STATEMENT FOR THE RECORD: MARC GOLDSCHMITT, PMP, CEO GOLDSCHMITT AND ASSOCIATES LLC

BEFORE THE SMALL BUSINESS SUBCOMMITTEE ON CONTRACTING AND THE WORKFORCE AND

THE VETERANS' AFFAIRS SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

MARCH 19, 2013

I wish to thank the subcommittee chairmen and ranking members for the opportunity to submit this statement for the record and for holding this hearing to address statutory, regulatory and interpretive differences in SBA and VA SDVOSB programs.

Summary:

As a Verification Assistance Counselor and the **verification Subject Matter Expert** for VET Force and the National Veterans Small Business Coalition, I have gained significant insights into the issues of CVE verification. As a small business owner, I have translated these issues to the impact and cost to the Veteran Small Business Community. These impacts and costs are the basis of my written and oral testimony. Key impacts and issues include:

- **CVE interpretations minimize business reality and favor extremes.** These extreme interpretations are major obstacles to increasing veteran small business opportunities.
- **Congress's intent to increase veteran business opportunities is not served by depriving vets of everyday business practices and therefore putting them at serious competitive disadvantage.** A common business adage is to hire employees that are smarter than you. Buy/Sell agreements are common business practices that protect the investments of all owners. These are among the common business practices that are frequent causes for denials.
- **CVE's "risk avoidance" approach has crippled legitimate veteran owned businesses while doing little to prevent fraud.** CVE's website lists four successful prosecutions over a two year period. My understanding is that these prosecutions resulted from veteran community self-policing, not CVE referrals. Over this same timeframe I estimate more than 4500 legitimate business have been denied. That's an average of **more than 10 companies in each of your districts that are legitimate businesses that have been denied.** I suspect that some of your districts may have 25, 50 or more than 100 such businesses.
- **CVE's verification is becoming a de facto credentialing program for prime contractors, other Government Agencies and state set-aside programs.** The existence of two Federal SDVOSB program standards is confusing, at best. Previously, as a small business, I could ignore verification if I was pursuing work anywhere other than VA. Now, one of the first questions I hear from prospective customers is "Are you CVE verified?" Watching their body language tells the story of how pervasive CVE's "second standard" has become.
- **The Documentation Required by CVE is excessive, incomplete and subject to compromise.** Personal Income taxes have little or no probative value in establishing either ownership or control. While CVE's systems do have access controls, my records can be viewed by anyone with access to the "library." The system lacks a control mechanism to allow access by only those with a need to know, and lacks an audit trail of who accessed my information and how it was used.
- **Major corrective actions are interpretive and can therefore be immediately implemented.** This would result in fewer denials and a significant reduction in effort and costs for both CVE and the veteran community.

The Impact of CVE's extreme interpretations

As a small business providing services to the Federal Government, the current environment provides significant challenges to profitability, growth and survival. CVE's interpretations add arbitrary and unpredictable hurdles that make it more difficult for me to plan, finance, market and operate my business. These hurdles cause me, and other service disabled veteran and veteran owned small businesses to waste significant management time and emotional energy that could otherwise be invested in building my business' capability and capacity. While most of the following issues were eventually corrected, the impacts to all small businesses are severe and have long lasting effects.

Unconditional Ownership

The urban myth surrounding unconditional ownership is that "If I woke up this morning and decided to sell" any condition that would preclude, delay or limit this decision is cause for denial. This extreme interpretation ignores several business realities:

- If that's how I run my business there wouldn't be anything worth buying, and
- Buy/sell is a long involved process. It includes determining the value of the company, hiring a broker, finding a buyer and working through the buyer's due diligence. What is the likelihood of closing on the business sale if there is an uncooperative or hostile partner?

Nagel Architects (Incorrect interpretations of state laws)

Nagel Architects is a Wisconsin-based SDVOSB that is registered in Illinois as a Series LLC. Series LLC's are an emerging business model that provides enhanced liability protections. Nagel was the apparent awardee for a Million plus dollar Indefinite Delivery Indefinite Quantity (IDIQ) contract. Nagel's submission included documentation that Nagel is directly and unconditionally owned by an SDV. CVE ignored this documentation, improperly used Illinois state law and opined that the Series LLC is actually a holding company and therefore, denied Nagel. Nagel requested reconsideration and was again denied due to community property laws. Previously, Nagel had provided documentation from his attorney describing how, in accordance with Wisconsin law, Nagel met CVE's community property vesting requirements. CVE either ignored or improperly evaluated this documentation and again denied Nagel. The result was Nagel's loss of a significant IDIQ contract.

An Ohio SDVOSB (Lack of Business reality)

An Ohio SDVOSB was denied based upon a statement in the Operating Agreement that if a judge should render a judgment of bankruptcy, the bankrupt owner must surrender his ownership interest. The business reality is that as a small business owner, it is most likely the business that is the cause of the bankruptcy.

A Texas SDVOSB (community property)

A Texas SDVOSB 100% owner was denied because Texas is a community property state. The owner executed a property agreement with his wife providing him with 51% ownership and her with 49%. He submitted a request for reconsideration and was denied. His denial letter stated: *"This would support a finding that the service-disabled Veteran only owns 51 percent of the company rather than support CVE's finding that the service-disabled Veteran owns 100 percent."*

XSIG (Lost Documentation, Incomplete documentation review, Threat of Prosecution)

XSIG is a Maryland based security company. Organized as a "C-Corporation," XSIG has compliant By Laws as evidenced by its 8(a) certification. At the time of initial verification application, XSIG had a non-veteran minority owner. CVE demanded that XSIG submit an Operating Agreement which was neither required nor appropriate. After prolonged discussions, the owner downloaded an Operating Agreement from the internet, which he submitted. Prior to CVE evaluation, the minority owner resigned all corporate offices and relinquished all ownership making the SDV a 100% owner. CVE was properly notified of the changes. CVE denied XSIG based upon the Operating Agreement even though the findings were no longer relevant based upon the ownership change. The owner sought CVE help in correcting this error and was told that he had to admit that the Operating Agreement that he submitted was incorrect. The owner was later notified, in writing, that he was lucky that he was not being prosecuted because he had submitted false information.

Syncon (Incomplete review of documentation)

Mark Lilly, a retired Navy SEAL Master Chief had successfully managed his Virginia-based construction business for two years when he applied for re-verification. Syncon was denied because his partner had more than 20 years' experience and he was, therefore, unduly dependent upon his partner. CVE's resume review totally ignored the Master Chief's more than 20 years of relevant management experience. A more detailed review of both resumes revealed that the Master Chief's Navy experience and business experience included military construction management while his partner's experience was only in residential construction.

Clauss Construction (De Facto and Incorrect size determination)

Clauss Construction is a California Based remediation services company. Large building demolition, including explosive building implosion and collapse, requires a range of NAICS codes expertise that includes environmental remediation, facilities management and broad construction expertise. With less than 100 employees, Clauss is a small business in its primary 500 employee based NAICS code, yet CVE arbitrarily selected a NAICS code and without due process removed Clauss from the VIP database as a verified SDVOSB. CVE collects payroll data information and could easily have counted the number of Clauss employees. When this error was pointed out to CVE, the response was to refer Clauss to the SBA for a formal size determination, again using an arbitrarily selected NAICS code in which Clauss is not small.

VETS, Inc. (Lost documentation, Improper Removal from VIP)

In November 2012, Veterans Enterprise Technology Solutions, Inc., a Virginia based LLC began its CVE re-verification process. They immediately uploaded all applicable, updated documents to the CVE web-site. The CVE acknowledged receipt and scheduled our CVE Site Visit in December 2012. On 1 March 2013, VETS Inc. received an email message advising that they had not yet started the re-verification process and needed to do so as soon as possible. VETS Inc. contacted the CVE Help Desk and was informed that the system shows no record of VETS, Inc. initiating the re-verification process, shows no record of the submitted documentation and no record of the CVE site visit conducted in December 2012.

Bravo 1-9 Construction (Gotcha!!)

Bravo 1-9 Construction is a New Jersey based Construction business. The owner, Edward Renshaw, is a combat wounded veteran rated at 100% by VA. On his 0877 application, Mr. Renshaw only checked the veteran status box. As part of his application, Mr. Renshaw submitted a copy of his VA rating determination letter showing his 100% disability. In spite of having clear proof of his status as a Service Disabled Veteran, CVE did not "Get to yes" and, instead reached a "Gotcha" determination.

I wish to thank the subcommittee chairmen and ranking members for the opportunity to submit this statement for the record and for holding this hearing to address statutory, regulatory and interpretive differences in SBA and VA SDVOSB programs.

My name is Marc Goldschmitt. I am a certified Program Management Professional (PMP), Verified SDVOSB Business Owner, VET Force Executive Committee Member, National Veteran Small Business Coalition Board Member, Vietnam Veterans of America Economic Opportunity Committee and a CVE Verification Assistance Counselor. Much of my business experience is in performing assessment and turnarounds involving people, process and technology. As the VET Force and National Veterans Small Business Coalition I am a Verification Assistance Counselor and **CVE verification Subject Matter Expert. Through roles, I have gained significant insight into just about every VA CVE verification issue.**

Today, however, I comment as a Service Disabled Veteran Owned Small Business owner. In this capacity I, like so many of my fellow veterans, have been personally affected by CVE's handling of the Verification process. CVE extreme interpretations preclude use of best business practices and apply little or no business sense or reality. By forcing me to align my business model with what they think is right, my ability as a small business to do what is right and what is needed to build capacity and capability is artificially limited. This reduces my competitiveness in non-VA

My comments are intended to address the outcomes and impact of CVE verification statute, regulation and interpretation on the daily life of a veteran small business owner. I make my comments through a series of simple observations and questions. These are not new issues or sudden revelations. Some have been on the table for more than five years. My overarching perspectives are:

My perspective

The Congress supports small businesses and knows that successful small businesses are essential building blocks for a strong, growing economy and a secure nation.

All Government Agencies are stakeholders in building a Small Business and Service Disabled Veteran Owned Small Business industrial base and capability. Statutes such as PL 109-461 elevated the Department of Veterans Affairs to a leadership role in developing SDV industrial capacity and capability. Moreover:

- Verification is an essential tool in managing the integrity of VA's SDV initiatives
- Verification reviews corporate governance documentation and determines compliance with 38 CFR 74 requirements
- Perfect statutes, regulations, implementations and interpretations do not exist, and
- ***The issues that have the greatest negative impact on meeting PL 109-461's goal of increasing veteran opportunities are interpretive and can, therefore, be immediately implemented.***

Contrasting Perspectives

CVE's personnel are highly committed and motivated. Many are veterans The verification program, however, is a business ownership program that is applicable to veterans. As a business owner, the issues I face with start-up, financing, regulations, payroll, benefits, accounting, business development, etc. are not issues that my military service prepared me for. . Although I appreciate the fact that many of the CVE staff have walked in my shoes as military members and now as

Veterans, they have not functioned as veteran business owners, and in many ways, are unable to identify with the requirements of the business world or the needs of small business owners such as myself. As I look at issues of ownership and control, I will contrast CVE's extreme interpretations to business realities.

The Business Governance Challenge

The Governance Challenge: Balancing what's good for business versus what's needed for verification

Good governance is an essential ingredient to business success, because:

- It fuels growth and profitability
- It must be demonstrated to be eligible for obtaining affordable capital, bonding, etc.
- It is essential to effective contract performance, and it is
- The business equivalent of "Smart Government"

Governance documentation is required when a business is protested – while CVE verification activity is initiated by the veteran and the veteran can spend as much time as needed before hitting the submit button, in a protest situation the documentation must be submitted within five business days. Spending the time to develop the documentation and supporting processes to submit a verification application can be helpful, but when the CVE dictated business model requirements are contrary to best business practices, a program that was designed to help veterans becomes one that creates artificial barriers and reduces my ability to compete both in VA and all other Federal Agencies. These interpretive challenges can and must be immediately corrected. This is Smart Government and good business.

What constitutes "Control?"

What actions, functions and decisions constitute control? Does an individual control operations or manage operations? Is control strategic, tactical, operational or some combination? My perspective is that control originates from majority ownership interest and involves the strategic direction of the company and the authority to allocate resources to implement that strategy. It may also include the ability to delegate the management of resources, usually subject to performance metrics. For me to exercise control, I do not have to make every decision, but I do have to delegate appropriate authority and constraints to allow those individuals that can contribute and help grow my business to realize their full potential which means I am growing the SDV industrial base and capability as envisioned by Congress in Small Business and Veteran Owned Business statutes. CVE must differentiate between control, management and operations and provide a concise definition of the functions, actions, decisions and authorities that constitute control of the company. This is an interpretive issue that can be immediately corrected.

Is CVE a "Get to Yes" or "Gotcha" Organization?

CVE boasts that it is making positive strides in moving from a "Gotcha" mentality to a "Get to Yes" mentality. This was a constant theme during CVE's recent training session held on February 22, 2013. The VA's Office of General Counsel representative stated that CVE should be using a "Reasonable person" or preponderance of evidence standard. CVE's initiation, examination and evaluation teams provided the dose of reality and described a process with multiple redundant layers of checkers each of whom repeated that any ambiguity, conflicting information or uncertainty would result in denial.

Consequently CVE's criteria seem to exceed those for capital crimes of "beyond a reasonable doubt" and go to a new standard of "beyond any doubt." CVE must align priorities to in order to use the verification program to help increase opportunities for veteran owned small businesses rather than crippling veteran owned small businesses with excessive criteria and documentation submission requirements. Our challenge is to work collaboratively to change CVE from its historical "Gotcha" roots to a shining example of "Smart Government."

Public Law 109-461 isn't just Verification and Vets First

A major portion of PL 109-461 deals with security and protection of Personal Health Information (PHI) and Personally Identifiable Information (PII). CVE addresses some of these requirements in 38 CFR 74 (Records Management Sections) and its System of Records Notifications (SORN).

CVE's website and instructions to applicants and on its web site and correspondence also address these requirements by providing guidance for redaction of PII. These instructions, however, raise several concerns:

- The need for redaction indicates CVE's concern about the ability to manage and control PII
- The CVE recommended process does not follow "De-Identification" guidance provided in VA's Privacy and Security Course. This interactive, web based course is an annual requirement for all VA Government and Contractor personnel.
- As a note, if applicants correctly redacted the documents they submit, these documents would not be usable by CVE to assess ownership and control.

OIG Report 10-02436, July 25, 2011 – Did VA Management swing the wrong pendulum?

The referenced OIG report may not be a valid metric. There was an apparent problem with due diligence of VA's SDVOSB awardees' status. The implication is that all of these companies had been improperly verified and that, therefore, there are serious flaws in the CVE verification system. When the report says that 36 out of 42 were not qualified, it is silent on several key aspects:

- How many of the 42 had actually been CVE verified?
- How many of had applied for verification?
- What criteria did OIG use to determine if these companies met 38 CFR 74 requirements?
- Were the problems companies that slipped through the cracks, or lack of process or effort for CO due diligence?

CVE's "risk avoidance at any cost" has proven to be a costly, ineffective and harmful strategy. Based upon the referenced report, did VA management address the correct cause by directing Mr. Leney to implement this risk avoidance program or should they have focused on acquisition processes and issues?

Is CVE collecting the correct documentation?

Antoine de Saint-Exupery said it best - *"Perfection is finally attained not when there is no longer anything to add but when there is no longer anything to take away.."*

- Are personal income taxes required for determination of ownership and control or are they superfluous?

- Resumes are often targeted to job search, technical or business development needs. Does collecting resumes from anyone other than the majority veteran owner serve any purpose other than to increase the cost and time of verifications?
- For LLC's many (if not most states) determine membership (ownership) interest by relative capital contributions, yet, to my knowledge, CVE has not asked for Balance Sheets from LLC's to verify the relative capital contributions. Corporate K-1's can be an indicator, as can the Operating Agreement, but the balance sheet is the only definitive measure.

Death, Taxes and Denial

CVE requires excessive personal tax information. In our February 22 training session, CVE personnel stated that they require all Federal Income tax Schedules and W-2's for owners and their spouses. I'm not sure how my medical deductions, charitable donations, other personal deductions or anything on any of the IRS' personal income tax schedules impact my ownership or control. Corporate tax returns contain the required information about ownership through K-1's and distributions. If I'm a sole proprietor, how relevant is my Schedule C to assessing control? CVE must limit collection of tax information to corporate tax return K-1's and only request personal tax information if the Office of Inspector General concurs that the additional information is required to determine if further OIG investigations are warranted.

CVE also requires complete payroll information. When properly redacted this large stack of paper has zero probative value. That's a lot to review for what could be accomplished by a simple affidavit or letter of explanation followed up by a site visit or IG referral if there is sufficient cause for concern.

Is Affiliation a CVE issue or concern?

Affiliations are issues with size and are defined in 13 CFR 121, an SBA regulation. During my re-verification, CVE noted W-2 income and distributions from another company – one that I previously had been a partner in – and they made strong requests for documentation that included the previous three years' corporate taxes and personal taxes of all of the other company owners. I avoided a protracted fight by submitting a redacted copy of the sales agreement. I note that 13 CFR 121's definition of affiliation by common ownership or management requires that the individual(s) control both entities so why CVE would deem it important to collect this information to determine if I control my "applicant" company?

Change CVE from a "risk avoidance" mentality to a Smart Government approach of risk management and mitigation. CVE requires experienced business ownership experience and oversight to place each standard, presumption and conclusion in a realistic context. This will help CVE to assesses the impact and unintended consequences of proposed CVE requests for information, requests for clarification and denials.

Similar but Equal?

SBA uses 13 CFR 125 to determine SDVOSB status. CVE uses 38 CFR 74. CVE has cross walked 38 CFR 74 with 13 CFR 125 and the 8(a) program's 13 CFR 124. From reviewing this crosswalk, there are few common items from 38 CFR 74 and 13 CFR 125. 13 CFR 124 and 38 CFR 74 are highly similar, but are they equal in the context of implementation and interpretation? The draft crosswalk that I was provided (current as of February 15, 2013) is not clear and convincing, and, in my opinion, falls far short of the "reasonable man" standard.

CVE is claiming that 38 CFR 74 aligns with SBA's regulations and interpretations. As a service disabled veteran owned small business, I do not have any issue with SBA's regulations and interpretations, nor am I aware of any veteran business owner who has expressed a concern with SBA's regulations. If SBA's regulations are good and correct and VA's regulations are aligned, then why is there a major push to change VA's regulation? Which is the case? , Is VA's regulation faulty and in need of correction or is it aligned with a regulation that has been effective and accepted for many years by SDVOSB's and the SB communities? ***If CVE's interpretations of existing regulations differ should they not immediately be brought into line with that which is correct within the law***?

CVE decisions lack accountability

There is no accountability for CVE errors. Companies suffering from incorrect CVE decisions have lost contracts and opportunities and, short of expensive lawsuits, there is no remedy. VA and CVE have not published statistics on the number of apparent awardees who are denied and, therefore, have lost awards. Those of us who have been working with veterans and CVE have each experienced apparent awardees that have lost significant contracts due to erroneous denials. Verification cases that I have worked, both formally and informally, have been provided independently to the HVAC O&I Committee Staff Director and are not included here because the owners feared CVE or VA retribution. ***Legislation and/or Executive action is required to define who controls CVE, establish accountability for incorrect or arbitrary and capricious CVE decisions and to define reasonable remedies for companies and individuals who have been financially and professionally harmed.***

Do the math - How long does Verification Really Take?

Veterans use elapsed days from when they pushed the button **until they get verification** as their metric. CVE uses processing days (with timeouts) **until a decision is rendered.** For approximately 60% of applicants, CVE's under 60 days metric can therefore translate to 90 days. Of the other 40%, approximately half must wait six months or more and the other half will wait more than a year. 3,000 legitimate companies each year pay a significant penalty while only a handful of bad actors have been prosecuted or debarred. SBA is required to complete an SDVOSB status determination within 15 business days using substantially fewer resources. With significantly larger volumes, CVE can realize economies of scale and implement production line concepts. ***What is preventing CVE from achieving the same metric as SBA at a lower cost per case?***

Verification is the middle of a long journey

For many veterans this is just a step from active duty to fulfilling their business dream. There may be long periods of rehabilitation, then, after release from active duty, there's the gauntlet of Compensation and Pension Claims. For my generation, diagnoses may only recently have been accepted or may have been improperly coded for years. In my case, it was 35 years before I had a proper diagnosis. Currently, I'm at just over 8 years and one 1month in the compensation and pension system. Like CVE, I was initially denied, then, with the same records and evidence, I subsequently had several contentions granted. ***CVE and VA need to be sensitive to the total veteran experience and act with the proper deference.***

Verification isn't just for VA anymore

Many prime contractors, other Federal Agencies and State Governments now use CVE verification as a means of separating the "real" SDVOSB's from the herd. Consequently, the impact of a CVE denial already reaches well outside of VA. Denials artificially restrict legitimate SD/VOSB businesses from contracts and subcontracts in other venues.

- The Federal Aviation Administration (FAA) requires CVE verification for their SDVOSB set-asides
- Other Federal Agencies occasionally require CVE verification as a procurement eligibility requirement. These cases are usually brought to the OSDBU's attention and quickly corrected.
- Other Federal Agency decision makers are asking "Are you CVE certified?" The perception, as reported to me by veterans, is that they are using CVE verification as a "Gatekeeper" function for either continued discussions or as a basis for requesting three quotes.
- States are jumping on the bandwagon and requiring CVE verification to compete for state SDVOSB set-asides including, among others, Illinois and Indiana.

Legislation or Executive action is required to compel CVE to immediately correct CVE interpretive issues that are resulting in outcomes that are not compliant with PL 109-461 and are unnecessarily harming veteran owned businesses.

Does 38 CFR 74 comport with the law?

Letter

Public Law 109-461 states multiple times that VA is to determine if a company is veteran owned. VA's verification regulation introduces a significant change to the law through the requirement for "unconditional" ownership. CVE's interpretations of unconditional ownership are the basis of many denials. Does CVE's addition of "unconditional" constitute an impermissible reading of the statute?

Intent

Public law 109-461 is clear in its intent: To increase opportunities for Veteran Owned Small Businesses and Service Disabled Veteran Owned Small Businesses. PL 109-461 envisioned achieving this outcome through set-aside priorities (Veterans First) to facilitate access to procurements and Verification to assure that awards go to legitimate SDVOSB/VOSB companies. The expected outcome: an increase in the Veteran Owned Small Business industrial base: more companies, stronger capabilities, increased capacities.

VA has achieved unprecedented levels of contract dollars to Veteran Owned and Service Disabled Veteran Owned businesses. So, why is the veteran community concerned? If I were a conspiracy theorist, I would be having a field day. Extended times to receive a disability rating, extended times and high denial rates to become verified. Then when we think we have reached the peak, we see another mountain where through vehicles such as VA's Transformation Twenty-One Total Technology (T4) and awards through the Navy's Space and Naval Warfare Command (SPAWAR) many IT opportunities are "off limits" even to those incumbent SDVOSB contractors that are successfully meeting the requirement. To many of my veteran brothers and sisters, these create the perception that more dollars are going to fewer companies.

While these issues provide a brief background for the pervasive concern and distrust of VA from the Veteran Community, the issue of today's hearing is how has VA's verification program supported the goals of PL 109-461 and would it be beneficial to extend this program Government-wide?

Through verification, there are fewer SD/VOSB companies that are available to compete for VA procurements. The system is clearly broken. As a veteran business owner, I contend that the problem lies in interpretations and presumed standards for the current regulation. CVE believes that the root cause is the current regulation – which, in essence, states that the current regulation does not comport with the law. To me, this says that there is a legal and moral obligation to fix the problem now, not through a protracted Regulatory revision that will continue the bleeding for another two years.

As a business owner, I need the shackles removed now so that I am on a level playing field and reasonably positioned to obtain capital, resources, partners and all of the necessary ingredients that I need to create meaningful jobs. It's not relevant to me if the fix is interpretive, regulatory of statutory – we are entering a challenging period and unreasonable constraints need to be removed now.

Ghosts of Verifications past

From its inception, CVE verification has been a contentious program that has caused much confusion, disdain and discontent within the veteran community. Known perennially as a "black hole" process, CVE's verifications program has stirred many veterans' emotions and has created a deep distrust of all things VA. While there is some truth to comments that many veterans may not understand the program, attorneys who have been working with SBA's 8(a) and HUBZone programs for more than 20 years and those of us who have been working with CVE and veterans for years remain baffled by many CVE decisions and standards.

Ghosts of Verifications Present

CVE claims to be using 13 CFR 125, the SDVOSB regulation, as the baseline. A review of CVE's comparative analysis shows that when both SBA regulations address an issue, CVE's 38 CFR 74 language is most frequently verbatim from the 8(a) regulation. The 8(a) program is a Business Development Program that has documentation and business model requirements that go well beyond the business model requirements for the SDVOSB program. It is easy to say that these items need to be corrected in a Regulatory change, but, in my opinion, it is the interpretation of these requirements, not the existence, that are the root cause of problems in the verification program. This has been the mantra of the veteran community since the inception of the verification program.

These interpretations have affected my ability as a small business to capitalize on partners and sweat equity. When I had my attorney draft an Operating Agreement to bring on a partner, he stated that I was crazy – no one that is in their right mind would sign the agreement. He was right. With the right partner, I could have accelerated my growth and profitability.

Ghosts of Verifications Future

My understanding is that it is the intent of this joint committee hearing is to assess the current state of CVE verification and, identify needed statutory, regulatory and interpretive changes. that are needed and, in some cases, long overdue. Perhaps recent GAO report and Court of Federal Claims cases such as Miles Construction will focus CVE interpretations on alignment with SBA interpretations and provide a dose of reality, allowing CVE to self-initiate required changes. My remaining comments will address recommended areas for change and strategies.

Areas for Change

	Issues	Comments
Interpretation Near Term Potential	Unpredictable, Varies with SBA interpretations	Immediately fixing interpretive differences will resolve the verification induced obstacles that most negatively impact SD/VOSBs
Implementation Near – Mid term potential	Attitude. Lack of responsiveness. Terminology. Perception of "Gotcha." Requests for additional information perceived as hostile.	Changing culture takes longer but is necessary to restore confidence and trust
Regulation Long term	Use of 13 CFR 124 versus 13 CFR 125 as Baseline	Long term if the full 2-year revision cycle is used. Short term if mandated by legislation or executive order. .
Statute	Business status upon veteran death or need for caregiver	After a veteran business owner's death, a spouse can be CVE verified but the business will not be qualified under SBA's regulations. This is an interesting contrast to CVE's community property interpretations.

Suggested Strategies

- **Statutory:**
  - Require that all CVE verification appeals be adjudicated by the Small Business Administration's Office of Hearings and Appeals (OHA)
- **Interpretive:**
  - Provide definitions (or CVE presumptions/standards/thresholds) for ALL Terms in 38 CFR 74. Some key examples include:
    - ***Business benefits*** versus ***business interest (use Miles Construction COFC)***
    - ***Great economic risk***
    - ***Any term that is subjective or lacks a specified threshold***
  - Develop and publish a "CVE Bright Line" standard that documents the functions, decisions, actions and authorities that constitute control and differentiate control from management and operations.
- **Regulatory:**
  - Align Regulations (38 CFR 74, 13 CFR 125), SBA standards and CVE standards to allow Best Business and Governance Practices
  - Provide a detailed comparison of 38 CFR 74 with corresponding language from 13 CFR 125 and 13 CFR 121.

- Where 38 CFR 74 language is not in either 13 CFR 125 or 13 CFR 121, remove it unless there is a clear statutory, regulatory and business rationale that demonstrates the applicability to both the spirit and letter of Veterans First as envisioned in PL 109-461.
- Remove or modify 38 CFR 74 language that limits industrial base growth
- For language that is common to 38 CFR 74 and 13 CFR 125 (or 13 CFR 121) provide and compare VA's standards with SBA's standards/case law.
- Provide a Government wide "sunset" provision that allows the surviving spouse or heirs to maintain the VOSB or SDVOSB status of the business for a reasonable period of time

- **Create a VA CVE advisory board**, modeled after existing VA advisory boards, to report to the Secretary and provide independent assessment of CVE policies, processes and interpretations. The advisory board should consist of Veteran and Service Disabled Veteran Business owners and should include a mix of start-up, small business and mid-tier businesses.