



VERIFICATION PROGRAM

MYVA VERIFICATION PROCESS

WORK INSTRUCTION

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1.0 Approval

This Work Instruction titled "Verification Program, MyVA Verification Process" is approved per the signatures below:

Document Control Number (DCN): EXEC-T4-WI-007



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2.0 Revision History

Version No.	Revision Date	Author(s)	Brief Description of Change
1.0	12/01/2015	Katerina Bonnevaux	Combine Case Manager, Business Analyst, and Legal Analyst Work Instructions into one Verification Trial Work Instruction. CR #:
		Gerard Fryar and QA Team	Revise process steps to include Initiation, Evaluation, and Determination Work Instructions and to include new WBS Version #5
	3/7/2016	Katerina Bonnevaux	Update previously drafted "Critical Path Work Instructions" to comply with the new Case Analyst trial process memo and incorporate the new PRF Memo
	6/27/2016	Beth Torres	Update to include all steps in the new process
	8/9/2016	Beth Torres and Scott Wilson	Update to comply with VCMS 7.0
	10/12/2016	Beth Torres	Update to remove defunct steps
	10/19/2016	Beth Torres and John Perkins	Update process steps and re-define term "Legal Analyst" to "Senior Analyst"

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3.0 Supporting Information and Overarching Documents

3.1 Definitions

Term / Acronym	Definition
Administrative removal	The act of CVE removing an application from the verification process due to non-response from the applicant or failure by the applicant to submit all requested documentation.
Applicant	A business that has submitted an application for verification, and whose application is still in process.
BIRLS	The Beneficiary Identification Records Locator System (BIRLS) is an electronic information system used and administered by the Department of Veteran Affairs' Veteran Benefits Administration (VBA) that contains personal identifiable information to identify a Veteran. The Center for Verification and Evaluation (CVE) uses BIRLS to verify that an applicant owner is a Veteran.
Cancellation	The act of CVE removing the verified status of a company from the VIP database in accordance with 38 CFR § 74.22.
CA	Case Analyst
CC	Case Coordinator
CVE	Center for Verification and Evaluation
D & B	Dun & Bradstreet
DBA	Doing Business As
DUNS	The D&B D-U-N-S Number is a unique nine-digit identification sequence, which provides unique identifiers of single business entities, while linking corporate family structures together. The D&B D-U-N-S Number has become the standard for keeping track of the world's businesses. Once a number has been allocated to a business, it can be used to identify and link millions of companies worldwide.
EPLS	Excluded Parties List System

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Term / Acronym	Definition
FR	Federal Reviewer
FRC	Federal Review Coordinator
SA	Senior Analyst
PM	Portfolio Manager
Participant	A business that has been verified as a SDVOSB or VOSB and whose verification eligibility period is still active.
POC	Point of Contact
PAR	Pre-Application Assessment Review
PRF	Post-Review Findings Program
SAM	System for Award Management
R4R	Request for Reconsideration
SDVOSB	Service-Disabled Veteran-Owned Small Business
VCMS	VetBiz Case Management System
VP	Verification Program
VIP	Vendor Information Pages (VIP) This site is used by the Center for Verification and Evaluation (CVE) to verify Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs). SDVOSBs and VOSBs who want to participate in the VA's Veterans First Contracting Program must be verified by CVE in order to be eligible for VA contract set-asides.
Voluntary withdrawal	The self-initiated act of an applicant removing its application from the verification process.
VOSB	Veteran-Owned Small Business

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3.2 Overarching Documents within the Quality Management System

This section describes requirements of the quality management system as a reminder to the author and users of this Work Instruction.

Doc. Number	Document Name – Section # Section Title	
QA-T2-PLCY-001	Quality Manual – Section 4.2.4 Entitled: “Control of Records”	
Quality Records or just “Records” are defined as objective evidences that some action has taken place. All records generated as a result of executing this Work Instruction are maintained, retained, and retrievable as delineated in the applicable section shown above.		
QA-T2-PLCY-001	Quality Manual – Sections 8.2.3 and 8.2.4 Entitled: “Monitoring and Measurement of Processes” and “Monitoring and Measurement of Product”	
The section listed above states that CVE functional areas shall monitor and/or measure key metrics in support of this functional area.		
Metric Title	Frequency Metric is Recorded	Location/Functional Role that has the Metric
Case Equivalent	Daily/weekly/monthly	

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Doc. Number	Document Name – Section # Section Title
QA-T2-PLCY-001	Quality Manual – Section 8.2.2 Entitled: "Internal Audit"
All internal audits are conducted as delineated in the applicable section shown above.	
QA-T2-PLCY-001	Quality Manual – Section 8.3 Entitled: "Control of Non-Conforming Product"
All non-conforming products/activities are documented as delineated in the applicable section shown above.	
QA-T2-PLCY-001	Quality Manual – Sections 8.5.2 and 8.5.3 Entitled: "Corrective Action" and "Preventive Action"
Corrective/Preventive Actions are documented as delineated in the applicable section shown above.	

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3.3 References

Title	Date	Links
Title 38 Code of Federal Regulation part 74 (38 CFR Part 74)	6/27/2012	http://www.va.gov/osdbu/docs/38CFR74.PRF
Title 13 Code of Federal Regulations part 125.15(b) (Joint Ventures)		
Verification Assistance Briefs and Guide for Applicants		http://www.va.gov/osdbu/verification/assistance/briefs.asp
VIP Profile		www.vip.vetbiz.gov
Post-Review Findings Process Memo	2/9/2016	Appendix G of this Work Instruction

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4.0 Introduction

4.1 Purpose

The purpose of this Work Instruction is to establish the processes and steps taken by the members of the MyVA Verification Process Team. This team will perform reviews of businesses applying for verification as a Veteran-Owned Small Business or Service-Disabled Veteran-Owned Small Business and inclusion in the Vendor Information Pages.

4.2 Scope

This Work Instruction governs the actions of the MyVA Verification Process Team in reviewing applications for inclusion as a verified business in the Vendor Information Pages.

4.3 Roles

Federal Review Coordinator (FRC): A Federal employee whose role is to assign new cases from VCMS daily to the contractor Portfolio Managers. Once contractor review is complete, FRC assigns cases to Federal Reviewers.

Case Coordinator (CC): If multiple teams from the same contractor are used, the CC receives cases from the FRC and assigns down to the PM for each team based on available capacity.

Portfolio Manager (PM): Receives cases from the Federal Review Coordinator (or CC) and assigns them to a Case Analysts (CA) based on availability.

Case Analyst (CA): Receives cases from Portfolio Manager on a daily basis. The CA reviews the registrant's information and conducts a Welcome Call. Once the registrant submits an application, the CA completes BIRLS/EPLS checks and identifies any issues associated with the applicant's VIP Profile. The CA further reviews the Pre-Qualification Documents and completes the necessary public research. After completing the Pre-Qualification Assessment, the CA contacts the Veteran owner and conducts an interview. Upon completion of the interview, the CA generates a Pre-Qualification Assessment Report and sends it to the applicant. Once the Pre-Qualification stage is complete, the CA obtains all remaining Required Documentation from the applicant and completes a full assessment of the application. Once the assessment is complete, the CA proposes a recommendation of approval or denial. If the CA recommends denial, the case is escalated to a Senior Analyst. If the CA recommends approval, the CA drafts an approval letter and the case is assigned for Federal Review. At any time

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during the CA review process, the CA may escalate the case to a Senior Analyst based on case complexity or risk. Also at any time during the CA review process, the CA may recommend that the application be administratively removed due to failure by the applicant to submit requested documentation or non-responsiveness by the applicant.

Intake Analyst (IA): The IA makes the first contact with the Veteran to assist with registering the company, creating the profile, any steps leading to the submission of an application, and the BIRLS/EPLS check and profile/0877 review.

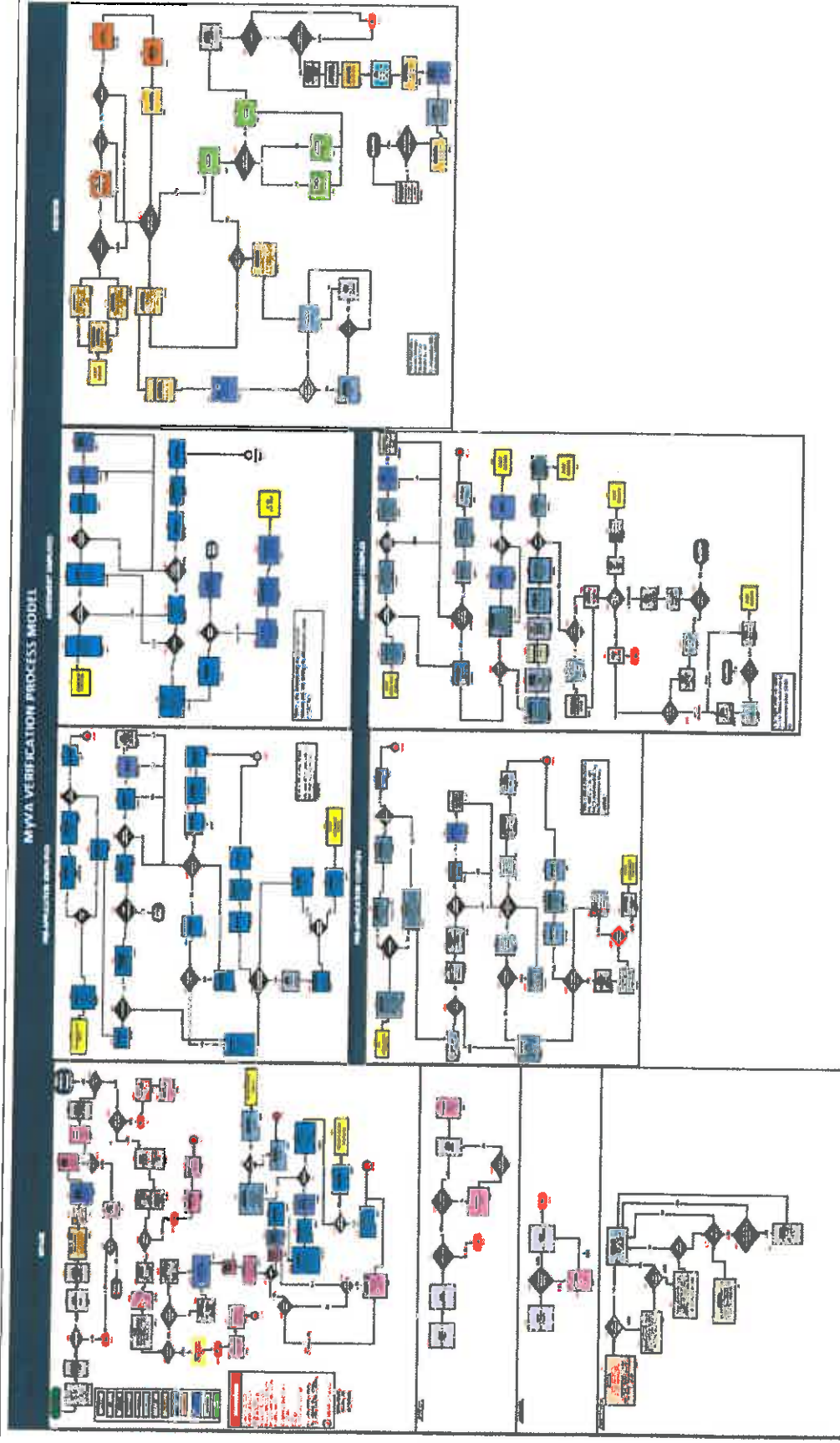
Senior Analyst (SA): The Senior Analyst holds a Juris Doctor (JD) degree and performs in-depth review of each application that is escalated to him/her by the CA. If a case is escalated to a Senior Analyst, the Senior Analyst assumes work on the case and completes the remainder of the review process and provides a recommendation to the government. When the Senior Analyst takes over the case, the Senior Analyst performs all of the required steps for the review until the case is sent for Federal Review. This includes making phone calls to the applicant, sending document requests, conducting a full assessment, conducting the PRF process, and drafting denial and approval letters. In lieu of formal escalation and reassignment, the CA may also informally consult with a Senior Analyst on a complex fact pattern or unique issue. At the conclusion of this consultation, the CA and Senior Analyst will determine whether formal escalation is warranted.

Federal Reviewer (FR): A Federal Government position, that reviews CA's or SA's recommendation and draft determination letter. If the FR recommends approval, the FR forwards the draft approval letter to the CVE Director for signature in accordance with Federal Reviewer process. If the FR recommends denial, the FR returns the case to the FRC with instructions for the Senior Analyst to initiate the PRF process. Once the PRF process is complete, the FR conducts a final review and forwards the appropriate determination letter for signature.

Team Lead (TL): The Team Lead is the lead Senior Analyst in charge of the quality of work coming from the team. The TL trains new members of the team, provides consultations to both CAs and SAs, makes decisions on case escalation, and oversees production of the team as a whole.

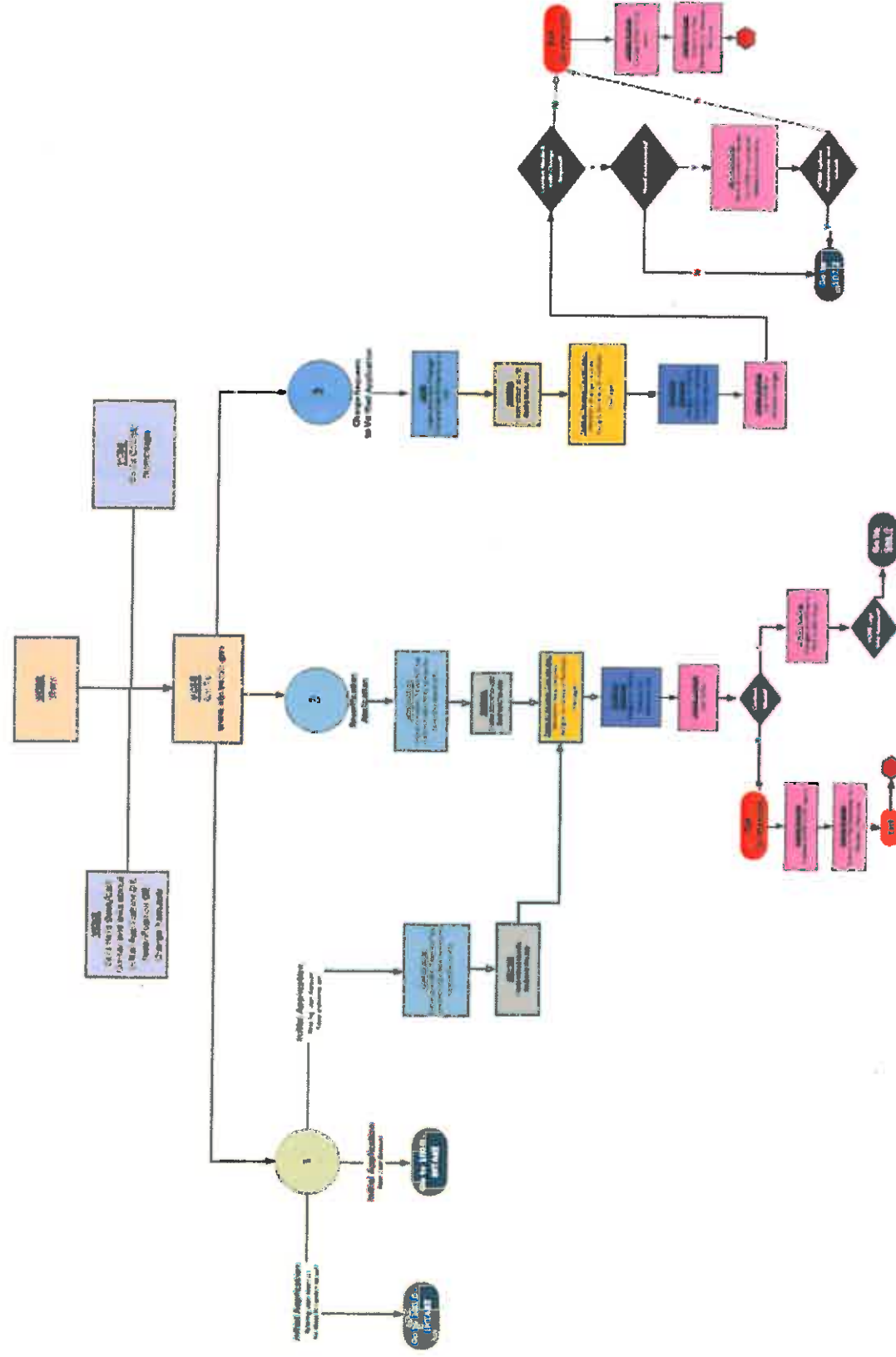
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5.0 Process Flowcharts



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6.0 MyVA Verification Process Execution

6.1 Inputs and Entry Criteria

Inputs	Detail of Inputs and Remarks
Registration	Applicant submits an online registration form in VIP

6.2 Escalation Criteria

Case Analysts will consult with a Senior Analyst for possible escalation when one or more of the following criteria are met:

1. Issues are identified that cannot be resolved by adjusting wording to key case business documents;
2. Legal grey area issues are identified, the risk level is elevated above Medium, and/or questions exist or persist within a case that cause a Case Analyst to be uncomfortable making a recommendation;
3. One or more grounds for denial are identified during the case review process.

6.3 Process Steps

	Task	Role
	STAGE: INTAKE	
A1	Veteran submits Verification application.	VET
A2	Sign into VCMS and pull Intake Report.	FRC
A3	Review report to determine if any cases require special handling per direction of the CVE Director or Deputy Director. a. FRC assigns Priority if warranted; Priority Processing – See Priority Processing Policy Memo b. Special Handling – no required processing timeframe, but case has elevated interest	FRC
A4	FRC enters new intake forms into SharePoint database.	FRC
	Queue: Intake Activity: PM Intake	
A5	Assign cases to Portfolio Manager(s) based on available capacity. Document all actions in MIS. a. FRC clicks Assign b. FRC assigns to PM c. Select processing Team	FRC

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	d. Select User Note: if multiple teams, the FRC assigns to a CC, who in turn assigns to the PM for each team.	
A6	Receive assignment from FRC or CC and assign to IA. If any cases are designated for Special Handling, these cases should be given priority.	PM
	Queue: Intake Activity: Registration	
A7	IA locates registration in VIP and approves new account. a. Click Admin; Manage User b. Click Approve	IA
A8	If Reverification, Expired, or Change Request, IA locates VCMS record and resets workflow status to allow for application submission.	IA
	Queue: Intake Activity: Welcome Call	
A9	IA conducts Welcome Call. a. Click Admin; Fix Business Error b. If Expired, change WFS to Registration Start	IA
A10	If Change Request, click "Change" button in the VCMS record. See Section H1-H12.	IA
A11	If Veteran takes no action after 14 days, send Exit email, create PWRR CCCR and reassign to PM for Administrative Removal.	IA
A12	Veteran logs in and completes profile/submits application.	VET
A13	PM checks Intake Queue; Activity "Submitted"	PM
	Queue: Intake Activity: BIRLS/EPLS Check	
A14	Sign into VCMS and search for the assigned case by DUNS number.	IA
A15	Create initial CTF.	IA
A16	Check BIRLS/EPLS for all owners and make note of Veteran status, and Veteran's name. Follow the steps below to check the information on the 0877 against BIRLS, DD 214, or DoD letter; also make note of total ownership percentage; expired (2 years from signature); non-Veteran listed as the majority owner, etc. Note: A form DD 214 is used to validate Veteran status only NOT for determining service disconnected disability. If there are errors or inconsistencies, notify the Veteran that the 0877 must be reset (See Appendices B and C for BIRLS status corrections and 0877 reset instructions.)	IA

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A17	Click on Owners to view the owner(s) name, ownership percentage, Veteran Type and email address.	IA
A18	To view 0877 (and Affirmation Page) click on arrow next to name	IA
A19	Look at <i>e-signature date</i> to ensure that 0877 falls within 24 calendar months. The <i>e-signature Type</i> identifies if Renewal or Registration (new application). <i>Signed?</i> indicates if the owner has signed. The <i>e-signature status</i> indicates if 0877 is viewable. Click on View to open 0877	IA
A20	Confirm that Veteran has a complete 0877 (ownership %, Veteran status, SSN, DOB, signature and date signed	IA
A21	Go to left and click BIRLS/EPLS.	IA
A22	In order to validate Veteran status, you must check BIRLS. Sign into the Citrix XenApp application via the following link vbahinescitrix.vba.va.gov/VBApps/auth/login.aspx with your VACO user name, password, and the domain "DVA."	IA
A23	Click Share_nVBA	IA
A24	Sign in with your Password and type "101" for Station. Click OK	IA
A25	Go to VBA Ready Screen enter File Number or SSN (can be found on 0877) to check Veteran status in BIRLS. You can also search by Name, Service Number and Insurance Number. Click Submit	IA
A26	If owner list their status as Veteran on the 0877, you must ensure the SSN (or File Number) Name and Date of Birth matches the information that is provided on 0877. Note: a commonly used nickname (e.g. Bob for Robert) is acceptable if the SSN and DOB match. If there is an error or mismatch, the 0877 must be corrected; the 0877 is reset and the Veteran is notified via email. There must be no entry for Date of Death (Veteran must be alive). Check CHAR SVC (character of service). If Veteran was dishonorably discharged, he or she is not eligible to participate in the program, send EXIT EMAIL stating "your records reflect dishonorable discharge. You have 5 days to submit documentation proving your most recent discharge was other than honorable or else you will be administratively removed." If the Veteran has Honorable (Hon) or Other-than-Honorable discharge (OTH) they are eligible, continue to step A27 .	IA
A27	If owner selects Service Disabled Veteran, click on the InactiveComp & Pen tab (sometimes ratings are listed here). If no disability information is listed, click Ready. Then click Corporate Inquiry and enter File Number or SSN. This is where you can see more detailed information on disability rating. Click Submit.	IA

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A28	Click Award/Ratings tab. Then Click Rating Information Tab. (The Rating Information list disability rating (from 0% to 100%+) and the Decision. We must see a percentage from 0% to 100%+ and the decision that states "Service Connected.") Click Ready at bottom.	IA
A29	If errors found, send document request for BIRLS issues as necessary, and continue to Step A31 . If no issues found, go to Step A32 .	IA
A30	In the applicant's VIP profile, in the Company Information Tab, check the "duplicate owner warning" button. If it indicates that there is a duplicate owner warning, check all of the listed companies and compare 0877s to see if the current owners also own other companies. If they do, check their Verification status.	IA
Queue: Intake Activity: BIRLS/EPLS Call		
A31	If BIRLS/EPLS check warrants a new 0877: <ul style="list-style-type: none"> a. Request new E-signature b. Set suspense date for 5 business days c. Annotate phone call activity attempts as necessary d. If the applicant fails to respond to the 0877 request, send Exit Email. If the applicant still fails to respond after the Exit Email, initiate Admin Removal, create PWRR CCCR 	IA
A32	Go to SAM website www.sam.gov to conduct search in EPLS. Click Search Records.	IA
A33	Enter owner's name and click Search	IA
A34	Go to left and click on Performance Information. Click OK in dialogue box.	IA
A35	Click Entity Information	IA
A36	Click Individual Name	IA
A37	Enter owner's name. Then Click SSN box. Type SSN and click Apply Filters	IA
A38	If search results state No for Active Exclusion, name does not match or No record found, the owner is good and not in EPLS. Go to Step A40 . If Yes for active exclusion and name matches go to Step A39 . Record in CTF .	IA
A39	If record found and there is a match, send exit email, and prepare removal report.	IA
A40	If BIRLS/EPLS check is good, IA checks BIRLS/EPLS tab/box and assign to PM.	IA

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	Queue: Intake Activity: PM Reassignment	
A41	PM receives reassignment, and assigns to CA	PM
	Queue: CMT Activity: Case Analyst Welcome call	
A42	Conduct Welcome Call with Primary Veteran owner to go through the process, set expectations, and explain the next steps. a. Use "Status" to update call status until successful b. CA sets status to "Done" when call was successful c. Send questionnaire	CA
A43	If Welcome Call is successful, go to Step A49 . If not successful, go to Step A49, but continue to attempt welcome call	CA
A44	If CA cannot make contact with the Primary Veteran owner after 3 attempts, CA creates Removal Report and the registrant is administratively removed. END OF PROCESS a. CA sends Exit Email (select type: ???)	CA
	Queue: CMT Activity: Prepare/Send Exit Email	
A45	If still unable to conduct Welcome Call after Exit Email, CA sends CCCR. a. Upload documents b. Upload Bin: 10.9 CCCR Report c. Type: 11 Post-Welcome Call Removal Report (PWRR) d. Select Team e. Upload file	CA
	Queue: CMT Activity: PM Re-assignment	
A46	CA re-assigns to PM: a. Select User	CA
	Queue: Federal Review Coordinator Activity: FRC Re-Assignment	
A47	PM assigns to FRC	PM
A48	FRC processes Administrative Removal a. Go to 10.9 and click "Review" to review the CCCR b. Select Submission Attempt c. Select YES or NO to accept CCCR d. Click "Remove" in VCMS record	FRC
	Queue: CMT Activity: Public Research	

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A49	If CA Welcome Call successful, CA conducts public research. Conduct public research by searching for the applicant in D&B, SAM, and the SBA. Also search LinkedIn, the applicant's website (if any) and perform Google searches on the company's name, address, telephone number, as well as all of the owners' names.	CA
A50	Continue the Case Tracking Form (CTF) by taking screen shots of all of the searches in Step A38 and pasting them into the form template . Add a research summary and make note of any red flags.	CA
A51	Make a note in the Remarks section of VCMS and state that the Public Research has been completed	CA
Queue: CMT Activity: Pre-screening		
A52	Review the submitted PAR documents and enter the appropriate information into the CTF. During the review, determine if the case will require a Simplified or Complex Review. <ul style="list-style-type: none"> a. CA sends document request if necessary for remaining PAR docs b. If PAR documents not submitted, CA sends Exit Email c. If PAR documents not submitted after Exit Email, CA sends CCCR (Post Research Removal Report – PRRR) d. Go to step A48 e. Click "YES" f. FRC clicks "Remove" g. FRC completes removal wizard h. If FRC rejects, go to step A53 i. click "NO" and reassign to PM 	CA
Queue: FRC Activity: Reassign PM		
A53	PM reassigns to CA with further directions from FRC.	PM
Queue: CMT Activity: Interview Scheduling Call		
A54	If the application appears that it will be a Simplified Pre-Application Assessment , proceed to Step B1 . If the application appears that it will be a Complex Pre-Application Assessment , consult with the Team Lead to determine if the case will be escalated. If yes, then this will be the end of the process for the CA. The Senior Analyst will assume full ownership of the case and will follow the steps described in Step D1 .	CA
A55	Contact the Veteran to schedule the PAR Assessment Interview. <ul style="list-style-type: none"> a. Record each attempt b. Mark Status done when interview has been scheduled or conducted 	CA/SA

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	Queue: CMT Activity: PAR Ready/Review	
A56	Once interview is scheduled, CA assigns for PAR ready a. Prepare PAR for PAR interview, include questionnaire b. Finalize PAR if interview already conducted	CA/SA
STAGE: SIMPLIFIED PRE-APPLICATION ASSESSMENT		
	Queue: PAR Activity: PAR Interview Call	
B1	Contact Veteran for PAR Interview call. a. If Veteran cannot be reached, CA will leave a message, record the attempt in VCMS remarks and will attempt the phone call 2 more times throughout the course of 2 business days. If the Veteran cannot be reached and makes no attempts to call the CA back, CA will send an exit email and the application is administratively removed. END OF PROCESS. Go to Exit email process. b. CA will conduct the PAR Interview call by reviewing the draft PAR report and questionnaire with the applicant and asking detailed questions to anticipate any potential problems, or special documents that will be needed. Record in VCMS and CTF	CA
	Queue: PAR Activity: PAR Report	
B2	CA determines if PAR issues exist a. If there are issues identified with the PAR documents, the CA will explain the problems and refer the Veteran to a Verification Assistance counselor, if needed. A summary of the issues will be provided to the applicant in writing after the PAR Interview Call is completed. Make a note in VCMS to state that the phone call was made and whether any errors were found. b. Complete the PAR Report section of the CTF to include any additional information obtained during the PAR Interview. c. If no issues exist, go to step B4 .	CA
	Queue: PAR Activity: PAR doc request	
B3	If issues found, send document request and PAR a. Send document request and PAR b. Set Activity to PAR document request call c. If not submitted, exit email and admin removal d. Follow Exit email process (PIRR CCCR) e. Repeat up to 2 times if documents submitted do not fix issue f. If not corrected after 2 attempts, CA gives applicant option to proceed to Assessment or withdraw application. If the applicant does not respond to these options, process administrative removal. (PIRR CCCR)	CA

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	g. If corrected, go to step B4	
	Queue: PAR Activity: Full doc request	
B4	If no issues exist, CA sends Full doc request for remaining Validation documents a. Follow up with Vet and set suspense date for document submission b. Set Activity to Full Document Request call c. If documents received, go to step B5	CA
B5	If document request complete, ensure all docs were submitted a. If all documents submitted, go to step B7 b. If documents are missing, go to step B4	CA
B6	If Vet fails to submit the required documents after 2 attempts, follow Exit Email process. (RDRR CCCR)	CA
B7	Review the submitted documentation and decide if this case will require a Simplified or Complex Assessment . If the case requires a Complex Assessment , consult with the Team Lead and the case may be assigned to a Senior Analyst (if this is the case, go to Step E1). If the case will be a Simplified Assessment , the case will remain with the Case Analyst, continue to Step C1 .	CA
STAGE: SIMPLIFIED ASSESSMENT		
	Queue: Assessment Activity: Assessment Review REGULATORY CLOCK STARTS HERE	
C1	CA initiates Assessment Once all required documentation has been uploaded, the case is ready for Assessment. Make a note in VCMS Remarks and move the file to the Assessment Queue – the REGULATORY CLOCK WILL NOW START .	CA
C2	Review all of the public research, and all of the submitted documents and start filling out the Assessment section of the CTF. Also review VCMS case remarks, and any previous evaluations, site visits, and NOPCs contained in section 10.3. Conduct additional internet searches if required.	CA
C3	At this stage of the review, CA can decide once more if this case will require a Complex Assessment, if this is the case – consult with the Team Lead, who will explore possible options for Resolution, if it determined that the case is complex or there are strong denial reasons, the case will be assigned to an SA. If escalation required Go to Step E1 . End of CA process. If no escalation required, continue to Step C4 .	CA

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	Queue: Assessment Activity: Clarifying Document Request	
C4	<p>CA determines that clarifying documents are needed</p> <ol style="list-style-type: none"> Then set activity to Clarifying Document Request Call If additional documents or clarifying letters are required, make a phone call to the Veteran and explain what is needed and send out a document request. Make a note in VCMS Remarks and make note of the deadline. If Veteran misses the suspense, continue to step C5b. 	CA
	Queue: Assessment Activity: Clarifying Document Review	
C5	<p>Once all additional documents are received, CA reviews clarifying docs and continues with the Assessment and update the CTF.</p> <ol style="list-style-type: none"> Set activity to Clarifying Document Request Call If denial reasons are identified and the case will require the PRF process – Escalate to the Team Lead for assignment to an SA, Go to Step E1. If the case is an Approval, continue to Step C7. 	CA
C6	If clarifying documents not received, return to Step C4. If clarifying documents are still not received, process as CDOR.	CA
	Queue: Assessment Activity: Recommendation	
C7	<p>CA initiates recommendation.</p> <p>Approval:</p> <ol style="list-style-type: none"> Enter recommendation in Recommendation tab Finish the CTF with a recommendation under each regulatory requirement with corresponding screenshots. Save and upload to section 10.9 in VCMS. CA re-assigns to PM for action Go to step C9 	CA
C8	<p>CA initiates recommendation.</p> <p>Denial:</p> <ol style="list-style-type: none"> Enter recommendation in Recommendation tab If Denial, select denial reasons If denial recommendation, upload Denial CTF to 10.3 CA re-assigns to PM for action Go to step C9 	CA
	Queue: Assessment Activity: PM Re-assignment	
C9	<p>PM takes appropriate action</p> <ol style="list-style-type: none"> If approval, PM performs QC review and generates approval using the Letter Wizard. Go to step C11 TL selects up to 30% of approval recommendations for QC review. 	PM

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	c. If denial, go to step C10	
	Queue: Assessment Activity: Escalation Review	
C10	PM reassigns to SA a. Go to step E1	PM
	Queue: Assessment Activity: PM Re-assignment	
C11	PM(CC) assigns to FRC a. If CC used, PM assigns to CC who then assigns to FRC b. Go to Stage: Decision c. End process for CA	PM/ CC
ESCALATION – COMPLEX PRE-APPLICATION		
D1	Follow steps B1 - B7	SA
STAGE: ESCALATION - ASSESSMENT COMPLEX		
	Queue: Assessment Activity: Assessment Review REGULATORY CLOCK STARTS HERE	
E1	Follow steps C1-C9	SA
	Queue: Assessment Activity: Escalation Review	
E2	SA initiates review of escalated case (Approval) a. SA enters recommendation in Recommendation tab b. If approval recommendation, upload Approval CTF to 10.9. Run approval letter wizard. GO TO STEP C11	SA
E3	SA initiates review of escalated case (Denial) a. SA enters recommendation in Recommendation tab b. If denial, select denial reasons c. If denial recommendation, upload Denial CTF that includes draft denial language to 10.3	SA
	Queue: Assessment Activity: PM Re-assignment	
E4	PM assigns to FRC Note: if CC used, PM assigns to CC who then assigns to FRC	PM/ CC
	Queue: FRC Activity: FRC Re-assignment	
E5	FRC assigns to Federal Reviewer for Pre-PRF Review	FRC
	Queue: Federal Review Activity: PRF Federal Review	

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E6	<p>Federal Reviewer conducts pre-PRF review</p> <ol style="list-style-type: none"> If Federal Reviewer recommends approval, FR clicks "Approve" to process approval letter Once Federal Review is complete, the Federal Reviewer notifies the PM that the pre-PRF review is complete and the file is ready for PRF. If Federal Reviewer made any updates the Draft Denial language in the CTF, it will be uploaded to the applications profile in VMCS under section 10.3. Federal Reviewer will also place a remark in VCMS using the "Assign" button stating that the review is complete and their recommendation. If Federal Reviewer agrees with PRF, assign to FRC 	FR
	<p>Queue: FRC Activity: FRC Re-assignment</p>	
E7	FRC assigns to PM	FRC
	<p>Queue: PRF Activity: PM Re-assignment</p>	
E8	PM assigns to SA to initiate PRF	PM
	<p>Queue: PRF Activity: PRF Notification</p>	
E9	<p>SA initiates PRF process</p> <ol style="list-style-type: none"> SA sends PRF email to applicant. The PRF email will state the findings, and provide the applicant with the opportunity to correct the findings, withdraw its application, or accept a determination letter based on the findings. The PRF email will contain a PRF Election Form to allow the applicant to notify the SA of its decision. The applicant must submit the PRF Election Form within 2 business days of receipt of the PRF email. 	SA
E10	<p>If the applicant submits a timely PRF Election Form, the following processes will be followed, based upon the applicant's election:</p> <ol style="list-style-type: none"> If applicant indicates withdrawal, fill out CCCR and upload to 10.9, change activity to "FRC Reassignment (AR Request)". Reassign to PM END OF PROCESS for SA. (Application will be administratively removed in the Federal Review process.) If applicant submits docs and fixes issue, process approval recommendation If applicant fails to respond or elects to receive a denial, SA processes denial recommendation 	SA
	<p>Queue: PRF Activity: PRF Call</p>	

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E11	Within 24 hours of issuing the PRF email, SA will make a PRF phone call to the applicant. During the phone call, the SA will explain the PRF process and the applicant's options. If the first phone call is not answered, the SA will make a second attempt the next business day. The SA will only make two phone calls, and if the Applicant cannot be reached, the PRF process will continue in accordance with this WI.	SA
E12	Once the applicant states that they wish to participate in the PRF process, send a document request and update remarks indicating that the applicant is undergoing PRF and has 5 business days to submit correcting documents. Clearly indicate the deadline in the document request and in the VCMS remarks.	SA
E13	If corrective documents are sent within the 5 business days, the SA will have an additional 5 business days to review the documents to determine whether the issue(s) is cured. If the new documents adequately resolve the issue(s), process as an Approval recommendation. Go to Step C11. If the applicant fails to submit new documents within 5 business days or if the new documents do not correct the findings, send Final PRF Email and allow the Applicant 2 days to respond with their intent to Withdraw or receive a denial recommendation. NOTE: The SA has the option to request another Federal Review prior to sending the Final PRF Email. Follow steps E3-E12 if a second Federal Review is needed.	SA
	Queue: PRF Activity: PM Re-assignment	
E13	PM Reviews case to ensure that all documentation has been uploaded, and that the profile/0877 are correct. a. Assigns to FRC Note: if CC used, PM assigns to CC who then assigns to FRC	PM/ CC
	Queue: FRC Activity: FRC Reassignment	
E14	PM/CC re-assigns to FRC for Federal Review End process for SA	PM/ CC
	STAGE: DECISION	
	Queue: Federal Review Activity: Federal Review	
F1	FRC assigns a Federal Reviewer to review the case a. Team: Federal Review b. Select User name	FRC
F2	FR completes CCCR review, recommendation, and Determination Review IAW the Federal Review work instruction	FR

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F3	If FR disagrees with recommendation send back to CMT with explanation – go to Step C1	FR
	Queue: Director Activity: Finalize Case Status	
F3	FR assigns to Director for signature	FR
F4	Director reviews and signs letter	Dir
F5	END PROCESS	
	CASE VARIANTS	
G1	Individual Cases fact patterns that require possible deviation from Work Instruction procedures: a) Identified by Senior Analyst or Case Analyst; or b) Identified by Federal Review personnel.	CA/ SA/ FR
G2	Identified issue written up in detail and sent to Federal Critical Path Team Lead and Federal Deputy Team Lead.	FR
G3	Federal Critical Path Team Lead or Federal Deputy Team Lead brings to CVE Director or Deputy Director via oral discussion or email.	FR
G4	CVE Director or Deputy Director approves or denies proposed process deviation depending on fact pattern. Director or Deputy Director's decision to approve or deny the proposed process deviation must be in writing and saved in VCMS Section 10.3.	FR
G5	Federal Critical Path Team Lead or Federal Critical Path Deputy Team Lead relay decision to Senior Analyst, Case Analyst, or Federal Review staff.	FR
G6	Senior Analyst or CA processes case as directed and memorializes decision and actions in VCMS and CTF.	CA/S A
G7	Case Variant: Joint Venture: Follow all steps listed in this work instruction.	CA/ SA/ FR
G8	Case Variant: NAICS code based Denial/PRF: If multiple points of failure are identified along with an Other Than Small NAICS codes, or single point of failure related to Other Than Small NAICS codes, use Other Than Small NAICS paragraph findings language.	SA
G9	Draft the Initial PRF Email and use the Other Than Small NAICS paragraph findings language and follow the PRF the PRF steps outlined above.	SA
G10	If the applicant does not remove all Other Than Small NAICS Codes within the five (5) day correction period, follow PRF steps above for processing as final PRF.	SA
	Change Requests	
H1	FRC monitors Change Request intake to identify new Change Requests.	FRC

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	Queue: Completed Activity: PM Intake	
H2	FRC assigns case to PM	FRC
	Queue: Completed Activity: PM Assignment	
H3	PM assigns to IA	PM
	Queue: Change Request Activity: Welcome Call	
H4	IA conducts Change Request Welcome Call to obtain CR docs	IA
	Queue: Change Request Activity: BIRLS/EPLS	
H5	IA completes BIRLS/EPLS check as needed based on Change Request	IA
H6	IA screens CR to determine if full review is required. a. If full review is not required (VOSB to SDVOSB), IA uploads CCCR and assigns to PM for letter generation b. Go to step H7 c. If full review is required, assign to PM to assign to CA	IA
	Queue: Change Request Activity: PM Re-assignment	
H7	PM reviews and clicks "Approve" to generate approval letter	PM
H8	PM assigns to CA for full review	PM
	Queue: Assessment Activity: Assessment Review	
H9	CA completes steps C1 – C11	CA
H10	Go to step F1	FR
H11	If recommended NOPC, email referral to Risk a. If Risk non-concurs, continue processing CR b. If Risk concurs, FR clicks "Remove" button to remove the CR from processing	FR
H12	FR clicks "Cancellation" in the approved record to open a cancellation record.	FR

7.0 Withdrawals

- **Voluntary:** Applicants may withdraw from the process based on information provided by the Case Analysts or Senior Analysts if it is believed that the Applicant will not gain approval due to various circumstances. Or, the applicant says this is not for them and they do not want to move forward.
- **Administrative Removal:** Applicants will be removed from the process queues for the following reasons:

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- Failure to provide required documents in a timely manner.
- Failure to respond to the Case Analyst's or Senior Analyst's contact attempts.

Terms: Applicants have thirty (30) days to complete their VIP profile and remain at the Edit Business Workflow status. After 30 days of no movement on the case and no response from the Veteran; the Intake Team will send Notification of Administrative Removal from process

Notification of Administrative Removal from Process stipulates a 3 business day response period. If no contact is established during this time frame; the Final Removal from process is sent via VCMS.

8.0 Outputs and Exit Criteria

Output	Details of Outputs and Remarks
VCMS/VIP	Research File, PAR Report, Evaluation Report and Recommendation Letter uploaded to VCMS

Exit Criteria

- Completed Recommendation is forwarded to the Federal Review Team

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Appendix B – Veteran Status Correction Process

The CA checks BIRLS and identifies the below listed:

- No BIRLS record
- Character of service unknown
- Name does not match
- No record of service connected disability

The CA **will**, send a document request (with a 7-day suspense date) to the Veteran owner with a statement that instructs the Veteran to perform **one** of following actions:

1. Proceed to nearest VBA regional office to have the following information updated in BIRLS:
 - a. DD214
 - b. Department of Defense or Department of Veterans Affairs disability rating letter (if applicable).
 - c. Certified documentation of name change (if applicable).
2. Upload in VIP section 1.1 "License" a legible copy of:
 - a. DD214
 - b. Department of Defense or Department of Veterans Affairs disability rating letter (if applicable).
 - c. Certified documentation of name change (if applicable).

Once the Veteran has uploaded his/her DD214, disability rating letter or certified documentation of name change into Section 1.1 "License," the Initiation Analyst will ensure it is legible and validate the information by name and social security number. If the information is unverifiable and/or not legible, the Veteran will be requested to upload legible documentation and/or provided guidance to ensure the documentation can be verified (i.e., Notary stamp, court documents, etc.).

1. DD214 – check Veteran name, SSN, DOB and discharge type (i.e. Honourable, other than Honourable, Dishonourable, etc.). Ensure information matches 0877
2. DOD/VA disability rating letter - check Veteran name, SSN, DOB and disability rating percentage. Ensure information matches 0877.

Certified documentation of name change – check for notary, court information, Veteran name, SSN, DOB and new name. Ensure information matches 0877.

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Appendix C – VA form 0877 Reset Process

Source: Email from VCMS

Purpose: To inform Veterans they have **7 days** to sign VA 0877 that was reset for new E-signature

Location: Q:/Initiation/VCMS REMARKS VERBIAGES

Unable to view 0877

*In our attempt to review and assess your application (VA form 0877) for entrance into the VIP program, we discovered an error causing limited access to your application. In order to process your application, we request your assistance in signing and resubmitting a new VA form 0877. Upon receipt of a new VA form 0877, we will re-examine it for completeness. You will have **7 days** (from enter today's date) to respond or we will remove your application and you can reapply at any time.*

Business listed instead of person

*In reviewing your application (VA form 0877) for entrance into the VIP program, we discovered that an entity was listed as a business owner. In order to process your application you must list the name of all business owners. We request your assistance in signing and resubmitting a new VA form 0877. Upon receipt of a new VA form 0877, we will re-examine it for completeness. You will have **7 days** (from enter today's date) to respond or we will remove your application and you can reapply at any time.*

Non-Veteran listed as majority owner

*In reviewing your application (VA form 0877) for entrance into the VIP program, we discovered that a Non-Veteran was listed as majority business owner. Our program requires a Veteran to be listed as the majority business owner. In order to process your application, we request your assistance in signing and resubmitting a new VA form 0877. Upon receipt of a new VA form 0877, we will re-examine it for completeness. You will have **7 days** (from enter today's date) to respond or we will remove your application and you can reapply at any time.*

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Owner needs to list full name

*In reviewing your application (VA form 0877) for entrance into the VIP program, we discovered that the business owner did not list his full name. In order to process your application, we request your assistance in signing and resubmitting a new VA form 0877. Upon receipt of a new VA form 0877, we will re-examine it for completeness. You will have **7 days** (from enter today's date) to respond or we will remove your application and you can reapply at any time.*

New 0877

*In order to process your application, we request your assistance in signing and resubmitting a new VA form 0877. Upon receipt of a new VA form 0877, we will examine it for completeness. You will have **7 days** (from enter today's date) to respond or we will remove your application and you can reapply at any time.*

0877 has expired

*In reviewing your application (VA form 0877) for entrance into the VIP program, we discovered that it has expired. In order to process your application, we request your assistance in signing and resubmitting a new VA form 0877. Upon receipt of a new VA form 0877, we will re-examine it for completeness. You will have **7 days** (from today's date) to respond or we will withdraw your application and you can reapply at any time.*

Percentage Total not between 99-100%

*In reviewing your application (VA form 0877) for entrance into the VIP program, we discovered that the percentage of ownership do not total between 99-100%. In order to process your application, we request your assistance in correcting the percentages, signing then submitting a new VA form 0877. Upon receipt of a new VA form 0877, we will re-examine it for completeness. You will have **7 days** (from enter today's date) to respond or we will remove your application and you can reapply at any time.*

APPENDIX D- VCMS Document Request Checklist

Item No.	Checklist Item
1.	Open case in VCMS (Tab 1)
2.	Copy case URL
3.	Past case URL in a new tab (Tab 2)
4.	Tab 2; click on "Email" (located at the top of the screen in the blue bar)
5.	Tab 2; type in case DUNS in DUNS box, click "Search"
6.	Tab 1; open the "Document Review" tab; click "Request Additional Documents"
7.	Select the types of documents needed from the list; click "Continue"
8.	Reason for Request: type "N/A"; click "Send Request"
9.	Request Additional Documents Dialogue Box; click "Close"
10.	Tab 2; search the DUNS (again) and CANCEL the outgoing email (within 60 seconds of sending the "Request Additional Documents" from Tab 1)
11.	Check the status of the request to ensure you canceled the initial email in the allocated timeframe by viewing the "Status" tab
12.	Tab 1; click "Send Email" located in the top left corner
13.	Manually enter email subject line and message; click "Send"

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Appendix E – Federal Review Standard

Federal Review Priority by Case Type once assigned for Federal Review:

1. Priority Processing Cases
2. Renewal
3. PRF Cases/R4R/Cancellation
4. Change Requests

Initial Evaluation average-1 hour per case (Denials-PRF/Change Requests/Renewals)

- Review Case Tracking Form and remarks in VCMS generated by Case Analysts/Senior Analysts. Ensure all “findings” match overall recommendation.
- Ensure appropriate review is conducted for Change Requests and Renewals with changes for issues raised by changes as required by CFR 38 Part 74
- Review VCMS remarks to ensure that a successful BIRLS check was performed.
- If denial, review draft letter for accuracy (grammar, formatting, and regulatory application). If approval, review appropriate draft letter.
- If necessary, review key documents, websites, reports, etc. referenced in the draft denial letters.
- Upload revised draft letter into VCMS 10.3/VEMS.
- If PRF, notify Portfolio Manager that file is ready for PRF process and make VCMS remark indicating that initial Federal Review is complete.
- Consider number and dollar of VA contracts associated with any renewal applications as part of risk to VA as annotated in VCMS
- Make appropriate recommendation in VCMS /VEMS
- If Case Analyst or Senior Analyst recommends Approval and a Substantive Point of law is missed, Federal Reviewer is to designate case to become PRF. Continue with checklist from that point or return to Portfolio Manager for reprocessing PRF.

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- Write an error report if a substantive or administrative error is identified. Forward to Federal Team Supervisors- Update Federal Team error tracker spreadsheet.

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GENERAL

Legal Organization of Applicant

- **Requirement:** The applicant must be legally organized to do business in its state of incorporation. A firm is not eligible for verification if it fails 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.”
- **Reference:** 38 CFR § 74.1 (def of small business concern); FAR 19.001; 38 CFR 74.21(c)(9)
- **Possible Relevant Documents:** License, Certificate of Good Standing, Articles of Organization/Incorporation, Online SOS Screen Print.
- **Current Guidance:**
 - **The applicant must be legally organized in its state of incorporation.** For example, if the articles of organization list the firm as being organized in Vermont, it must be in good standing in Vermont. If it is registered as a foreign corporation in another state, the concern must be in good standing in its home state, as the foreign state's registration depends on the validity of the registration in the state of organization/incorporation. However, if the concern is not in good standing in its foreign jurisdiction registration, that alone would not be a point of failure unless the submitted documentation or public research suggests that the concern conducts business in the foreign jurisdiction.
 - Some states require payment to verify a firm's standing online. In these instances, due diligence should be performed to attempt to determine the status. This may include placing a phone call to the Secretary of State's office and explaining the need for the information. If all reasonable options have been exhausted and the applicant's status still cannot be determined, the matter should be elevated to the reviewer's supervisor for additional guidance.
 - Generally, it is the contracting officer's responsibility to ensure a firm is properly licensed based upon the place of performance. However, in the event that the applicant states it is not currently required to hold a license in the City or County, the Examiner must research this information and **save a screen shot of the information to Section 10.3. Licensing should only be a reason for denial if the absence of a license prevents the applicant from doing any business at all.** For example, if an applicant is located in Fairfax but does not have an active license to transact business in Fairfax, this would not be a reason for denial if the applicant also transacts business in Alexandria and is properly licensed in Alexandria. In other words, as long as the applicant is properly licensed to

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transact business in some place (and is legally organized in its state of incorporation), the requirement has been satisfied.

- It is the contracting officer's responsibility to ensure that a firm has all the required licenses to perform on any given contract(s). The verification analysis of licenses is more important when it comes to critical licenses – contractor licenses, medical licenses, legal licenses, architectural licenses, etc. This analysis is also helpful in considering other issues....i.e. can the applicant even do this business without this license? Some states require a type of license to be able to manage a business from your home, and the absence of this licensed would be a reason to deny. **Bottom line – only deny on licenses if the applicant cannot operate without it.**

Free of Federal Financial Obligations

- **Requirement:** The applicant and its eligible individuals must be free of significant delinquent or unresolved financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing.
- **Reference:** 38 CFR § 74.2(d)
- **Current Guidance:** If the applicant has a delinquent federal debt listed in SAM or Lexis Nexis, the examiner is required to request information pertaining to the applicant establishing a payment plan or paying off the debt. **The applicant must submit official documentation outlining the debt payoff plan. A LOE is not sufficient.** If information is received, the recommendation is to approve with a high risk rating. If this information is not received, the applicant will be denied for this section.

OWNERSHIP

Direct Majority Ownership by Veteran

- **Requirement:** One or more Veterans must directly own at least 51% of the applicant concern. One or more Veterans must be entitled to receive at least 51% of the annual distribution of profits.
- **Reference:** 38 CFR § 74.3(a); 38 CFR § 74.3(d)
- **Possible Relevant Documents:** Operating Agreement, Stock Ledger/Certificates, Tax information to include Schedule C, K-1s or Schedule G.
- **Current Guidance:**
 - With regards to a corporation, refer to the Bylaws to determine if stock certificates must be issued. If the Bylaws require that stock certificates be issued then the applicant must provide copies of the stock certificates OR a stock ledger. If the Bylaws are silent refer to State law to determine if the issuance of stock certificates is required.
 - **Profits and Distributions**
 - **Corporations: The default rule is that a dividend will be paid to a class on a pro rata basis. As corporate distributions are**

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made through dividends you can assume a distribution will be made on a pro rata basis unless there is evidence to the contrary. Again, this guidance applies when there is only one class of stock, and additional analysis may be required should a concern issue multiple classes. If there are multiple classes of stock, the case should be elevated for additional review.

- **LLCs:** Determination of profit distribution for LLCs should be performed in the following order:

1. **Check the Operating Agreement.** If the Operating Agreement mentions that the profits are distributed based on the percentage of shares or pro rata, then this statement will be acceptable and the issue is satisfied. If the Operating Agreement is silent on profit distribution, go to Step 2.

2. **Check the applicable state code.** If the state code mentions that the profits are distributed based on the percentage of shares or pro rata, then the issue is satisfied. If the state code is silent on profit distribution, go to Step 3.

3. **Check the taxes.** If the most recent 2 years of tax documentation clearly shows that the Veteran received profit distributions commensurate with the Veteran's ownership interest, then the issue is satisfied. If the applicant is a start-up and is not able to provide 2 years of taxes reflecting profit distributions, we will accept 1 year of taxes. If the applicant is not able to provide any taxes, or the taxes provided do not show that the Veteran received profit distributions commensurate with the Veteran's ownership interest, then the issue is not satisfied.

- **Exceptions:** 100% owners are presumed to automatically receive 100% of the profits and distribution

- **Trusts:** Ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where:

- The trust is revocable,
- The Veteran is the grantor,
- The Veteran is a trustee, and
- The Veteran is the sole current beneficiary

Note: All 4 requirements must be met.

- **401(k) Plan:**

- As 401(k)s are legally distinct from ESOPs, it has previously been advised that the ESOP exception outlined in 38 CFR § 74.3(a) should not be extended to 401(k) plans. Therefore, the only way a SDV can satisfy the direct ownership requirement is if the 401(k) meets the trust exception outlined in 74.3(a) by demonstrating the 401(k) is revocable, the SDV is the grantor, a trustee and the sole current beneficiary. Typically 401(k)s are established by the

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concern, rather than the SDV and therefore there may be a grantor issue. Additionally, 401(k)s are almost always for the benefit of all the concern's employees and therefore there will likely be a sole current beneficiary issue

- When requesting 401K Plan documents, ask for stock certificates / stock ledgers, as 401K ownership is often listed on those documents. Also, ensure that the 401K Plan Summary Description is requested. This document will reflect if the Plan is revocable, who is the grantor, who are the trustees, and who are the beneficiaries. You may also need to ask for a list of the employees currently using the plan.

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Unconditional Nature of Veteran Ownership

- **Requirement:** One or more Veterans must unconditionally own at least 51% of the applicant concern. Ownership must not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another.
- **Reference:** 38 CFR § 74.3 (b)
- **Possible Relevant Documents:** Bylaws, Meeting Minutes, Operating Agreement, Shareholder Agreement
- **Current Guidance:**
 - As a general rule, the only issue we are consistently looking at with regard to 74.3(b) are automatic forfeitures of interest as a result of some triggering event. Most restrictions on transfers that we see have a subsequent right of first refusal provision in the document somewhere. However, if you have a case where you believe a restriction on transfer exists with no subsequent right of first refusal, please feel free to send to your supervisor for review.
 - Typically, 100%-owned, single-member LLCs are exempt from unconditional ownership issues. The regulation prohibits any arrangement that could cause or potentially cause the Veteran's ownership interest to go to another. If the Veteran owns 100% and is the sole member, there is no one else who could potentially take over the Veteran's interest and/or exert any kind of influence over that interest. In cases where the Veteran owns 100% but there are multiple members, you will need to read the ownership condition carefully to determine whether the Veteran's interest could potentially go to another member. But as a general rule of thumb, a single-owner, single-member LLC would not be denied on unconditional ownership.
 - Note that unconditional ownership is reviewed independently and the analysis is based on the provisions in the governing documents. We do not deny on unconditional ownership simply because there is also an issue with direct ownership or majority ownership.

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- **Bankruptcy.** Provisions that require automatic forfeiture of interest in the event of bankruptcy are not considered grounds for denial. (*Ambuild* court case)
- **Involuntary Dissolution.** Some governing documents contain a provision that requires the dissolution of the company in the event of certain triggering events. While the Veteran member may lose his or her membership interest when the company dissolves, the interest and ownership benefits would not go to another. Therefore the provision does not violate 38 C.F.R. § 74.3(b).
- **CURRENT GUIDANCE (Unconditional Ownership Guidance Paper 10.3.13)**
 - **A right-of-first-refusal** is a standard provision used in normal commercial dealings, and does not burden the Veteran's ownership interest.
 - Going forward, a restriction on unconditional ownership affecting verification approval of a SDVOSB/VOSB would have to be based on a provision that, ***subject to an event or action***, would cause the Veteran to lose or forfeit his/her ownership interest. An example would be a 'morals' provision, where, for example, if Veteran owner is arrested or convicted of a crime, Veteran forfeits his/her ownership interest without compensation.
 - **Question 1:** Would the requirement that a Veteran or service-disabled Veteran obtain the approval of non-Veteran members/owners before withdrawing from the company violate 38 CFR § 74.3(b)?
 - **Answer:** No. This is a common requirement in Operating Agreements and company bylaws. However, it is not significantly different from requirements of non-Veteran approval before a transfer. In most instances, withdrawal from the company is similar to selling all of the interest. Therefore, these requirements, like requirements of approval before transfer, shall not be considered a restriction on unconditional ownership.
 - **Question 2:** Whether a requirement that, in selling his or her interest in a concern, a Veteran/service-disabled Veteran must sell that interest at a set price or by formula violates 38 CFR § 74.3(b)?
 - **Answer:** No. It is rare to see a set price or formula affecting the price of a *bona fide* offer from a third party. These are generally included for instances, where the owners/members are leaving without an offer to buy, such as dissolution of the company. However, even in the case that the formula extends to regular transfers, the Veteran has negotiated and agreed to these terms. Similar to rights of first refusal, such a provision only affects the terms of the transfer. Generally,

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this would not operate as a restriction on unconditional ownership. However, if the formula or price is significantly below fair market value so as to make it commercially unreasonable, this would present a problem similar to forfeiture if the Veteran receives little or no value for his/her ownership interest. This instance would be exceedingly rare, and these cases should be elevated for additional review if this fact pattern is identified.

- **Question 3:** Does a provision that requires a Veteran/service-disabled Veteran to wait a certain period of time prior to selling his interest violate 38 CFR § 74.3(b)?
- **Answer:** This is not a particularly common term/condition of ownership documents. However, ultimately all such a requirement would do is delay a sale. The Veteran is still able to transfer his or her interest. This would not operate as a restriction on unconditional ownership.
- **Question 4:** Whether a provision that allows a non-Veteran to veto a sale with/without cause violates 38 CFR § 74.3(b)?
- **Answer:** This is no different from a requirement that non-Veterans approve the transfer in any significant way. Therefore, this would not be a restriction on unconditional ownership.
- **Question 5:** Whether a provision that provides that no sale of an ownership interest may result in the company ever being owned by less than 51% Veteran/service-disabled Veteran ownership violates 38 CFR § 74.3(b)?
- **Answer:** This is not a violation for the following reasons. These provisions are included in an effort to demonstrate to VA that the Veteran will always hold 51% as is required by the regulation. Often, these requirements are silent on what would happen if the Veteran attempted to sell or withdraw. Because an individual cannot be forced to maintain involvement in the company, VA can reasonably read into this type of term or condition that the Veteran will own 51% unless all owners consent otherwise.
- **Legal Review of Heritage Health Solutions, Inc. Shareholder Agreement**
 - **Background:** A legal review was performed on Heritage Health Solutions, Inc. to determine whether any provisions imposed a condition subsequent in violation of 38 CFR § 74.3(b).
 - **Relevant Provisions:**
 - **5.1(a) Involuntary Transfers:** If a Shareholder has any notice or knowledge of any attempted, impending or completed Involuntary Transfer (other than an

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Involuntary Transfer subject to Article 6 of this Agreement) of any of his Shares, whether by operation of law or otherwise, s/he must give immediate written notice to the Corporation specifying the number of Shares that are subject to the Involuntary Transfer and all pertinent information in his or her possession relating to the Involuntary Transfer. If any Shares are ever subject to an Involuntary Transfer (other than pursuant to Article 6 of this Agreement), the Corporation will, at all times thereafter, have the immediate and continuing option by notice to the owner of the Shares within six months after the date the Corporation first learns or has notice of the Involuntary Transfer, to purchase all the Shares for a purchase price per Share determined pursuant to section 7.1 below to be payable in accordance with section 7.2(b).

- **Recommendation:** Upon review of the relevant provisions, the Shareholder Agreement submitted does not impose a condition subsequent that would violate 38 CFR §74.3(b).
 - Typically, a prohibited condition subsequent is a specified event that when it occurs causes a shareholder to forfeit their interest. The language of the relevant provisions is distinguishable as the Corporation here is not imposing events that would cause a shareholder to forfeit his or her interest but merely creating contingencies should an outside influence (operation of law etc.) cause a shareholder to involuntarily transfer their shares. (Emphasis added) Section 5.1 does impose a requirement that the Shareholder notify the Company in writing of any “attempted, impending, or completed” Involuntary Transfers; however the Company does not create the event which would trigger an Involuntary Transfer. Rather, the Company merely reserves the right to purchase any Shares that are already subject to an Involuntary Transfer. (Emphasis added) This scenario is analogous to a right of first refusal where a Company maintains the right to purchase shares already offered for sale or transfer. As the Company is only purchasing shares that are already subject to a transfer, the provision would likely be considered commercially reasonable and therefore would not violate the verification guidelines in accordance with the Miles court decision.

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Community Property

- **Requirement:** A Veteran's ownership interest in the applicant may not be held as community property.
- **Reference:** 38 CFR § 74.3(f)
- **Possible Relevant Documents:** Tax information, Pre or Post-nuptial Agreement, Community Property Waiver, Transmutation Agreement, Marriage License, Articles of Incorporation, Articles of Organization
- **Current Guidance:**
 - Community property requirements are based on the state of the Veteran owner's residence (not where the business is located). Reference tax documentation as the primary source to determine state of residence.
 - Community property does not apply if the marriage occurred after the company was established. If the applicant claims this exception, request a marriage certificate or other documentation to confirm the claim that the marriage occurred after the formation of the company.
 - Refer to the previously filed taxes to find out if the Veteran filed "Single" or "Head of Household" in the most recent years.
 - In order to comply with this requirement, the spouse must transmute a portion of his or her community property interest in the applicant so that the Vet/SDV maintains at least a 51% unconditional or "sole and separate" ownership interest. This community property waiver cannot be limited to "in the event of divorce" or any other conditions, as this places a condition on the waiver, which in turn places a condition on ownership.

CONTROL

Day-to-Day Control

- **Requirement:** One or more Veterans must control the day-to-day operations of the applicant.
- **Reference:** 38 CFR § 74.4(a)
- **Possible Relevant Documents:** Resume, Bank Signature Cards, Cancelled Checks, Contracts, Lease, Meeting Minutes, Operating Agreement, Bylaws, Online Research
- **Current Guidance:**
 - The evaluation of the Day-to-Day Control requirement involves looking at **a totality of the available evidence** to determine day to day control
 - Is the Veteran an authorized signer on the bank account?
 - Who signed the applicant's checks?
 - Who signed the applicant's lease?
 - Who signed the contracts?
 - Who is listed on the website as the management team?
 - Does the website or any other documentation list multiple locations? **If so, request a letter of explanation demonstrating**

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how the Vet/SDV is able to maintain management control over each location.

- Who is listed as the point of contact in SOS, D&B, SAM, the SBA?
 - Does the SOS, D&B, SAM, or the SBA list a different address than that listed in the applicant's VetBiz profile? If so, request a letter of explanation to determine if the applicant has multiple locations. If the applicant has multiple locations, request letter of explanation demonstrating how the Vet/SDV is able to maintain management control over each location.
- Where does the Veteran live in relation to the applicant?
- How does the Veteran's experience relate to the non-Veteran's?
- What do the resumes reveal about the Veteran's duties and how the day-to-day operations of the applicant are conducted?
- What do LOEs say?
- Does the Veteran hold outside employment that may impact his or her ability to meet the Day-to-Day Control requirement?

Review based on a totality of the evidence, and generally this is not black and white.

- **We ask – in reality, regardless of what the operating agreement/bylaws say – WHO is actually running the applicant's day to day operations?**
- **RELATED TO CONTROL:** If the only reason for potentially denying on Day-to-Day Control is based on the fact that the Veteran does not have the power to control the applicant's decisions based on language in the applicant's governing documents, and NO other "totality of the evidence" reasons exist, approve on Day-to-Day Control and deny on Control of Decision-Making. If the applicant resolves the decision-making issues during the process, this will also cure the potential Day-to-Day Control issue.
- **RELATED TO HIGHEST OFFICER:** If the only reason for potentially denying on Day-to-Day Control is because the Veteran does not hold the highest officer position, and NO other "totality of the evidence" reasons exist, approve on Day-to-Day Control and deny on Highest Officer. If the applicant resolves the highest officer issues during the process, this will also cure the potential Day-to-Day Control issue.

Experience of Veteran Manager

- **Requirement:** One or more Veterans must have the managerial experience and requisite management capabilities necessary to run the applicant.
- **Reference:** 38 CFR § 74.4(b)
- **Possible Relevant Documents:** Trade Licenses, Resume, LinkedIn
- **Current Guidance:**
 - Use the totality of the information available to determine the applicant's primary line of work. The primary NAICS code in SAM may help with this

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determination, but it is not the sole source for determining primary line of work. CVE should review the applicant's website, resume, capability narratives, contracts, marketing material, NAICS codes, etc. to make a determination of primary line of work. Once this determination has been made, this line of work should govern CVE's review of experience. (**Note:** in some instances, an applicant may specialize in several unrelated lines of work. These applications must be reviewed on a case-by-case basis.)

- Does the Veteran have the experience to run the applicant, and does he/she have more experience than other non-Veteran owners?
- Who holds the critical licenses?
- If one of the non-Veteran's stopped working suddenly, would the Veteran be able to continue the operations? (This will often link to Undue Influence as well.)
- If the non-Veteran has more specialized experience, does the Veteran have the ultimate managerial and supervisory control over the non-Veteran?
- Is the concern in an industry that would generally be assumed to require more specialized industry-specific experience, education, and expertise? (e.g., construction, architecture, engineering, medical practices, etc.)

Outside Employment Impact

- **Requirement:** An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the application which demonstrates that such activities will not have a significant impact on the owner's ability to manage and control the applicant concern.
- **Reference:** 38 CFR § 74.4(c)(1)
- **Possible Relevant Documents:** Resume, Personal Taxes, Business Taxes, Payroll, number of hours worked for the applicant, Online Research, LOE or any information pertaining to outside employment.
- **Current Guidance:** If the Veteran currently has outside employment, the applicant **MUST** provide a **Letter of Explanation that explains how the outside employment will not have a significant impact on the SDV/Vet's ability to maintain control and management of the applicant.** If there is inconsistent information or the applicant has provided a vague response, seek further clarification. (e.g., "I work third shift." *What are the hours of third shift?*) If the SDV has outside employment, the LOE must provide the level of detail needed to demonstrate when and how the SDV manages the applicant. Some questions to ask and factors to consider when reviewing the totality of the circumstances surrounding outside employment:
 - Hours of operation based on the line of business (detailed hourly schedule for the SDV is always helpful).
 - Who is running the applicant while the SDV is at his outside job?
 - Does the SDV run the applicant out of his home as the only employee, or are there multiple owners/employees and the job has a physical location?

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- If the applicant has employees, how does the SDV manage, supervise, and respond to them during the day?
- If the applicant has a physical location, who is available to meet with customers when the SDV is at the outside job?
- If the applicant has a physical office, how far away from it is the SDV's place of outside employment?
- Does the SDV's outside employment provide the flexibility needed to respond to needs of the applicant during the day, and to adjust his/her schedule in the event that additional time is required for the applicant (e.g., a contract is awarded to the applicant)?

Full-time Management by Veteran

- **Requirement:** One or more veterans or service-disabled veteran owners who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business.
- **Reference:** 38 CFR § 74.4(c)(3)
- **Possible Relevant Documents:** Resume, Personal Taxes, Business Taxes, Payroll, number of hours worked for the applicant, Online Research, LOE or any information pertaining to outside employment.
- **Current Guidance:** The information needed to evaluate this requirement is typically self-reported by the applicant in a LOE. We will typically accept the applicant's statement regarding number of hours worked as fact, unless we have reason to believe that the information provided by the applicant is not correct. As a general rule, 40 hours per week is considered full-time for most lines of work. However, it is possible to satisfy full-time with fewer than 40 hours per week. If the applicant attests to working fewer than 40 hours per week, discretion should be used to account for age of the applicant, number of active contracts, type of service provided, number of employees, amount of revenue being generated, etc. However, the burden is on the applicant to explain why fewer than 40 hours a week is enough to run the business in its current state. Typically, we are more lenient on startups, but there is no exception in the regulation that would exempt a startup from meeting this requirement.

Highest Officer Position

- **Requirement:** One or more veterans or service-disabled veterans must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or participant.
- **Reference:** 38 CFR § 74.4(c)(2)
- **Possible Relevant Documents:** Resume, Bank Signature Card, Contracts, Meeting Minutes, Operating Agreement/Bylaws, Internet Research
- **Current Guidance:**
 - Regardless of ownership, if the governing document(s) states that the company is Manager Managed and the documentation does not reflect that the Veteran owner has elected himself as Manager, we must deny on

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Highest Officer. So for example if under the management section of the OA it states the company shall elect a manager to manage the applicant, but there is no attached exhibit listing the managers, and the Veteran is not listed as Manager, we must deny based on highest officer. This rule applies even if the Veteran owns 100% of the company.

- If the applicant's governing documents do not require the election of officers, but make it optional (e.g., the corporation may choose to elect Officers...), we cannot require the applicant to elect officers. However, the applicant must clearly demonstrate that the Veteran/SDV holds the highest established position.
- For an LLC or partnership, if the OA or Partnership Agreement does not list a requirement for the appointment of officers, we will deem the management member or partner to hold the highest officer position. (See Control of Decision-making section for how to determine the management member.)
- If the governing documents state that there are officer positions – the SDV MUST be named to one of these positions in a binding legal document (e.g., Operating Agreement or meeting minutes – and they must be properly executed). We cannot rely on secondary self-serving evidence to determine that this requirement has been met.

Control of Applicant Decision-Making (Corporations)

- **Requirement:** One or more veterans or service-disabled veterans must control the board of directors of a corporate applicant or participant.
- **Reference:** 38 CFR § 74.4(f)
- **Possible Relevant Documents:** Meeting Minutes, Bylaws, Shareholders Agreement
- **Current Guidance:**
 - If one Veteran owns 100% of the applicant, the Veteran is deemed to control the Board of Directors in accordance with 38 CFR § 74.4(f)(1)(i).
 - In order for CVE to deem the Veteran to control the Board under 74.4(f)(1)(ii), the following criteria must be met:
 - Single Veteran owns at least 51%
 - Individual is on the Board of Directors
 - Veteran must be able to overcome any supermajority voting requirements except with regard to those items considered as extraordinary events. Noted examples of extraordinary events include:
 - Determination to engage in a substantially and materially different business enterprise than originally agreed;
 - to prevent altering or amending the firm's charter, operating agreement or bylaws, in a way that materially alters members' rights;
 - when issuing additional shares of stock;

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- sale or disposition of all or substantially all of a concern's assets;
- acceptance of new capital contributions,
- addition of members to an LLC
- company filing for bankruptcy
- Veteran must have the power to remove a Director at any time with or without cause.
- The SDV can own 100% of the corporation and be deemed to control the Board of Directors even if he/she is not a Director. However, this would be a red flag for other areas of control in 74.4. For example 74.4(c)(2) and (3) requires that a SDV owner devote full-time management, and an eligible full-time manager must hold the highest officer position. So even if the SDV is not on the board, the applicant still needs to demonstrate that the SDV owner manages the firm, devotes full-time, is the highest officer, etc. In other words, just because the applicant satisfies 74.4(f)(1)(i), doesn't necessarily mean it satisfies all other control and management requirements. Each needs to be examined.
- **Bylaws must be properly executed.** Generally, this is demonstrated through signed and dated meeting minutes documenting the adoption of the Bylaws by the Board of Directors.
 - **"Digital signatures"** are acceptable so long as we can reasonably conclude that the individual has demonstrated the intent to cast a signature. Some examples include a digital signature using an authenticated token such as a PIV card; a typed name in a cursive font; and a typed name using "/s/" or some signature designation.
 - **The SDV/Vet must have the unilateral ability to amend the controlling governing documents.** A Veteran owner is not required to have the ability to unilaterally amend all governing documents; however, he or she must have the power to unilaterally amend any documents that govern the control, management, and/or normal operations of the business except with regard to those items considered as extraordinary events. Noted examples of extraordinary events include:
 - Determination to engage in a substantially and materially different business enterprise than originally agreed;
 - to prevent altering or amending the firm's charter, operating agreement or bylaws, in a way that materially alters members' rights;
 - when issuing additional shares of stock;
 - sale or disposition of all or substantially all of a concern's assets;
 - acceptance of new capital contributions,
 - addition of members to an LLC
 - company filing for bankruptcy

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In the case of a corporation, this would most likely be the Bylaws, but may also apply to the Shareholders Agreement if this agreement contains control or management provisions.

- **Amendments:** If an applicant submits more than one version of the same governing document at any time during the verification process, amended versions or amendments to a previous version must be clearly identified as such. Preferably, this is accomplished by renaming the newer version to reflect an amendment (e.g., "Amended and Restated Operating Agreement," or "Second Amendment to the Operating Agreement"). Alternately, the applicant may elect not to rename the document. This is only acceptable if the newer version is executed with a newer date than the previous version. If the newer version is neither renamed nor re-dated, CVE cannot reasonably conclude which version governs.
- **Block voting:** In cases where a corporation is, for example, owned 33% Vet, 33% Vet and 33% non-Vet, there may be an issue of negative control if there is no block voting established in the governing documents. So if a majority of shares is required to form a quorum there are scenarios where if one Vet is not available, the presence of the non-Vet 33% shareholder would be necessary to form a shareholder quorum. As a result, the non-Vet has the ability to exert negative control by choosing not to be present and blocking a quorum. Also, voting deadlocks may occur if a quorum is formed by a 33% shareholder Vet and a 33% shareholder non-Vet. Also, the non-Vet can be the deciding vote if all three shareholders form a quorum and a disagreement arises between the two Vet shareholders.
- **"Unable to act."** A provision found in the Bylaws (or other governing document) that allows a non-Vet to assume management control of the company in the absence of the Vet/SDV affects control of decision making. An example of such a provision is, *"In the absence of the President or in the event of the President's inability to act, [Non-Vet Name] shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all of the reactions upon the President."* As a result of this provision, the non-Vet has the ability to potentially manage the applicant when the Vet/SDV is absent from the office or unable to act for some reason, which has not been clearly defined. The phrase "unable to act" (or any similar phrase) is ambiguous, and leaves too much room for interpretation, and therefore too much room for potential control by a non-Veteran.
 - A provision such as the one listed above may be acceptable if it more clearly and specifically defines the circumstances under which the Veteran is absent. The circumstances must relate to a disability or serious, long-term health issues that would prevent the Veteran from performing his or her duties. Any other circumstances would most likely not be accepted, but may be elevated for additional review if a unique circumstance for absence is identified.

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- **Conflicting documentation:** An applicant should submit only the governing document that pertains to its business type:
 - LLCs should submit an Operating Agreement
 - Corporation should submit Bylaws
 - Partnerships should submit a Partnership Agreement

However, if the applicant submits Bylaws and an Operating Agreement, for example, and it is not clear which is the governing document, we must request clarification from the applicant. The applicant's clarifying response must include an official signed and dated resolution showing that one document is the official governing document and the other document is null and void. If the applicant does not adequately demonstrate which document governs, then we must review both documents and each should be given equal weight. If either document reveals an area of regulatory non-compliance, this would be a point of failure. To correct, the provision causing the point of failure must be amended.

Control of Applicant Decision-Making (LLC and Partnerships)

- **Requirements:**
 - In the case of a partnership, one or more veterans or service-disabled veterans must serve as general partners, with control over all partnership decisions. A partnership in which no veteran is a general partner will be ineligible for participation.
 - In the case of a limited liability company, one or more veterans or service-disabled veterans must serve as management members, with control over all decisions of the limited liability company.
- **Reference:** 38 CFR § 74.4(d) and (e)
- **Possible Relevant Documents:** Operating Agreement, Partnership Agreement, Meeting Minutes,
- **Current Guidance:**
 - **The Operating Agreement/Partnership Agreement must be properly executed.**
 - **"Digital signatures"** are acceptable so long as we can reasonably conclude that the individual has demonstrated the intent to cast a signature. Some examples include a digital signature using an authenticated token such as a PIV card; a typed name in a cursive font; and a typed name using "/s/" or some signature designation.
 - **Single-member LLC**
 - **Member-managed:** If the OA does not list a requirement for there to be a Manager/Managing Member, and one has not been elected, we will presume that the single member is the management member. Further, if the OA does not list a requirement for the appointment of officers, we will deem the management member to hold the highest officer position.

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- **Manager-managed:** If the OA requires a Manager/Managing Member or gives express authority to the Manager/Managing Member, and there is no official documentation reflecting that the SDV has been appointed to this position, then the applicant has not satisfied 38 CFR § 74.4(e), regardless of how quickly or easily the single member could appoint himself/herself as Manager.
 - Example 1: “Only members elected as Managers will have control over the decisions of the company...”
 - Example 2: “The company will be managed by the Managing Member...”
- **Multiple-member LLC**
 - **Member-managed:** If the OA does not list a requirement for there to be a Manager/Managing Member, and one has not been elected, we will presume that the member who controls all decisions is the management member. Further, if the OA does not list a requirement for the appointment of officers, we will deem the management member to hold the highest officer position.
 - **Manager-managed:**
 - If the OA requires a Manager/Managing Member or gives express authority to the Manager/Managing Member, and there is no official documentation reflecting that the SDV has been appointed to this position, then the applicant has not satisfied 38 CFR § 74.4(e), regardless of how quickly or easily the majority member could appoint himself/herself as Manager.
 - If more than one Member has been appointed as Manager/Managing Member, we will presume that the Manager who controls all decisions is the management member. Further, if the OA does not list a requirement for the appointment of officers, we will deem the management member to hold the highest officer position
- **The SDV/Vet must have the unilateral ability to amend the governing documents.** For LLCs this is a two part analysis and **Operating Agreements must be signed by all members to be legally enforceable**, so even if the SDV/Veteran has the unilateral ability to make changes to the Operating Agreement, the non-Veterans might still block the implementation/ adoption by refusing to sign the new OA – so there should be a second element that we look for in the OA. For example, a paragraph that gives “additional assurances”: “Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents which the Company deems reasonably necessary to effectuate the provisions of this Second Amended and Restated Operating Agreement.” Ultimately, both prongs must be satisfied:
 - Prong 1: The Veteran must have unilateral control over the decision to amend the Operating Agreement.

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- Prong 2: The Veteran must have unilateral control over the decision to adopt the amendment that was approved in Prong 1.
- **Amendments:** If an applicant submits more than one version of the same governing document at any time during the verification process, amended versions or amendments to a previous version must be clearly identified as such. Preferably, this is accomplished by renaming the newer version to reflect an amendment (e.g., "Amended and Restated Operating Agreement," or "Second Amendment to the Operating Agreement"). Alternately, the applicant may elect not to rename the document. This is only acceptable if the newer version is executed with a newer date than the previous version. If the newer version is neither renamed nor re-dated, CVE cannot reasonably conclude which version governs.
- **"Unable to act."** A provision found in the Operating Agreement (or other governing document) that allows a non-Vet to assume management control of the company in the absence of the Vet/SDV affects control of decision making. An example of such a provision is, *"In the absence of the Manager or in the event of the Manager's inability to act, [Non-Vet Name] shall perform the duties of the Manager, and when so acting, shall have all the powers of and be subject to all of the reactions upon the Manager."* As a result of this provision, the non-Vet has the ability to potentially manage the applicant when the Vet/SDV is absent from the office or unable to act for some reason, which has not been clearly defined. The phrase "unable to act" (or any similar phrase) is ambiguous, and leaves too much room for interpretation, and therefore too much room for potential control by a non-Veteran.
 - A provision such as the one listed above may be acceptable if it more clearly and specifically defines the circumstances under which the Veteran is absent. The circumstances must relate to a disability or serious, long-term health issues that would prevent the Veteran from performing his or her duties. Any other circumstances would most likely not be accepted, but may be elevated for additional review if a unique circumstance for absence is identified.
- **Conflicting documentation:** An applicant should submit only the governing document that pertains to its business type:
 - LLCs should submit an Operating Agreement
 - Corporation should submit Bylaws
 - Partnerships should submit a Partnership AgreementHowever, if the applicant submits Bylaws and an Operating Agreement, for example, and it is not clear which is the governing document, we must request clarification from the applicant. The applicant's clarifying response must include an official signed and dated resolution showing that one document is the official governing document and the other document is null and void. If the applicant does not adequately demonstrate which document governs, then we must review both documents and each should

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be given equal weight. If either document reveals an area of regulatory non-compliance, this would be a point of failure. To correct, the provision causing the point of failure must be amended.

Highest Paid

- **Requirement:** No non-Veteran may receive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, which exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant.
- **Reference:** 38 CFR § 74.4(g)(3)
- **Possible Relevant Documents:** Personal Taxes, Business Taxes (K-1), Payroll, Letter of Explanation
- **Current Guidance:**
 - 38 CFR § 74.4(g)(3) does not prohibit a non-Veteran from receiving the same salary as the SDV owner. If a non-Veteran is receiving more compensation than the SDV owner, the regulation requires the SDV to provide an explanation that demonstrates how the SDV receiving a lower salary benefits the applicant. **Equal compensation is not grounds for denial.**
 - If an applicant states that it does not have payroll or W2's because it subcontracts its work or pays through 1099's, we should request the 1099's or subcontracting documentation. These 1099's will not be used to analyze the Highest Paid requirement, but the information obtained from the 1099's may yield red flags that should be considered when evaluating other control issues, such as undue influence. **(NOTE: 1099 contractors are not considered employees for the purposes of Verification.)**

Undue Influence/Undue Dependence

- **Requirement:** The applicant must be able to stand on its own without undue influence from or dependency on a non-Veteran or other entity. A non-Veteran may be found to control when the non-Veteran holds a critical license which directly or indirectly allows the non-Veteran to significantly influence business decisions. Business relationships may not exist with non-veterans or entities

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which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk.

- **Reference:** 38 CFR §§ 74.4(i)(2) and (4)
- **Possible Relevant Documents:** Resume, Personal Taxes, Business Taxes, Contracts, Duplicate Owner Tab, Letter of Explanation, Google/online research
- **Current Guidance:**
 - If the Veteran/service-disabled Veteran owns at least 51% of an outside entity and controls that entity, there is no issue with undue influence related to that outside entity, as the SDV can never cause undue influence on himself. **The only way to know for sure if the Veteran/SDV owns and controls the outside entity is if the outside entity is verified in VIP.** If the outside entity has not been verified or we cannot clearly show that the Veteran/SDV owns and controls the outside entity in accordance with verification standards, then undue influence is still a potential finding. **NOTE:** 100% ownership is not what's important when determining whether the applicant is unduly dependent on an outside entity. The Vet could own 100% of the outside entity and still not have full control over it (unlikely, but we can't assume). If the Vet does not have full control over the outside entity, then it is possible for decisions to be made on behalf of the outside entity outside of the Vet's control that cause undue influence on the applicant.
 - If an applicant states that it does not have payroll or W2s because it subcontracts its work or pays through 1099s, we should request the 1099s or subcontracting documentation. These 1099s will not be used to analyze the Highest Paid requirement, but the information obtained from the 1099s may yield red flags that should be considered when evaluating other control issues, such as undue influence. **(NOTE: 1099 contractors are not considered employees for the purposes of Verification.)**
 - Key questions:
 - Can the company survive on its own without any outside assistance?
 - Is the company dependent on something or someone to remain viable?
 - The burden is on the applicant to demonstrate to CVE that it is not unduly influenced by or dependent upon a non-Veteran or entity. Has the applicant demonstrated this?
 - Factors to consider:
 - Experience of Veteran vs. experience of non-Veterans
 - Address of applicant
 - Who signed the lease?
 - Has the Veteran always owned the company?
 - Who has contact with CVE with regards to the application process?
 - Whose e-mail is listed in the VIP profile?
 - Look at online databases (website, LinkedIn, SAM, D&B, SOS, etc.)

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MyVA Verification Process Work Instruction

- Are there co-listed companies especially in the same line of business?
- What is the relationship with any non-veteran owner(s)?
 - Is there co-location issues that would lead to dependence (free lease, etc.)
 - Is there a former work relationship identified with non-Vets?
 - Is there a financial relationship that leads to dependence (to include bonding, free workers, or staffing) or other financing from an outside entity
- Does the Vet have to rely on an outside company person or workers for most or all of the accomplishment of the work (i.e., pass-through)?
- Does the Veteran's outside employment require him or her to depend on another person to maintain the operations of the applicant?

SBA Size Standard "Small Business"

- **Requirement:** The applicant business must qualify as a Small Business Concern per the SBA guidelines
- **Reference:** 38 CFR § 74.13 (d), 13 CFR §121
- **Possible Relevant Documents:** Personal Taxes, Business Taxes, Payroll (941 information), USASpending.gov
- **Current Guidance:**
 - An applicant must be considered small for **ALL** NAICS codes listed in the applicant's VIP profile.
 - The applicant should remove all offending NAICS codes from its profile.

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