explain the position of the 2 million members of the American Legion.

And I look forward to answering any questions you may have.

Chairman KELLY. I now yield myself 5 minutes for my round of questions.

And, Mr. Gould, I am going to start with you. I would like to start with a general question. You have been discussing the concept of government-wide verification with the VA for some time, can you give us a progress report on the problems you have solved and the ones that still remain, and specifically, one of the problems I would like for you to address is going from 3,500 to 35,000 verifications or processes, that is quite a jump.

And so kind of tell me what you are doing to address to make sure there is continuity, and that we don't drop a whole lot or get big backlogs with that number increase so much.

Mr. GOULD. Well, you asked for a solution, sir, and we are not quite there yet, to be perfectly frank. That is a huge, huge number. What we are doing now, as I mentioned in my testimony, we are trying to consolidate the certification programs that we have now, and unify them into a single certification program, so that there is

consistency in the terminology and how we are managing our certification programs.

So when this monster lands on our lap, we are able to—we are able to process this in a much more efficient way. And we are working with the VA to understand what their certification processes are so that we can incorporate some of their best practices into how we are managing all four of these certification programs that we have upcoming.

Chairman KELLY. And what variables are you considering in order to fund an effective and responsible verification program at SBA?

Mr. GOULD. Could you clarify?

Chairman KELLY. Variables, I mean, that is a lot. So there is going to be a lot of funding. What variables are you considering in deciding how funding you need, or you need to ask for and those kind of things?

Mr. GOULD. The variables are—the primary variable is number of applicants we are going to receive. That is the primary variable, and it is unknown. Right? We honestly don't know. That is the primary variable. And we just don't know how many people are going to want a full-blown government-wide certification versus a self-certification, because I think Chairman Bergman noted that it is an onerous process that some may or may not want to take on.

Chairman KELLY. And, Mr. Wong, I understand that SBA intends for the service-disabled veteran-owned small business certification process to take place at Certify.SBA.gov, along with all other small business certifications. Can you walk me through what this would look like?

Mr. WONG. Well, I can try. So, in general, if you want to look at it this way, you know—you know, as Bill said, this is a monster, right? So it is like the old joke right, how do you eat an elephant? Right? One bite at a time. Okay.

So what we have been doing, we have actually taken this opportunity knowing this was coming, in our meetings we are not just talking about how we are going to look at the service-disabled veteran-owned program, and the way that we are processing these. We are taking the opportunity to realize that with the staff we have, as an example, we have roughly 60 to 70 people that do 5,000 applications.

If we take all of these in total, we are going to need roughly 18 times that. Well, that isn't happening. So we have got to do more with the people we have.

So really what we are doing, if you look at my wall back in the office, we are basically taking the 8(a) program, which is 30 years old. We think we do that pretty well. We take the elements of eligibility that we have, and roughly there are nine of these, and then you have seven of these, I think, for HUBZone, and then you have four of these for WOSB, and then you have other elements that we can add to service-disabled veteran.

What they are trying to do is eliminate one of your primary concerns for the government, is to make sure that truly valid companies are getting these contracts. And so what we are trying to do is we have been working in four different silos, and what we are trying to do now is basically to take people, and the concept that

we are looking at right now is to take our staff and turn them into analysts.

We have the initial processing, in general, get to what we call an initial recommendation to the agency. And then from that point, we have the processing of the 15,000 excuse me, the 30,000 applications that we have, potential 30,000 applications we have, and then we are going to probably—you know, we are looking at different scenarios of where we can take the power of the people that we have, make them analysts of the things that have been processed beforehand. We are trying to find more efficiencies there.

Chairman KELLY. And just—I have 30 seconds left. Is it possible that many of the firms that previously self-certified with SBA will need to learn a new process to become verified?

Mr. WONG. I think the answer is yes. I mean, self-certification with—you know, I have been in this industry before and I have seen how people do it. I think that—I would just say this, the more formal process I think will bring more order to the system.

Chairman KELLY. Thank you. And I now yield—I yield back my time. And now yield to the Ranking Member, Ms. Adams, for her questions.

Ms. ADAMS. Thank you, Mr. Chairman. Mr. Leghorn, previous witnesses have stated that generally veterans hire other veterans. Moreover, service-disabled veteran-owned small businesses are much more likely to hire other veterans with disabilities or join with other such businesses to compete for a contract.

Can you discuss the successes of veterans hiring veterans, and what impact that plays to vets coming home and transitioning to civilian life?

Mr. LEGHORN. Ma'am, thank you for your question. And in terms of—one of the main reasons why the American Legion does such extensive work with the veteran-owned small business community is because we know that veterans hire veterans, and we see it every day. We have an extensive small business task force, and we meet regularly. And one of the things that we always talk about is rolling all the employment initiatives around the stuff that they are doing.

So, you know, this is something that is very important to us, and we constantly talk about it, and we are hoping to make a dent in veterans' employment through our advocacy in veterans small business.

Ms. ADAMS. Okay. So do you feel that breakdowns that individual agencies have impeded the ability of veterans to enter the Federal marketplace?

Mr. LEGHORN. I am sorry. Can you repeat that question?

Ms. ADAMS. Do you feel that breakdowns at individual agencies have impeded the ability of veterans to enter the federal marketplace?

Mr. LEGHORN. You know—and that is one of the issues that I think SBA verification will solve, because right now with self-certification a lot of contracting offices are unsure about veteran-owned small businesses, and their risk averse, and they are less likely to award contracts to a veteran firm that is self-certified.

So—and a lot of agencies outside of VA, what—they are asking for CVE certification, when statutorily they are not supposed to. So that does impede federal contracting.

Ms. ADAMS. Okay. Let me move to Mr. Leney. VA has made major achievements in small business contracting, particularly with the dollars awarded to SDVOSBs, however, this Committee has heard that small businesses were deprived of billions in contracting dollars prior to the Kingdomware decision. So have you seen improvements and solicitations for veteran-owned and SDVOSBs at the VA and other agencies since then?

Mr. LENEY. Yes, ma'am. In fact, as we look at the difference between 2016, which is the year of the Supreme Court decision, and—or 2015, before the Supreme Court decision, and 2017, the year after the Supreme Court decision, we saw a 50 percent increase in the award of procurement awards to SDVOSBs and a 43 percent increase to veteran-owned small businesses.

Ms. ADAMS. Okay. Thank you. So given the verification of veteran small business contracting programs will be moving to the SBA, how can our Committee—both of our Committees—help ensure that there is an increase in technical assistance provided to the VOSBs and SDVOSBs by the VA, now that this function will be transitioned?

And that is for any person on the panel, all of you may answer.

Mr. LENEY. Let me take a stab at that. As we transfer the verification program to SBA certification, SBA still takes the lead in the development of small businesses and we support the SBA program in that regard, and it won't change really what we do in that arena. What it merely does is helps consolidate and gain efficiencies to the certification program.

Ms. ADAMS. Okay. Mr. Wong?

Mr. WONG. Yes, ma'am. In a word, funding. Just to make sure that we have that and we that have the support, and also to make sure we go government-wide I think would be the most helpful.

Ms. ADAMS. All right. Mr. Gould?

Mr. GOULD. Just to echo what they both said. I think we need the funding, and your support to make it successful.

Ms. ADAMS. Okay. Mr. Leghorn, you have got the last leg up.

Mr. LEGHORN. So one thing I would say is that I think there is still a reason why VA needs to stay in the process, they still have to verify veteran status, and also service-connected disability status.

Ms. ADAMS. Great. Thank you, gentlemen.

Yield back.

Chairman BERGMAN. [Presiding.] Thank you, Ranking Member Adams.

Dr. Marshall, you are now recognize for 5 minutes.

Dr. MARSHALL. Okay. Thank you, General Bergman.

Tell you what, following this conversation is worse than neural anatomy was in medical school, trying to understand this. I have never seen such a thing. So the first thing we got to do is find out a simpler acronym. SDVOSBs is too much. Okay?

So I am going to give each 30 to 45 seconds. What can we do to make this simpler? If you were king, what would you do to make

all this simpler, keeping in mind our goals here and maybe, you know, what we can do to help you make it simpler.

Mr. LENEY, you go first, and we will go down the row.

Mr. LENEY. I think we are taking those actions, Dr. Marshall, by consolidating the verification process into an SBA certification process across the entire Federal Government, we will make it much simpler for small businesses, particularly those who are eligible for more than one program.

We consciously make the process rigorous so that a contracting officer or a program manager can be very, very confident that a service-able veteran owns and controls a business. That raises the probability that they are going to be willing to set stuff aside. So we make no apologies about the rigor of the process. We have done a lot to simplify and streamline it. We have reduced the processing time. We made it much more applicant friendly. And I think as we move it to the SBA, they have the same commitment, and I am confident that that will be done.

Dr. MARSHALL. Great. Thanks.

Mr. Wong, anything else?

Mr. WONG. No. I would just like to echo that—one of the things that is kind of cool is that we all know each other, right? We have been working together as a team for the last couple of months. And with your support, I think we can actually make this thing go.

My main drive when I came into to run GCBDB was pretty simple. Make it easier for businesses to get our certifications and make money with them. But more importantly, you know, with those certifications, that is one thing. But we are also focusing mostly on the government supply of contracts, right? It is great to have a certification, but if you don't make money from it, right, you have a situation where somebody has a product that they don't like, right? If they have something that they like, they might tell somebody. If they have something that they don't like, they will tell everybody.

So what I want to make sure is to focus to make the contracting officer's job easier. I would like them eventually to look at—I want them to look at small business first, and I want them to look for SBA certified companies to accomplish that.

Mr. MARSHALL. Great. Thanks.

Mr. Gould, anything else to add there?

Mr. GOULD. Just real quick. I think we are stuck with the acronym SDVOSB.

Mr. MARSHALL. Okay.

Mr. GOULD. I apologize. But as I noted earlier, we are looking to streamline the application process at the SBA, right? When you log in—when a small business owner logs into certify at SBA.gov, name, address, what certifications are you interested in, right? A checkbox. That will generate questions depending on which checkbox you chose, right? And just making it simple and very straightforward for the user, that is my goal of unifying all these certifications under SBA.

Dr. MARSHALL. Mr. Leghorn, what else can we do?

Mr. LEGHORN. I think we are already doing it. I would like to just echo what Mr. Gould said. One of the biggest problems that we had in the past was that two different agencies were doing it. So a lot of our veterans are not only exclusively in one group, they

are either 8A and vet owned or they are women owned and vet owned. To move to a singular agency and a singular platform and one time where they could just enter in all their paperwork, that is the best possible outcome that can come from all this.

Dr. MARSHALL. Okay. Thanks.

I yield back my time.

Chairman BERGMAN. Thank you Dr. Marshall.

Ranking Member Kuster, you are recognized for 5 minutes.

Ms. KUSTER. Thank you, General Bergman.

I want to start with you, Mr. Leghorn, because there is one piece of this in terms of getting rid of the sort of overburdensome government regulation.

If the certification is transferred to the SBA, should the SBA also eliminate the self-certification program? In other words, I am a little confused by the discussion, and we can let others respond after you do, but whether there is still going to exist the duplicative programs.

Mr. LEGHORN. I think that, with the move, self-certification should go away because it causes just a lot of a confusion across the board, not only for contracting officers but for veterans seeking certification as well. And it is not only the contracting officers at the federal level but at the state level as well, because a lot of the States are—think that some of the certifications are reciprocal.

Ms. KUSTER. So, Mr. Gould, would you agree? And do you have the resources necessary for—to streamlining and not having the duplicative programs?

Mr. GOULD. Tricky question. Currently, we do not have the resources. But there is talk about keeping the self-certification program for subcontracting, right? The full-blown certification program, which we are taking from the VA, would be for prime contracts. But there is a need for a subcontractor to be an SDVOSB on occasion. And he or she may not have gone through the full-blown certification process, so we are still analyzing whether there is a true need for the self-certification program.

Ms. KUSTER. And, Mr. Wong, any comment on that?

Mr. WONG. Yes. Just a complement to what Mr. Gould has said and Mr. Leghorn has said.

You know, the balance that you have is between getting it right and also continuity of operation. We are trying to do the best because, again, the goal is to make sure that, when people get our certification, they go to work. Because when they go to work, they put Americans to work. And I think that is what everybody wants.

By the same token, we don't want it so fast so that there is fraud, waste, and abuse. But so as long as there is a balance, I think that—you know, I think, in theory, having one certification would be a good idea. But I think that it is not an easy answer, right? But, again, it is—just as long as we can hit that right balance between prime and sub about subcontracting and also the speed at which someone can get to work accurately and reliably is what we were striving for.

Ms. KUSTER. And how about you, Mr. Leney?

Mr. LENEY. Our goal is to do away with self-certification. We don't see any further needed for it. We think once the program is

federal wide we will then put the veterans on a level playing field and in a good place relative to the other socioeconomic groups.

I also want to say that we have got the capacity. It is a case of funding. It is going to be important for the Congress to fund the SBA to do this. We have funded a verification program. This program can ramp up within 6 months. And I expect that, within a year, we will be verifying every eligible SDVOSB.

Because the SDVOSB community is very smart. Once they realize that the Congress intends to move toward federal wide verification, I expect, over the course of the next year, we will have most, if not all, of the SDVOSBs who want to play with the Federal Government are going to come to CVE and they are going to get verified. So we will be eliminating the uncertainty in that regard. We can't do much about the women-owned small business arena.

The capacity we have now has the ability to scale up. Once we get to complete the transition of EMs and the model we have, I think we have an efficient and effective program.

It is our intent, and We are in the discussion with the SBA to transfer that program potentially lock, stock, and barrel to the SBA so they don't have to reinvent the wheel. And we are working closely with them to refine our programs to make sure we will plug in effectively to Certify.gov, et cetera.

So I think that while there is always risk associated with what we are doing, I think those risks—we are taking action to mitigate those risks. And when we are done, this program will be highly effective.

Ms. KUSTER. So back to you Mr. Leghorn. The question about the subcontractors and the contractors. Do you think this might engender confusion and, again, just this duplicative process? Do you think we should streamline and get down to one, as Mr. Leney has said?

Mr. LEGHORN. Well, I think, as an organization, we absolutely think that Mr. Leney is right on this in terms of we need to get to one standard, and we need to get there quick, because having a rigorous process makes contracting officers sure—like, our veteran-owned small business are who they say they are and, you know, they control the purse strings. So we want what is best for our veteran-owned small businesses.

Ms. KUSTER. Great. As do I.

I yield back.

Chairman BERGMAN. Thank you, Ranking Member Kuster.

Dr. Dunn, you are recognized for 5 minutes.

Mr. DUNN. Thank you very much General Bergman.

Mr. Leney, please walk me through a little statistics. How many companies do you verify in a typical month? And what is the budget, annual budget?

Mr. LENEY. We run about 1,100 to 1,200 a month right now. We have a little over 14,000 firms as of June 30 in the program. We expect, in 2018, to deal with about 15,000 applications.

The current budget for verification in 2017 for the core element of the verification process was about \$12 million. If you add in some of the other attributes we have in our program, we do a rigorous audit program that was mentioned by one of the members to

make sure that firms that have verified stay verified, and that runs about \$16 million.

Mr. DUNN. On top of?

Mr. LENEY. No. No. That is about \$4 million—

Mr. DUNN. Altogether.

Mr. LENEY. So all in about 16 million. We expect, when we go to the higher level, and, again, I think within a year we will know what that is, probably running about \$20 million.

Mr. DUNN. How long do you think it takes you to do 18,000 currently self-certified SDVOSBs?

Mr. LENEY. Self-certification is one click of a button on—

Mr. DUNN. Yeah. But, now, you are going to certify them. So how long do you think you get them processed?

Mr. LENEY. Right now our goal is—we verify firms under 60 application days from the time they start, initiate, their application, to the time they receive a determination. The only time we stop the clock is when we are waiting on—

Mr. DUNN. One year? 2 years? To get all those?

Mr. LENEY. How will it take us to get to 18,000?

Mr. DUNN. Eighteen thousand, you know, additional. This is new business, right?

Mr. LENEY. I think the total will be around 21,000.

Mr. DUNN. Okay.

Mr. LENEY. Okay.

We are also verifying 4,000 veteran-owned small businesses. So that process will also move to the SBA. We will have to pay for that. It will be appropriate for the VA to pay for that because that is—

Mr. DUNN. Yeah. And I am getting at the budget questions.

Mr. LENEY. We are probably looking at \$20 million, I think.

Mr. DUNN. Okay. Good.

So, Mr. Wong, how much does it cost the SBA to run through all the other small business certifications? So what is your annual budget?

Mr. WONG. Let me defer that to Mr. Gould. He keeps—

Mr. DUNN. I am sorry.

Mr. WONG. If I could defer that answer to Mr. Gould.

Mr. DUNN. Sure.

Mr. Gould, annual budget on that?

Mr. GOULD. So the annual budget currently for the certifications, it is a tricky question, because we run—we have one pot of money that we use for the certification programs and the business development programs which—

Mr. DUNN. Okay. So not the development programs but—

Mr. GOULD. Right.

So, again, it is a tricky question, because those two programs are blended so closely together.

Mr. DUNN. Give me your best shot. I am trying—you know, you have asked for resources. I am working my way towards—how much resources do you need?

Mr. GOULD. An analysis I did was trying to figure out how much it is going to cost us to process 33,000 applications a year. I came up with \$115 million.

Mr. DUNN. So higher than what I was expecting.

Now, SBA has a network of field offices. Mr. Wong, I think this is you.

Mr. WONG. Yep.

Mr. DUNN. A network of field offices. The VA doesn't really have that. Does this create some great efficiencies for the program?

Mr. WONG. So in terms of servicing, yes. We have 68 different field offices. And generally happens is, when you apply to Certify.gov, the headquarters function is the one that certifies the business. Once it is certified, it is assigned to the district office in which they reside.

Presently those BOSes, the business opportunity specialists, who work for our staff in the field, are only statutorily authorized to provide business development assistance for 8A. So there would be some additional—there would be some additional legislation, I suppose, that is required. But in general, we do have 68 different offices around the country that—

Mr. DUNN. So let's make—put a pin in that. You need additional legislation. You need to talk to us about that. Not in this meeting, but—

Mr. WONG. Yes, sir.

Mr. DUNN. So I want to get back to Mr. Gould. The number you gave me confused me a little.

Was that an all out budget including the prior—the 115 million, was that including the current SBA?

Mr. GOULD. That is all in.

Mr. DUNN. Okay. Plus the VA.

Mr. GOULD. Including the VA. Not plus, including the VA.

Mr. DUNN. All right.

Thank you, Mr. Chairman. I yield back.

Chairman BERGMAN. Thank you, Mr. Dunn.

Mr. Poliquin, you are recognized for 5 minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman, very much. Thank you, gentlemen, for being here.

It is always a good idea to find efficiencies and save money throughout the Federal Government, or the State or local government, whenever you can.

What I found at the VA, sometimes this becomes difficult when you have an organization of 385,000 people that have, many cases, been there for quite some time. And in many regards there aren't performance metrics, so we know how these folks are performing and you see the budget is doubled over the last 8 years, roughly.

So you folks are coming before us now asking to do something which, to me, seems like commonsense. But I have also heard a couple times here, Well, you need more money.

We spend a lot of our time talking to people that need more money. I would think, and this may not be the case, but if you are taking two functions, same function, really, or close to the same function, right, at the VA and at the SBA, and you combine the two of them, and the SBA has all kinds of regional offices around the country, so forth and so on, and you are putting them together, you think you would save money. That is not what I am hearing. And you are shaking your hand Mr. Leney.

So I am going to give you a shot at telling me Why it is going to cost us money instead of saving money. Let's start with that, and then I have a couple other follow-up questions.

Go ahead, sir.

Mr. LENEY. Simple response to that is the expansion of the program. What we expect, if we were to move this to the SBA, do a federal wide certification program, we will run from about 14,000 firms to about 21,000 firms in the program. So you are talking about a 50 percent increase in the size of the program, just volume.

Mr. POLIQUIN. Just not veterans that own small businesses. Everybody else who wants a contract with the government. Is that what you mean?

Mr. LENEY. Well, I am only speaking to the veteran piece. And as Mr. Gould mentioned, they are going to go from 3,500 that they deal with. We deal with 15,000 applications a year right now. I want expect that would go up over 20,000. So it is just an increase in volume.

In fact, the cost per application—

Mr. POLIQUIN. That is because you are going to do away with the self-certification. Is that what you mean?

Mr. LENEY. Self-certification doesn't have an explicit cost, because we don't run that. People self-certify. The cost is in the back side. The cost is the real veterans owned small businesses.

Mr. POLIQUIN. Yeah. I was just talking earlier today someone who owns 22 McDonald's franchises. He is saying the cost of labor is going up so much now, he is finding technology to save—head count to save money so his business can make it.

Is there a possibility of that happening here?

Mr. LENEY. Yes.

Mr. POLIQUIN. Tell me about it.

Mr. LENEY. With the implementation of our veteran engagement management system, we expect to reduce the amount of labor involved that we just—in fact, we just deployed it. We are going—

Mr. POLIQUIN. Then why are you asking for more money?

Mr. LENEY. Because we are going to increase the program by 50 percent.

Mr. POLIQUIN. Okay. One of the things we have run into at the VA is—and this was a real eye-opener for me. I come from the business community, but I have a tremendous amount of respect for our veterans. That is why I lobbied to get on this committee. And my goal is the same, I think, as everybody else down the path here.

We have 7 million veterans, and we need to take care of them. That is the deal. That is the contract we have with the folks who gave us our country. It is pretty simple to me.

But at the same time, you look at the VA. And over the past, I don't know, Neal, how long, they have—I won't get this exactly right. They have a hundred different legacy computer systems. A hundred of them. And one can't talk to the other, so you have a veteran that is in Maine, and he needs healthcare, and he traveled down to Florida to see his kids. And all of a sudden they can't exchange medical records, and all this other stuff. It is getting better, I understand that. One of the reasons is that we now allocated

what? \$10 billion dollars for them to fix this mess so the computer systems can talk to each other. Can you imagine running a business like this?

And what I found, what I believe, and I think it has been verified, I think it has been said publicly, is that the reason we have this problem is a lot of these folks build up their own systems to protect their jobs and what they do with these organizations, and they don't talk to each other, so the people that get screwed are the taxpayers and the veterans that we should be taking care of, using that money to take care of them.

So you have two computer systems here, I am guessing. They talk to each other? What are you going to do about that?

Mr. LENEY. We are happy to offer—in fact, we have offered our system up, if they determine that is a better system. If it is not, we will use their system. Our system goes away.

Mr. POLIQUIN. Yeah. Who makes that decision?

Mr. LENEY. They will.

Mr. POLIQUIN. Okay.

Mr. LENEY. We will defer to the SBA, because they are going to take the mission. I have no interest in keeping my organization alive in this regard. That is why we are proposing to move the entire organization. We think it is efficient and effective.

Mr. POLIQUIN. I appreciate that.

I know I have a little bit of time here, Mr. Chairman. If I may.

Mr. Leghorn, you represent the Legion. Great folks. We love them.

Have the other VSOs weighed in here? And if they have, I missed it.

What do the rest of the VSOs feel about this issue?

Mr. LEGHORN. I am really hesitant to speak for other VSOs, but there are several out there that are also on our small business task force. And through our small business task force, I know that we are all locking in step with the proposal to move verification from VA to SBA.

Mr. POLIQUIN. Okay. Do you have any concerns? What will be the top two concerns you would have and the other folks at the other VSOs have about doing this?

It is going cost more money. You come to us. We don't have the money. Is that one of them?

Mr. LEGHORN. Cost is definitely an issue.

Mr. POLIQUIN. Yeah.

Mr. LEGHORN. You know, VA, to their credit, has been funding the CVE on their own agency generated money. So cost is an issue when we move that to the SBA, because I don't think VA's going to just give that money over to the SBA.

Mr. POLIQUIN. No? You are kidding? You mean to tell me a federal agency here in Washington not wanting to cut their budget—you don't mean that, do you, Mr. Leghorn?

I think my time is up. Thank you very much for being candid. Thank you, sir.

Yield back.

Chairman BERGMAN. Thank you, Mr. Poliquin.

Mr. Leney, a persistent complaint about the SDVOSB—and, by the way, I agree with Dr. Marshall that either we come up with

a better acronym or figure out a pronunciation of it. But anyway, the verification program is that bad actors misrepresent ownership of companies. In fact, there is a term used, the storefront veteran, in some cases. That is—for those of you who have delved into this a little bit. And in a previous life, I did do some pro bono work with SDVOSBs trying to get themselves certified.

But sometimes they are caught, the bad actors are caught, and the companies are eliminated. But too often these same entities, kind of like Whack-A-Mole, remedy the non-compliance on paper but not in reality. And then they get reverified and they are back in the game.

In what we are looking at going forward, what are we doing to end this? And how would you recommend the SBA solve the problem once and for all and, and basically, you know, use the tech term, close the back doors?

Mr. LENEY. Bottom line up front, Mr. Chairman, we are not going to solve the problem of criminals. We haven't solved in any other sector of society. They will continue to be criminals who seek to take advantage of a government program. However, we have taken a number of actions that I think have been very helpful.

Here in the VA we have an audit program, a no notice man from—one of our people shows up on-site to confirm that a veteran-owned small business continues to be owned or controlled by a veteran. That does not solve the storefront problems in terms—another term called pastors. That is a contracting issue.

But I think we have largely addressed the issue of are you really owned and controlled by a veteran? Yes. There are some that can paper it over. There are some that commit fraud. We have referred those to the IG. I have a risk manager who works very closely with the IG. And we have seen a decline in the number of those firms.

If you do business with the VA in any reasonable capacity, you will get visited, no notice, by an auditor. And that has made a major difference in terms of veteran-owned small businesses realizing that we are serious to the program.

Chairman BERGMAN. Good. Well, speaking of audits, you know, Mr. Gould, you know, VA audits SDVOSBs after they have been verified, as we just heard Mr. Leney say.

What level of auditing or ongoing oversight does SBA currently exercise in other small business programs? And have we got a plan going forward, or is that Mr. Wong?

Okay.

Mr. WONG. So we have some safeguards. They are not perfect. We are making progress. But it is not perfect. But we have things like size protests.

In some regards, I think that in order to reduce the number of back doors, in order—as we call them, fronts, I think having a more solid process in the front door is going to be one of the safeguards that we can have. Additionally—

Chairman BERGMAN. So let me ask the question.

So do you believe that—if I am not hearing that you are saying audits are useful going forward. Did I misinterpret what you said?

Mr. WONG. I don't want to say that you didn't do anything. I would just say that I did not say that.

Chairman BERGMAN. Okay. But that was kind of getting from—you were talking about front doors, back doors.

Mr. WONG. Yes.

Chairman BERGMAN. I didn't hear about—are we going to use the audits to do this, or are we going to do this through our processes and designing the system to able update, or do we have to physically audit?

Mr. WONG. So we can do that. What SBA has right now, with all of our certification programs, we have a—we ostensibly have a strong entrance barrier. And once that is through, then we have annual reporting requirements. And then we have analysts that look at these annual reviews or this continuing eligibility.

We also have the public and competitors—I mean, competitors are great for policing things. And they have protests. So we even have protests. And a mechanism by which, if somebody protests size and they are untimely, because I am a lawyer by trade, but sometimes lawyers play games, and if they are obviated because of time, SBA even has its own ability to—

Chairman BERGMAN. And I hate to cut you off here, because now I know you are a lawyer, I know you would run out my time if I let you.

But the point is the audit verification process that you just articulated by, in other words, letting those affected parties, those negatively affected parties, basically take care of those bad actors by letting you know who they are, kind of—it is kind of a team effort on it. That is to get everybody invested in the program going forward, especially those honest, you know, business-minded veterans who want to build a small business. They will feel included.

Mr. Leghorn, you get the last word here as far as your thoughts on, you know, how about the audits. Will they be helpful? Hindrance? What are you thinking?

Mr. LEGHORN. So the issue with the audits is that it really cuts into a small business's time and effort in their capacity to make money when you show up for a site visit. That has always been the problem. And, you know, what is the right level of government intrusion necessary to verify that you are who you say you are versus, you know, if you are who you say you are, let's let you go on and go about your business.

Chairman BERGMAN. So going forward, then, if the SBA is they take over the program, look at the audit as a tool that, if properly applied and doesn't require small business to, let's say, to add compliance people or add other, you know, limited resources that you have as a small business to then apply those resources towards successfully passing an audit.

So, again, it is working together to make sure it doesn't stay onerous, any part of it stays onerous. Is that a fair assessment?

Mr. LEGHORN. Correct. And if I could add one more thing real quick. I think there is a great avenue for SBA or VA to do something along the lines of improving community policing and, in fact, promoting it. And also, just as Mr. Wong said, there are still status protests that could be levied through the GAO.

Chairman BERGMAN. Okay. Well, thank you very much.

So I see no further questions from the dais up here. If there are no further questions, then the panel is now excused.

Thank you again to Chairman Kelly and Ranking Member Adams for hosting this hearing. Do either you, Ms. Adams or Ranking Member Kuster, have any final remarks before I close?

Ms. ADAMS. No, sir. I just want to thank all of the panelists for being here and all the members of the committee.

Chairman BERGMAN. Thank you.

A couple of thoughts. Based upon what Dr. Marshall said about, you know, simplifying, getting a new name. I would suggest to you we love, you know, acronyms and words and whatever. But, you know, personally, alliteration helps me figure out what it is we are trying to do that I would suggest, you know, if we stratify, we simplify, and then especially from VA as you transition out and SBA as you transition in, you support one another in the lessons learned that you have already learned in VA.

Don't go, you know, a year from now over a cup of coffee saying, Oh, yeah, we could have told you that a year ago, you know, type of thing. So support one another so in the end we support the veterans and their efforts to become successful small business owners.

Small business programs and contracting reform are important to all of us. And I know that Ranking Member Kuster shares this view, because we have been a good team here for 18 months on the VA O&I Committee. We have prioritized these issues on the Oversight and Investigations Subcommittee hearings. We devote as much time as we can. But the reality is that the Small Business Committee is dedicated to these issues now full-time. We welcome the opportunity to work with you.

Thank you to our witnesses for sharing your knowledge, your perspectives, and for continuing to highlight the need for government-wide verification. I look forward to working with all of you to craft such legislation.

I would be remiss in saying the 115 million is—that is an interesting figure. We are going to have to talk about that.

I ask unanimous consent that all members have 5 legislative days to revise and extend their remarks and include extraneous material.

Without objection, so ordered.

This hearing is now adjourned.

[Whereupon, at 3:20 p.m., the subcommittees were adjourned.]

A P P E N D I X

**STATEMENT OF THOMAS J. LENEY
EXECUTIVE DIRECTOR
OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION (OSDBU)
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
HOUSE COMMITTEE ON VETERANS' AFFAIRS,
AND THE
SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT, AND REGULATIONS,
HOUSE COMMITTEE ON SMALL BUSINESS**

JULY 17, 2018

Chairman Bergman, Chairman Kelly, Ranking Member Kuster, Ranking Member Adams, and Members of the Subcommittees, thank you for inviting me to testify on the status of our efforts to implement a uniform standard for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) in Federal contracting. In my capacity as Executive Director for VA's Small and Veteran Business Programs, I oversee the Center for Verification and Evaluation (CVE), which verifies the Veteran ownership and control of small business participating in VA's Veterans First Contracting Program. This program directs VA to prioritize SDVOSBs first, and Veteran-Owned Small Businesses (VOSBs) second, when VA seeks to buy goods and services.

CVE continues to carry out its mission to verify SDVOSBs and VOSBs, in order to fulfill the statutory mandate set forth in 38 U.S.C. 8127 that requires the Secretary of Veterans Affairs (or his designee) only awards contracts under the program to verified firms. This means participation in the program is limited to those firms which CVE has verified and included in the database. As the database represents the potential universe of eligible firms, it also serves as a helpful starting point for market research for contracting officers evaluating whether a Veterans First set-aside is appropriate, since they can readily identify eligible firms from which they can then determine those with the requisite capability.

These factors, combined with the heightened attention on our program following the *Kingdomware Technologies v. United States* decision of the Supreme Court in June 2016, have fostered significantly higher workload for CVE. New applications, measured as initial applications created in our system by the Veteran entrepreneur, rose slightly to 10,194 applications in the first three quarters of Fiscal Year 2018. This followed nearly 30 percent growth during the same period of 2017, compared to 2016. New applications also result in increased workload at subsequent stages, as those applications, and those carried over from 2017, move through our review process. Through June 30, 4,009 applications were approved, 85 were denied, 1,346 were withdrawn by the applicant, and 5,823 were administratively removed by CVE from further processing for reasons such as for failure to respond to a document request. All told, as of June 30, CVE had 14,084 verified firms, including both VOSBs and SDVOSBs, in the database. Increasingly, the range of available firms makes VA more and more likely to use the Veterans First program as its principal means to provide access for small business.

This makes the Veterans First Contracting Program an essential priority for both VA, in recognition of our Veteran-centric mission, and our partners in the Small Business Administration (SBA), responsible for Government-wide programs to enhance small business access. Together, we have made great progress carrying out the Congressional mandate, contained in the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017), to create uniform standards for the VA and SBA programs for contracting with SDVOSBs. Congress enacted a single uniform definition, and placed it in the Small Business Act, to ensure such firms are not held to two different standards depending on which agency they were dealing with. In addition, VA and SBA were directed to come up with a joint regulation for determining ownership and control. The outcome of this process will be reduced frustration for our SDVOSB participants, so they can go about what they do best: delivering the goods and services VA and all Federal agencies need to get our work done.

Removing barriers to entry is a critical part of maintaining and enhancing small business participation in Government contracting. The proliferation of varying standards

and multiple certifications is a disincentive to the small businesses that would need to commit time and resources to research and understand those requirements, and submit to multiple approval processes. These should be burdens we can avoid imposing, and I am grateful to your Committees for your helpful direction in this area.

For similar reasons, I was pleased to see this matter addressed in the Administration's proposal for reorganizing the Executive Branch, "Delivering Government Solutions in the 21st Century." The proposal recommends consolidating all the small business contracting programs into SBA's Office of Government Contracting and Business Development. Exceptions would be made for programs requiring some kind of industry-specific expertise at a different agency, in which case that agency's program would be the Government-wide standard and others would yield to it.

Thanks to your legislation and our implementing efforts on the SDVOSB and VOSB programs, we are ahead of the curve in this effort. I'm sure we will be glad to make our experiences and "lessons learned" available to other programs where that would be beneficial. We look forward to our continued partnership with SBA.

Let me provide a little more detail on where we are with our implementation efforts.

Uniform Definition of SDVOSB

Section 1832 of the NDAA 2017 created a single uniform definition of Service-Disabled Veteran-Owned Small Business, by combining the definitions in the Small Business Act and in 38 U.S.C. 8127. In effect, any SDVOSB that was eligible under one of the previous definitions would remain eligible under the revised, combined definition. The NDAA 2017 placed the combined definition in section 3(q) of the Small Business Act, and replaced the VA definition with a cross-reference to it. The law then directed SBA and VA to develop a joint rule to implement the change, after which VA will no longer use its own separate rule to verify the ownership and control of SDVOSBs.

Jointly developing a single standard for ownership and control necessitated two proposed rules, one to revise the SBA regulations, and one to delete ownership and control matters from the VA rule. After extensive SBA-VA collaboration, these efforts

are approaching completion. VA published a proposed rule on January 10, 2018 (83 Federal Register 1203), and SBA published its proposed rule on January 29, 2018 (83 Federal Register 4005). The comment periods for both proposed rules expired in March. The final remaining step is to publish final rules addressing the public comments received. This is not a trivial exercise, but we anticipate completing it before the end of Fiscal Year 2018.

Generally, the ownership and control requirements seek to ensure that one or more service-disabled Veterans is in fact the true beneficiary of the contracting programs, and that non-Veterans are not able to abuse these programs to gain benefits not intended for them. For this reason, the regulations extensively discuss what it means for one or more service-disabled Veterans to own a firm unconditionally, and what it means for the Veteran(s) to control the management and daily business operations of the small business.

We have learned a lot over the years about what this means in particularly complex cases involving small businesses that are incorporated. Do the service-disabled Veteran owners in fact own 51% of the stock, and is that ownership unconditional? How is control exercised in the presence of a Board of Directors, or in some cases by an Executive Committee of the Board of Directors? These arrangements can enable non-Veterans to participate in the business but must not be structured in such a way that the non-Veterans can exercise effective control at the expense of the Veteran. Supermajority rules for certain business decisions can mean the Veteran requires concurrence from non-Veterans to take certain actions, and therefore is not the effective decisionmaker. In a complex economy the size of the United States, businesses can be structured according to a wide variety of legitimate arrangements, and our rules must allow flexibility while preserving the integrity of the program as directed by Congress. The revised joint rule captures many insights gained through experience by both VA and SBA.

Some observers thought the outcome of this process would mean the complete elimination of 38 CFR part 74, the VA regulation on verification. While we did eliminate matters relating to ownership and control, as directed by the NDAA 2017, some materials in this regulation continue to be necessary. Many of these remaining

provisions are procedural. For example, VA requires that a verified firm has a continuing obligation to notify us within 30 days of any material change that affects its eligibility. SBA has no comparable provision that we could use instead of this provision, because SBA's SDVOSB program is based upon self-representation rather than SBA certification. Accordingly, we retained this provision, and others that deal with the verification process, in 38 C.F.R. part 74. We also retained other provisions touching on verification of VOSBs, which have no counterpart at SBA.

Appeals and Protests to the SBA Office of Hearings and Appeals

Section 1832(f) of the NDAA 2017 amended the statutory language governing VA's administration of the database of verified SDVOSBs and VOSBs, to provide an appeal right for denied applicants to SBA's Office of Hearings and Appeals (OHA). The legislation also directed that protests by an interested party be heard by OHA; these could include protests from a competing offeror on an SDVOSB set-aside, as well as CVE-initiated processes to review a firm for potential cancellation, not connected to any particular acquisition. These replaced appeal and protest processes formerly conducted within my office.

SBA published a final rule amending the OHA rules at 13 CFR part 134 on March 30, 2018 (83 Federal Register 13626). This piece of the implementation is complete and the new rules take effect October 1, 2018. In addition, SBA and VA have reached an interagency agreement to cover OHA's costs for deciding these matters.

Moving these processes to SBA will make them more formal and ensure more procedural safeguards for firms under review. This comes with a trade-off, however, of removing informal resolution processes. For example, a firm that applied for verification and was denied would previously have submitted a request for reconsideration to my office, and could include new information to bolster its case. The new process means a denied firm would have only the formal appeal to OHA, which does not have the capacity to engage in gathering and reviewing new evidence and instead makes its decision based on the administrative record it receives. This is consistent with OHA's role as an appellate body.

Next Steps

As mentioned previously, we have learned much from the effort to make uniform standards across the VA and SBA programs for SDVOSBs. As the Administration's proposal for reorganizing the Executive Branch proposes, we likely will apply many of these lessons in further streamlining other Government contracting programs and centralizing responsibilities at SBA where appropriate. As previously mentioned, we have already identified one challenge in this area as CVE has quite a heavy workload of interested SDVOSBs and VOSBs, and the annual number of applicants far exceeds those in the 8(a) and HUBZone programs combined. Ensuring SBA is properly organized to manage these obligations will be a challenge, but one worth tackling for the benefit of our small business program participants. We will work with SBA to develop appropriate implementing legislation.

Mr. Chairman, I will be pleased to answer any questions you or other Members may have.

**Joint Statement of Robb Wong
Associate Administrator
and on behalf of William Gould
Office of Government Contracting & Business Development
U.S. Small Business Administration**

**before the
Subcommittee on Oversight and Investigations
House Committee on Veterans' Affairs**

**and the
Subcommittee on Investigations, Oversight and Regulations
House Committee on Small Business
July 17, 2018**

Chairman Bergman, Chairman Kelly, Ranking Member Kuster, Ranking Member Adams, and members of the subcommittees, thank you for inviting me to testify on the status of our efforts to implement a uniform ownership and control standard for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) in federal contracting.

First, Mr. Chairmen, I am proud to report that in Fiscal Year 2017, the federal government awarded the highest percentage, ever, of contract dollars, and the highest total dollar awards to SDVOSBs. We look forward to continuing this performance in Fiscal Year 2018 and beyond.

As you know, the authority for SDVOSB set-asides and sole source awards for the federal government resides in the Small Business Act, with the exception of the Department of Veterans Affairs (VA). SBA drafted rules on ownership and control for SDVOSBs based largely on the rules we had in place for the 8(a) Business Development program. The government-wide SDVOSB program, excluding the VA, is a self-certification program, and SBA decides status protests in connection with set-aside procurements. When the VA created its ownership and control rules for the Center for Verification and Evaluation (CVE) program, it based its rules largely on SBA's. Over the years, there have been some differences in interpretation between the two agencies on certain technical requirements, which is the focus of our discussion today.

Section 1832 of the National Defense Authorization Act (NDAA) of 2017 created a single uniform definition of Service-Disabled Veteran-Owned Small Business in section 3(q) of the Small Business Act, and deleted the former provision in the VA law. The law then directed SBA and VA to develop a joint rule to implement the change for the use of both SBA and VA in continuing their respective programs and responsibilities. The VA continues to certify firms for participation in its procurements, and the SBA continues to operate its government-wide self-certification program and decide status protests.

SBA collaborated with the VA and on January 10, 2018 the VA published a proposed rule to remove ownership and control provisions from its rules (83 Federal Register 1203). Also, the SBA published its proposed rule on SDVOSB ownership and control on January 29, 2018

(83 Federal Register 4005). The comment periods for both proposed rules closed in March. SBA continues to consult with the VA and is on track to issue a final rule before the end of Fiscal Year 2018, with an effective date of October 1, 2018.

Section 1832(f) of the 2017 NDAA provided an avenue for protests and appeals involving the VA's CVE program to be decided by SBA's Office of Hearings and Appeals (OHA). SBA published a final rule implementing this legislation on March 30, 2018 (83 Federal Register 13626) with an effective date of October 1, 2018, to coincide with the SBA's anticipated issuance of the ownership and control rule discussed previously. The VA will reimburse OHA for deciding the matters related to the VA's program.

SBA currently certifies businesses in the 8(a) Business Development and HUBZone programs, and has a legislative mandate to establish a certification program for Women-Owned Small Businesses. We are in the exploratory phase with VA of considering whether SBA should also certify SDVOSBs. Such an effort would require legislative and regulatory changes, such as potentially expanding the SDVOSB certification to a government-wide requirement. The VA's portfolio of certified firms far exceeds SBA's combined portfolio of certified 8(a) and HUBZone small business concerns. Therefore it is critical that as part of this effort, SBA and VA identify opportunities for operational efficiency and seek to minimize disruption to the small business and government contracting communities.

The SBA and VA formed a committee in December 2017 to examine the possibility and subsequent process for moving the VA certification program to SBA. The group consists of six members each from VA and SBA and meets monthly. These discussions have focused on resources, technology, and process analysis. Both agencies are holistically examining this endeavor to inform any determinations regarding implementation and potential next steps.

The working group is also discussing the need to market any potential new government-wide SDVOSB certification process across the government and business communities. SBA and VA would need to work with contracting officers and government program managers to assure these partners have a solid understanding of the new certification in order to issue contracts to SDVOSBs. Additionally, the agencies anticipate the need for outreach to the small business owner community to highlight the process and value of this new certification.

Thank you, Mr. Chairmen and Ranking Members. I will be pleased to answer any questions you or other members may have.



STATEMENT OF
DAVY LEGHORN, ASSISTANT DIRECTOR
NATIONAL VETERANS EMPLOYMENT AND EDUCATION DIVISION
THE AMERICAN LEGION

BEFORE A JOINT HEARING OF THE

SUBCOMMITTEE ON INVESTIGATION, OVERSIGHT AND REGULATION
COMMITTEE ON SMALL BUSINESS

AND

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
VETERANS' AFFAIRS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

ON

"IMPLEMENTATION OF SECTIONS 1832 AND 1833 OF THE FY17 NATIONAL
DEFENSE AUTHORIZATION ACT"

JULY 17, 2018

STATEMENT OF
DAVY LEGHORN, ASSISTANT DIRECTOR
NATIONAL VETERANS EMPLOYMENT AND EDUCATION DIVISION
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BEFORE A JOINT HEARING OF THE
SUBCOMMITTEE ON INVESTIGATION, OVERSIGHT AND REGULATION
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COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"IMPLEMENTATION OF SECTIONS 1832 AND 1833 OF THE FY17 NATIONAL
DEFENSE AUTHORIZATION ACT"

JULY 17, 2018

Chairman Bergman, Chairman Kelly, Ranking Members Kuster and Adams, and distinguished members of both subcommittees, on behalf of Denise H. Rohan, National Commander of The American Legion and our 2 million members, we thank you for inviting The American Legion to testify today. We are privileged to present our position on the Small Business Administration's (SBA) ability to assume the functions of the Department of Veterans' Affairs (VA) Center for Verification and Evaluation's (CVE) office and extending verification of Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) across the federal government.

As a resolution-based organization, The American Legion is directed and driven by millions of active Legionnaires: who dedicate their time and resources to the continued service of veterans, their families, and this great nation. Our positions are guided by nearly 100 years of advocacy and resolutions that originate at the grassroots level of our organization. Thus, The American Legion provides a direct voice to congress on behalf of the veteran community.

BACKGROUND

Sections §1832 and §1833 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (FY17) mandated the federal government adopt streamlined definitions for service-disabled veteran-owned small businesses. President Trump's Administration has signaled a desire to streamline the certification process by providing a "one-stop shop" within SBA¹. The proposal follows Congress' desire to streamline the process to protect the integrity of the SDVOSB program. The federal government initiated an alignment of regulations governing SDVOSB definitions, but The American Legion notes in previous testimony that regulations have always been similar, the problems that arise come from inconsistent enforcement between VA and SBA.

¹ Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations

The SBA and the VA outlined similar rules and regulations for businesses to qualify for certification as a SDVOSB. Despite maintaining similar regulations, discrepancies arise as VA requires businesses applying for certification to address existing issues relating to meeting SDVOSB status prior to agency certification. In contrast, SBA allows businesses to self-certify, stating their business meets outlined rules and regulations. Self-certification permits the business to qualify for contracts from agencies across the federal government with the exception of the Veterans First Contracting Program within VA. Unfortunately, no process exists for SBA to verify a business' claim to be an SDVOSB on the front-end. SBA relies on community policing through SDVOSB status protests after a contract has been awarded. The American Legion, "endorses VA's efforts to ensure that contracts...are awarded to companies that truly are entitled to receive these contracting benefits"² and urges SBA to adopt similar protections rather than policing after a contract has been awarded. The stringent protocol and certification process implemented by VA permits contracting officers to safely award contracts to SDVOSBs with the assurance the businesses are vetted.

The disparity between the two certifying agencies in the certification process creates confusion for government entities seeking to award contracts to SDVOSBs and adds confusion to veteran businesses attempting to gain certification. While SBA provides certifications for veteran-owned small businesses (VOSBs), members of The American Legion's Small Business Taskforce have stated that many other agencies now also inquire whether a small business attempting to receive a contract is also certified by the VA's Center for Verification and Evaluation. This inquiry by agencies inadvertently creates two vetting systems, as small businesses now feel compelled to also receive CVE certification. Agencies' inquiry into a business' CVE certification violates statute, as they are not permitted to make contracting decision based on VA's certification process. CVE certification represents a higher level of scrutiny versus self-certification and is often preferred by risk averse contracting officers.

The federal government is realigning definitions for SDVOSBs and evaluating the validity of self-certification, as such responsibilities will shift from VA CVE to SBA. The American Legion, "supports legislation that calls for the Department of Veterans Affairs and the Small Business Administration to share responsibilities for the verification of service-disabled veteran-owned businesses and veteran-owned small businesses, and this responsibility should be divided accordingly to each agency's expertise and record of past performance."³ The American Legion urges SBA and VA to work together to provide each other pertinent information.

VA should continue validating veteran and service-connected disability status, meanwhile, SBA should utilize their expertise to conduct examination of the size, ownership and control standards. VA does not have SBA's history of certifying small businesses and therefore should not be tasked with such responsibility. Additionally, VA's recent rollout of the Veterans Entrepreneur Management System (VEMS) has been hampered by delays and Customer Relationship Management System (CRMS) migration complications. In contrast, SBA successfully rolled out *certify.sba.gov* in 2017, which performs the same functions as the VEMS, without the integration problems.

² The American Legion Resolution 155 (2016): Support Verification Improvements for Veterans' Business

³ Ibid.

VA CVE, SBA, VEMS and The American Legion Small Business Task Force

Veteran small business owners who are members of The American Legion have described the increased stress and difficulty of having to essentially manage two certification processes. While some VOSB owners felt confident in self-certification, increasingly, agencies across the federal government now ask if they are CVE certified. As such, veterans have expressed a need to apply for both certifications rather than only self-certifying for fear of not being awarded contracts. The Federal Aviation Administration (FAA) and an increasing number of states with veterans' preference in government contracting are accepting CVE certification in lieu of independent verification. As such, even veteran businesses with no interest in federal contracting are beginning to seek CVE certification.

Members of The American Legion's Small Business Task Force also stated that another major hurdle involves VA's migration to the new Veterans Entrepreneur Management System (VEMS). Failure to correctly fill out documentation could result in the revocation of the CVE certification. According to our Small Business Task Force, the new VEMS has a poor user interface and has not been adequately beta-tested for functionality. Relunched in 2018, the adoption of the new CRMS under unrealistic timelines resulted in premature implementation that negatively impacted numerous VOSBs and SDVOSBs reverification. Furthermore, during the CRMS migration, much of the information from previous VEMS was lost.

One member of The American Legion's Small Business Task Force managed to successfully log into the new VEMS system. During their initial log-in into the newly created system, the veteran business owner was asked for the previous system's user identification information and password to migrate documents from the previous system. Once entered, the owner discovered none of the documents that were in the old system had successfully been migrated to the new VEMS. The systems "search" feature and data showed the company was verified; however, when logging in, there were no companies associated with the veteran, and the system required a new verification application. The system only recognizes the company by their Data Universal Numbering System (DUNS) number;⁴ therefore it is impossible to complete a new application if an existing application is already in the system under the same DUNS number. Under the suspicion that creating a new application has a high probability of removing the company's verified status and rendering the company ineligible for the Vets First set aside contracts, this prevented the company from creating a new profile in the new VEMS.

RECOMMENDATION 1

The American Legion understands the need for more stringent VOSB and SDVOSB certifications. The American Legion urges the committees to weigh past performance, expertise and resources in determining which certifying body is best suited for the task of certifying veteran businesses. With the move of VA verification functions to the SBA, the current form of self-certification at SBA will likely disappear. The benefit is that federal contracting officers will take the SDVOSB

⁴ Data Universal Numbering System, is a system developed by Dun & Bradstreet (D&B) that assigns a unique numeric identifier, referred to as a "DUNS number", to a single business entity. Many federal agencies utilize the number to track businesses applying for federal contracts. The system has been in use since 1963.

certification more seriously and will be more likely to utilize certified businesses, knowing that these certifications are backed by SBA and the Department of Veterans' Affairs as the reviewing and approving authorities.

RECOMMENDATION 2

VA has done a lot to establish SDVOSBs as a credible workforce; the natural progression is to expand the verification program government wide through the SBA.

VA's Office of Small and Disadvantaged Business Utilization, has led CVE over many programmatic and legal hurdles. VA invested in the implementation of Vets First and the verification program with agency generated funds. VA's investment proved to state and federal agencies the value and capabilities of veteran businesses as a preferred contracting group. VA's efforts created a "Buy Veteran" impetus that has been integrated into state, federal and private sector procurement infrastructure.

For the veteran small business industrial base to grow beyond just the Vets First program, the certification authorization process must leave the VA. VA's job is done and it is time to hand over the process to the SBA so the verification program can go agency-wide and reach its full potential. SBA already possesses the capabilities to have businesses apply for certification through certify.sba.gov. With the move to a single regulatory standard for SDVOSB definition, and the shifting of appellate cases to SBA Office of Hearing and Appeals, it makes sense to move the determinations of size, ownership and control standards to the SBA as well.

RECOMMENDATION 3

In soliciting public comments, SBA wrote in the Federal Register: "In response to the NDAA 2017 changes, SBA is proposing to amend the definitions in § 125.11 by incorporating language from VA's regulations and also from SBA's 8(a) Business Development (BD) program regulations." Currently, the SDVOSB program is a set-aside program and not a BD program. The alignment of the regulations will, in essence, hold SDVOSBs to the same standards as the BD programs. SDVOSBs will be subject to that same standards and rigor, but receive none of the benefits and assistance of the BD programs. If standards are the same across the board, then The American Legion urges agencies to provide the same type of assistance to SDVOSBs as other categories under the BD program. The incorporation of BD elements into the SDVOSB programs is the logical next step, and is consistent of 38 C.F.R. §74 and 13 C.R.F. §125 regulation alignment with 8(a) language and the prospective move of current CVE responsibilities to SBA.

CONCLUSION

Chairman Bergman, Chairman Kelly, Ranking Members Kuster and Adams, and distinguished members of both subcommittees, The American Legion thanks you for your leadership on this important matter and for allowing us the opportunity to explain the position of our 2 million members. Questions concerning this testimony can be directed to Mr. Jonathan Espinoza, Legislative Associate, in The American Legion's Legislative Division at (202) 861-2700, or jespinoza@legion.org.

