

Proposed Rule Change for 38 CFR 74 Top Eleven Changes Affecting VOSBs

Change	Benefit
1. Minority owner protection for extraordinary business decisions.	This will help to facilitate equity financing.
2. Split voting is acceptable.	Veteran owners will no longer be required to vote as a block.
3. Unconditional ownership requirements now allow <ul style="list-style-type: none"> a. right of first refusal, b. transfer restrictions, and c. elimination of community property requirements 	These are acceptable as long as the same requirements apply to all owners, and they are in line with common business practices.
4. All appeals of denials or cancellations are heard by the Small Business Administration (SBA) Office of Hearings and Appeals (OHA), and all status protests are also decided by OHA.	Veterans will have one source to go to for denial/cancellation appeals and status protests.
5. Board composition requirements state that <ul style="list-style-type: none"> a. Veterans must control the board through actual numbers or voting ownership interest, b. Veteran must be able to unilaterally amend the governing documents without the consent of non-Veterans, and c. non-voting, advisory, or honorary directors may be appointed. 	This change clarifies the meaning of control in terms of board structure.
6. The meaning of control is clarified by stating it is <ul style="list-style-type: none"> a. strategic policy, long-term decision-making authority and b. management of daily business operations (rather than “day-to-day management and administration of business operations”). 	This change facilitates small business growth. As businesses expand, the Veteran owner can employ other people to run day-to-day operations as long as the Veteran has control over those people.
7. Managerial position and experience are clarified regarding <ul style="list-style-type: none"> a. critical licenses held by non-Veteran owners, b. full-time work and outside employment, and c. highest officer position and delegation of decision making authority. 	The Veteran owner has better insight into how VA considers influences on control over small businesses, especially by minority owners. Also for Veteran business owners starting out, providing the ability to work full-time and maintain outside employment, allows them to still control their business and expand their income as the business grows. This change also clarifies the meaning of : “highest officer position” and “delegation of decision making authority.”
8. Employee Stock Ownership Plan (ESOP) stock is excluded from consideration of ownership (requirement in 2017 National Defense Authorization Act).	In the current rule, the ESOP provision caused great confusion among VOSBs and added further headaches for them regarding their understanding of the rule. Eliminating ESOP as a requirement for ownership consideration helps alleviate this pain point for the Veteran.

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<p>9. Control of a concern's governing body is clarified regarding</p> <ul style="list-style-type: none"> a. quorum restrictions, b. Veteran must be able to unilaterally amend the concern's governing documents, c. executive committees must be controlled by Veterans, d. non-voting members may be appointed to boards, and e. board of directors structure and voting rights must comply with applicable state law. 	<p>Veterans will now have a clearer understanding of how VA views control in terms of quorums, governing documents, executive committees, and other aspects of the concern's governing body. These provisions align to those outlined in SBA's 8(a) Business Development Program.</p>
<p>10. Non-Veterans may be involved in the management of the concern as long as they:</p> <ul style="list-style-type: none"> a. do not exercise actual control, b. are not a former employer of the Veteran, c. do not receive compensation greater than the Veteran without demonstrating how it helps the concern, d. do not provide critical financing, bonding, or critical license that allows significant influence on business decisions (specifically applies to non-Veteran owners), e. do not provide loan guaranty on other than commercially reasonable terms, and/or , f. do not have business relationships with other entities that cause dependence so that the Veteran cannot exercise independent business judgement without great economic risk. 	<p>This allows non-Veterans to be part of the management of VOSB firms. These provisions also align to those outlined in SBA's 8(a) Business Development Program.</p>
Bonus Change	Benefit
<p>11. No penalty for deployed reservists</p>	<p>Reserve component business owners are no longer penalized for their status while deployed.</p>