

**PART 74—VETERANS SMALL BUSINESS REGULATIONS**

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AUTHORITY: 38 U.S.C. 501 and 513, unless otherwise noted.

SOURCE: 75 FR 6101, Feb. 8, 2010, unless otherwise noted.

GENERAL GUIDELINES

**§ 74.1 What definitions are important for Vendor Information Pages (VIP) Verification Program?**

For the purpose of this part, the following definitions apply:

*Applicant* means a firm applying for inclusion in the VIP database.

*Application days* means the time period from when a veteran registers for

verification to the time of a determination, excluding any days in which CVE is waiting for the firm to submit information or documentation necessary for the office to continue processing the application.

*Center for Verification and Evaluation* (CVE) is an office within the U.S. Department of Veterans Affairs (VA) and is a subdivision of VA's Office of Small and Disadvantaged Business Utilization. CVE receives and reviews all applications for eligibility under this part and maintains the VIP database. CVE assists VA contracting offices to identify veteran-owned small businesses and communicates with the Small Business Administration (SBA) with regard to small business status.

*Days* are calendar days unless otherwise specified. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where CVE is closed for all or part of the last day, the period extends to the next day on which the agency is open.

*Eligible individual* means a veteran, service-disabled veteran, or surviving spouse, as defined in the United States Code and the regulation promulgated by the SBA, currently 13 CFR part 125.

*Joint venture* is an association of two or more business concerns for which purpose they combine their efforts, property, money, skill, or knowledge in accordance with 13 CFR part 125. A joint venture must be comprised of at least one veteran-owned small business. For VA contracts, a joint venture must be in the form of a separate legal entity.

*Non-veteran* means any individual who does not claim veteran status, or upon whose status an applicant or participant does not rely in qualifying for the VIP Verification Program participation.

*Office of Small and Disadvantaged Business Utilization (OSDBU)* is the office within VA that establishes and monitors small business program goals at the prime and subcontract levels. OSDBU works with VA Acquisitions to

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ensure the creation and expansion of small businesses opportunities by promoting the use of set-aside contracting vehicles within VA procurement. OSDBU connects and enables veterans to gain access to these Federal procurement opportunities. The Executive Director, OSDBU, is the VA liaison with the SBA. Information copies of correspondence sent to the SBA seeking a certificate of competency determination must be concurrently provided to the Director, OSDBU. Before appealing a certificate of competency, the Head of Contracting Activity must seek concurrence from the Director, OSDBU.

*Participant* has the same meaning given to such term in 13 CFR part 125.

*Primary industry classification* means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the participant. The NAICS code designations are described in the NAICS Manual published by the U.S. Office of Management and Budget.

*Principal place of business* means the business location where the individuals who manage the concern's daily business operations spend most working hours and where top management's current business records are kept. If the office from which management is directed and where the current business records are kept are in different locations, CVE will determine the principal place of business for program purposes.

*Register* means the initiation of an application for verification or reverification by the business owner or a business representative.

*Service-disabled veteran* has the same meaning given to such term in 13 CFR part 125.

*Service-disabled veteran-owned small business concern* (SDVOSB) has the same meaning given to such term in 13 CFR part 125.

*Small business concern* (SBC) has the same meaning given to such term in 13 CFR part 125.

*Surviving spouse* has the same meaning given to such term in 13 CFR part 125.

VA is the U.S. Department of Veterans Affairs.

*Vendor Information Pages (VIP)* is a database of businesses eligible to participate in VA's Veteran-owned Small Business Program. The online database may be accessed at no charge via the internet at <https://www.va.gov/osdbu>.

*Verification eligibility period* is a 3-year period that begins on the date CVE issues its approval letter establishing verified status. The participant must submit a new application for each eligibility period to continue eligibility.

*Veteran* has the same meaning given to such term in 13 CFR part 125.

*Veteran-owned small business concern* (VOSB) has the same meaning given to such term in 13 CFR part 125.

*Veterans Affairs Acquisition Regulation* (VAAR) is the set of rules that specifically govern requirements exclusive to VA prime and subcontracting actions. The VAAR is chapter 8 of title 48, Code of Federal Regulations, and supplements the Federal Acquisition Regulation (FAR), which contains guidance applicable to most Federal agencies.

[83 FR 48229, Sept. 24, 2018]

### § 74.2 What are the eligibility requirements a concern must meet for the VIP Verification Program?

(a) *Ownership and control.* A small business concern must be unconditionally owned and controlled by one or more eligible veterans, service-disabled veterans or surviving spouses, have completed the online VIP database forms, submitted required supplemental documentation at <http://www.va.gov/osdbu>, and have been examined by VA's CVE. Such businesses appear in the VIP database as "verified".

(b) *Good character and exclusions in System for Award Management (SAM).* Individuals having an ownership or control interest in verified businesses must have good character. Debarred or suspended concerns or concerns owned or controlled by debarred or suspended persons are ineligible for VIP Verification. Concerns owned or controlled by a person(s) who is currently incarcerated, or on parole or probation (pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity) are ineligible for VIP Verification. Concerns owned or controlled by a person(s) who is formally convicted of a

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crime set forth in 48 CFR 9.406-2(b)(3) are ineligible for VIP Verification during the pendency of any subsequent legal proceedings. If, after verifying a participant's eligibility, the person(s) controlling the participant is found to lack good character, CVE will immediately remove the participant from the VIP database, notwithstanding the provisions of § 74.22.

(c) *False statements.* If, during the processing of an application, CVE determines, by a preponderance of the evidence standard, that an applicant has knowingly submitted false information, regardless of whether correct information would cause CVE to deny the application, and regardless of whether correct information was given to CVE in accompanying documents, CVE will deny the application. If, after verifying the participant's eligibility, CVE discovers that false statements or information have been submitted by a firm, CVE will remove the participant from the VIP database immediately, notwithstanding the provisions of § 74.22. Whenever CVE determines that the applicant submitted false information, the matter will be referred to the VA Office of Inspector General for review. In addition, CVE will request that debarment proceedings be initiated by the Department.

(d) *Financial obligations.* Neither an applicant firm nor any of its eligible individuals that fails to pay significant financial obligations, including unresolved tax liens and defaults on Federal loans or State or other government assisted financing, owed to the federal government, the District of Columbia or any state, district, or territorial government of the United States, is eligible for VIP Verification. If after verifying the participant's eligibility CVE discovers that the participant no longer satisfies this requirement, CVE will remove the participant from the VIP database in accordance with § 74.22.

(e) *Protest Decisions or other negative findings.* Any firm verified in the VIP database that is found to be ineligible by a SDVOSB/VOSB status protest decision will be immediately removed from the VIP database, notwithstanding the provisions of § 74.22. Any firm verified in the VIP database that is found to be ineligible due to a U.S.

Small Business Administration (SBA) protest decision or other negative finding may be immediately removed from the VIP database, notwithstanding the provisions of § 74.22. Until such time as CVE receives official notification that the firm has proven that it has successfully overcome the grounds for the determination, that the decision is overturned on appeal, or the firm applies for and receives verified status from CVE, the firm will not be eligible to participate in the 38 U.S.C. 8127 program.

(f) *System for Award Management (SAM) registration.* All applicants for VIP Verification must be registered in SAM at <http://www.sam.gov> prior to application submission.

[83 FR 48229, Sept. 24, 2018]

### § 74.3 Who does CVE consider to own a veteran-owned small business?

(a) *Ownership.* Ownership is determined in accordance with 13 CFR part 125. However, where 13 CFR part 125 is limited to SDVOSBs, CVE applies the same ownership criteria to firms seeking verified VOSB status.

(b) *Change of ownership.* (1) A participant may remain eligible after a change in its ownership or business structure, so long as one or more veterans own and control it after the change. The participant must file an updated VA Form 0877 and supporting documentation identifying the new veteran owners or the new business interest within 30 days of the change.

(2) Any participant that is performing contracts and desires to substitute one veteran owner for another shall submit a proposed novation agreement and supporting documentation in accordance with FAR subpart 42.12 to the contracting officer prior to the substitution or change of ownership for approval.

(3) Where the transfer results from the death or incapacity due to a serious, long-term illness or injury of an eligible principal, prior approval is not required, but the concern must file an updated VA Form 0877 with CVE within 60 days of the change. Existing contracts may be performed to the end of the instant term. However, no options may be exercised.

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(4) Continued eligibility of the participant with new ownership requires that CVE verify that all eligibility requirements are met by the concern and the new owners.

[83 FR 48230, Sept. 24, 2018]

### § 74.4 Who does CVE consider to control a veteran-owned small business?

Control is determined in accordance with 13 CFR part 125. However, where 13 CFR part 125 is limited to SDVOSBs, CVE applies the same control criteria to firms seeking verified VOSB status.

[83 FR 48230, Sept. 24, 2018]

### § 74.5 How does CVE determine affiliation?

(a) CVE does not determine affiliation. Affiliation is determined by the SBA in accordance with 13 CFR part 121.

(b) Joint ventures may apply for inclusion in the VIP Verification Program. To be eligible for inclusion in the VIP Verification Program, a joint venture must demonstrate that:

(1) The underlying VOSB upon which eligibility is based is verified in accordance with this part; and

(2) The joint venture agreement complies with the requirements set forth in 13 CFR part 125 for SDVOSBs. However, while 13 CFR part 125 is limited to SDVOSBs, CVE will apply the same requirements to joint venture firms seeking verified VOSB status.

[83 FR 48230, Sept. 24, 2018]

#### APPLICATION GUIDELINES

### § 74.10 Where must an application be filed?

An application for VIP Verification status must be electronically filed in the Vendor Information Pages database located on the CVE's Web portal, <http://www.va.gov/osdbu>. Guidelines and forms are located on the Web portal. Upon receipt of the applicant's electronic submission, an acknowledgment message will be dispatched to the concern containing estimated processing time and other information. Address informa-

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tion for CVE is also located on the Web portal.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0675)

[83 FR 48230, Sept. 24, 2018]

### § 74.11 How does CVE process applications for VIP Verification Program?

(a) The Director, CVE, is authorized to approve or deny applications for VIP Verification. CVE will receive, review, and examine all VIP Verification applications. Once an applicant registers, CVE will contact the applicant within 30 days to initiate the process. If CVE is unsuccessful in its attempts to contact the applicant, the application will be administratively removed. If CVE is successful in initiating contact with the applicant, CVE will advise the applicant of required documents and the timeline for submission. If the applicant would be unable to provide conforming documentation, the applicant will be given the option to withdraw its application. CVE will process an application for VIP Verification status within 90 application days, when practicable, of receipt of a registration. Incomplete application packages will not be processed.

(b) CVE, in its sole discretion, may request clarification of information relating to eligibility at any time in the eligibility determination process. CVE will take into account any clarifications made by an applicant in response to a request for such by CVE.

(c) CVE, in its sole discretion, may request additional documentation at any time in the eligibility determination process. Failure to adequately respond to the documentation request shall constitute grounds for a denial or administrative removal.

(d) An applicant's eligibility will be based on the totality of circumstances existing on the date of application, except where clarification is made pursuant to paragraph (b) of this section, additional documentation is submitted pursuant to paragraph (c) of this section, as provided in paragraph (e) of this section or in the case of amended documentation submitted pursuant to § 74.13(a). The applicant bears the burden to establish its status as a VOSB.

(e) Changed circumstances for an applicant occurring subsequent to its application and which affect eligibility will be considered and may constitute grounds for denial of the application. The applicant must inform CVE of any changed circumstances that could affect its eligibility for the program (*i.e.*, ownership or control changes) during its application review.

(1) *Bankruptcy*. Bankruptcy is a change in circumstance requiring additional protection for the agency. Should a VOSB enter into bankruptcy the participant must:

(i) Inform CVE of the filing event within 30 days;

(ii) Specify to CVE whether the concern has filed Chapter 7, 11, or 13 under U.S. Bankruptcy code; and

(iii) Any participant that is performing contracts must assure performance to the contracting officer(s) prior to any reorganization or change if necessary including such contracts in the debtor's estate and reorganization plan in the bankruptcy.

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(f) The decision of the Director, CVE, to approve or deny an application will be in writing. A decision to deny verification status will state the specific reasons for denial and will inform the applicant of any appeal rights.

(g) If the Director, CVE, approves the application, the date of the approval letter is the date of participant verification for purposes of determining the participant's verification eligibility term.

(h) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means. It is the responsibility of the applicant to ensure all contact information is current in the applicant's profile.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675)

[83 FR 48230, Sept. 24, 2018]

**§ 74.12 What must a concern submit to apply for VIP Verification Program?**

Each VIP Verification applicant must submit VA Form 0877 and supplemental documentation as CVE requires. All electronic forms are avail-

able on the VIP database web pages. From the time the applicant dispatches the VA Form 0877, the applicant must also retain on file, at the principal place of business, a complete copy of all supplemental documentation required by, and provided to, CVE for use in verification examinations. The documentation to be submitted to CVE includes, but is not limited to: Articles of Incorporation/Organization; corporate by-laws or operating agreements; shareholder agreements; voting records and voting agreements; trust agreements; franchise agreements, organizational, annual, and board/member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; financial statements; Federal personal and business tax returns for up to 3 years; and licenses.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675)

[83 FR 48231, Sept. 24, 2018]

**§ 74.13 Can an applicant appeal CVE's initial decision to deny an application?**

(a) An applicant may appeal CVE's decision to deny an application by filing an appeal with the United States Small Business Administration (SBA) Office of Hearings and Appeals (OHA) after the applicant receives the denial in accordance with 13 CFR part 134. The filing party bears the risk that the delivery method chosen will not result in timely receipt by OHA.

(b) A denial decision that is based on the failure to meet any veteran eligibility criteria is not subject to appeal and is the final decision of CVE.

(c) If the Director, CVE, denies the application solely on issues not raised in the initial denial, the applicant may ask for reconsideration as if it were an initial denial.

(d) If CVE determines that a concern may not qualify as small, they may directly deny an application for VetBiz VIP Verification or may request a formal size determination from the U.S. Small Business Administration (SBA). A concern whose application is denied

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because it is other than a small business concern by CVE may request a formal size determination from the SBA Associate Administrator, Office of Government Contracting (ATTN: Director, Office of Size Standards), 409 3rd Street, SW., Washington, DC 20416. A favorable determination by SBA will enable the firm to immediately submit a new VetBiz VIP Verification.

(e) A denial decision that is based on the failure to meet any veteran or service-disabled veteran eligibility criteria is not subject to a request for reconsideration and is the final decision of CVE.

(f) Except as provided in paragraph (c) of this section, the decision on the request for reconsideration shall be final.

(g) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

[75 FR 6101, Feb. 8, 2010, as amended at 83 FR 48231, Sept. 24, 2018]

### **§ 74.14 Can an applicant or participant reapply for admission to the VIP Verification Program?**

(a) Once an application, an appeal of a denial of an application, or an appeal of a verified status cancellation has been denied, or a verified status cancellation which was not appealed has been issued, the applicant or participant shall be required to wait for a period of 6 months before a new application will be processed by CVE.

(b) Participants may reapply prior to the termination of their eligibility period. If a participant is found to be ineligible, the participant will forfeit any time remaining on their eligibility period and will be immediately removed from the VIP Verification database. An applicant removed pursuant to this section may appeal the decision to OHA in accordance with § 74.13. The date of a new determination letter verifying an applicant will be the beginning of the next 3-year eligibility period.

[83 FR 48231, Sept. 24, 2018]

### **§ 74.15 What length of time may a business participate in VIP Verification Program?**

(a) A participant receives an eligibility term of 3 years from the date of

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CVE's approval letter establishing verified status.

(b) The participant must maintain its eligibility during its tenure and must inform CVE of any changes that would affect its eligibility within 30 days.

(c) The eligibility term may be shortened by removal pursuant to § 74.2, application pursuant to § 74.14(b), voluntary withdrawal by the participant pursuant to § 74.21, or cancellation pursuant to § 74.22.

(d) CVE may initiate a verification examination whenever it receives credible information concerning a participant's eligibility as a VOSB. Upon its completion of the examination, CVE will issue a written decision regarding the continued eligibility status of the questioned participant.

(e) If CVE finds that the participant does not qualify as a VOSB, the procedures at § 74.22 will apply, except as provided in § 74.2.

(f) If CVE finds that the participant continues to qualify as a VOSB, the original eligibility period remains in effect.

[83 FR 48231, Sept. 24, 2018]

### OVERSIGHT GUIDELINES

### **§ 74.20 What is a verification examination and what will CVE examine?**

(a) *General.* A verification examination is an investigation by CVE officials, which verifies the accuracy of any statement or information provided as part of the VIP Verification application process. Thus, examiners may verify that the concern currently meets the eligibility requirements, and that it met such requirements at the time of its application or its most recent size recertification. An examination may be conducted on a random, unannounced basis, or upon receipt of specific and credible information alleging that a participant no longer meets eligibility requirements.

(b) *Scope of examination.* CVE may conduct the examination at one or all of the participant's offices or work sites. CVE will determine the location(s) of the examination. CVE may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the legal structure,

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ownership, and control. Examiners may review any or all of the organizing documents, financial documents, and publicly available information as well as any information identified in § 74.12.

[83 FR 48232, Sept. 24, 2018]

### § 74.21 What are the ways a business may exit VIP Verification Program status?

A participant may:

(a) Voluntarily cancel its status by submitting a written request to CVE requesting that the concern be removed from public listing in the VIP database; or

(b) Delete its record entirely from the VIP database; or

(c) CVE may remove a participant immediately pursuant to § 74.2; or

(d) CVE may remove a participant from public listing in the VIP database for good cause upon formal notice to the participant in accordance with § 74.22. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the participant's VIP Verification application.

(2) Failure by the participant to maintain its eligibility for program participation.

(3) Failure by the participant for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, management, and control by veterans, service-disabled veterans, or surviving spouses.

(4) Failure by the concern to disclose to CVE the extent to which non-veteran persons or firms participate in the management of the participant.

(5) Failure to make required submissions or responses to CVE or its agents, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(6) Cessation of the participant's business operations.

(7) Failure by the concern to provide an updated VA Form 0877 within 30 days of any change in ownership, except as provided in § 74.3(f)(3).

(8) Failure to inform CVE of any such changed circumstances, as outlined in paragraphs (c) and (d) of this section.

(9) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

(e) The examples of good cause listed in paragraph (d) of this section are intended to be illustrative only. Other grounds for canceling a participant's verified status include any other cause of so serious or compelling a nature that it affects the present responsibility of the participant.

[83 FR 48232, Sept. 24, 2018]

### § 74.22 What are the procedures for cancellation?

(a) *General.* When CVE believes that a participant's verified status should be cancelled prior to the expiration of its eligibility term, CVE will notify the participant in writing. The Notice of Proposed Cancellation Letter will set forth the specific facts and reasons for CVE's findings and will notify the participant that it has 30 days from the date CVE sent the notice to submit a written response to CVE explaining why the proposed ground(s) should not justify cancellation.

(b) *Recommendation and decision.* Following the 30-day response period, the Director, CVE, will consider any information submitted by the participant. Upon determining that cancellation is not warranted, the Director, CVE, will notify the participant in writing. If cancellation appears warranted, the Director, CVE, will make a decision whether to cancel the participant's verified status.

(c) *Notice requirements.* Upon deciding that cancellation is warranted, the Director, CVE, will issue a Notice of Verified Status Cancellation. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may re-apply after it has met all eligibility criteria.

(d) *Effect of verified status cancellation.* After the effective date of cancellation, a participant is no longer eligible to appear as "verified" in the VetBiz VIP database. However, such concern is obligated to perform previously awarded

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contracts to the completion of their existing term of performance.

(e) *Appeals.* A participant may file an appeal with OHA concerning the Notice of Verified Status Cancellation decision in accordance with 13 CFR part 134. The decision on the appeal shall be final.

[75 FR 6101, Feb. 8, 2010, as amended at 83 FR 48232, Sept. 24, 2018]

### RECORDS MANAGEMENT

#### § 74.25 What types of personally identifiable information will VA collect?

In order to establish owner eligibility, VA will collect individual names and Social Security numbers for veterans, service-disabled veterans, and surviving spouses who represent themselves as having ownership interests in a specific business seeking to obtain verified status.

[83 FR 48232, Sept. 24, 2018]

#### § 74.26 What types of business information will VA collect?

VA will examine a variety of business records. See § 74.12, “What must a concern submit to apply for VIP Verification Program?”

[83 FR 48232, Sept. 24, 2018]

#### § 74.27 How will VA store information?

VA stores records provided to CVE fully electronically on the VA’s secure servers. CVE personnel will compare information provided concerning owners against any available records. Any records collected in association with the VIP verification program will be stored and fully secured in accordance with all VA records management procedures. Any data breaches will be addressed in accordance with the VA information security program.

[83 FR 48232, Sept. 24, 2018]

#### § 74.28 Who may examine records?

Personnel from VA, CVE, and its agents, including personnel from the SBA, may examine records to ascertain the ownership and control of the applicant or participant.

[83 FR 48232, Sept. 24, 2018]

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#### § 74.29 When will VA dispose of records?

The records, including those pertaining to businesses not determined to be eligible for the program, will be kept intact and in good condition and retained in accordance with VA records management procedures following a program examination or the date of the last Notice of Verified Status Approval letter. Longer retention will not be required unless a written request is received from the Government Accountability Office not later than 30 days prior to the end of the retention period.

[83 FR 48232, Sept. 24, 2018]

## PART 75—INFORMATION SECURITY MATTERS

### Subpart A [Reserved]

### Subpart B—Data Breaches

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AUTHORITY: 38 U.S.C. 501, 5724, 5727, 7906.

SOURCE: 72 FR 34399, June 22, 2007, unless otherwise noted.

### Subpart A [Reserved]

### Subpart B—Data Breaches

#### § 75.111 Purpose and scope.

This subpart implements provisions of 38 U.S.C. 5724 and 5727, which are set forth in Title IX of the Veterans Benefits, Health Care, and Information Technology Act of 2006. It only concerns actions to address a data breach regarding sensitive personal information that is processed or maintained by VA. This subpart does not supersede the requirements imposed by other laws, such as the Privacy Act of 1974, the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996,