**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**

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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 SBA[1]. 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 statue, 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 difficultly 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. Relaunched 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.