U.S. SMALL BUSINESS ADMINISTRATION

INTERAGENCY TASK FORCE ON VETERANS SMALL BUSINESS DEVELOPMENT

PUBLIC MEETING

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PROCEEDINGS

MS. CARSON: All right. Welcome to the September 15th, 2016 Interagency Task Force for Veterans Business Development. We will take a quick roll call around the room, and do understand that others will be joining us as traffic allows.

Victor, we'll start with you.

MR. KLINGELHOFER: Victor Klingelhofer representing Vietnam Veterans of America.

MS. BAINTON: Amanda Bainton representing the Military Officers Association of America.

MS. CARSON: Barb Carson, SBA’s Office of Veterans Business Development.

MR. FULLER: Myron Fuller, Arlington, Texas VBOC.

MR. HEILMAN: Craig Heilman, Office of Veterans Business Development.

MR. WESLEY: Kenyata Wesley, Department of Defense.

MR. METHENY: Bill Metheny with Department of Labor, Veterans Employment and Training Service.

MS. CARSON: In the room, we are still awaiting the attendance of Department of Treasury, the Office of Management and Budget and Department of Veteran Affairs.

And on the phone, we would appreciate it if you could please say your name clearly, and if you represent an organization, you are welcome to share that with us.

Thanks, go ahead.


MS. SAGESTER: Cherylynn Sagester, Veteran Business Outreach Center, Old Dominion University.

MR. FRONABARGER: Derek Fronabarger, Student Veterans of America.

MS. KAUFMAN: Julie Kaufman, the COMMIT Foundation.

MS. McMAHON: Lee McMahon, Department of Defense Spouse Education and Career Opportunities.

MR. BENNETT: Jerry Bennett. My apologies.

MR. FLETCHER: You're good, go ahead.

MR. BENNETT: Jerry Bennett, Privateer IT.

MR. FLETCHER: Jerome Fletcher, associate administrator for the Office of Small Business at GSA.

MS. HICKEY: Allison Hickey, All-in Solutions.

MR. GLOWACKI: Edward Glowacki, Veteran Corps of America.

MR. NIMMO: Brian Nimmo with Pearl Interactive Networks. Barb, good to hear your voice again this morning.
MS. CARSON: It's a pleasure to hear from many of you who I met at National Veterans Small Business Coalition last evening. We did have a little bit of trouble hearing your names. If you would be so kind so that we can ensure that we do have your name, since this meeting is on public record, please do email your information if you're on the line to veteransbusiness@SBA.gov.

We will have SBA leadership, in addition to myself, joining us shortly, because they wanted to thank us for all the work that you've done to get us to this point. And we will kick off with a short update on that.

You have completed the combined fiscal year '14 and '15 Interagency Task Force Report. Thank you so much. Not only did you report on what you have done, you've continued to work hard to achieve the goals that we've set for ourselves. That is at OMB for final clearance, and we expect that it will be available to the public within a month.

We do have two vacancies on the Interagency Task Force on Veterans Small Business Development and they are both for veterans service organizations. We will be putting out the word to get some applicants who are very interested and able to affect change in this arena. So, anyway, with that, just thank you, and that's over the past few months who have submitted additional suggestions made. And then thank you to those of you over the past year, particularly with our now former deputy administrator, Doug Kramer, there was a lot of progress made. I don't know, does everybody know that Doug Kramer is no longer the deputy administrator here? He has moved on to greener pastures in San Francisco with seemingly everybody else, or half the rest of the known world.

But, you know, due to your participation effort, this task force has really been revitalized. The initial report, it's a little sad that making progress on an FY '13 report is real progress, but it was stalled and is real progress, and then all of your work on the initial '18 recommendations has been really fantastic.

I thank both the American Legion and the Naval Post-Graduate School for their contributions during their tenure.

I am now pleased to introduce the Small Business Administration's chief of staff, Nicolas Maduros, who is going to join us this morning, as our administrator has an important engagement this morning. Please.

MR. MADUROS: Yes. Thank you, Barb. Thanks, everybody, for being here. I really apologize that the administrator cannot be here. She planned to be, but then Congress called her up to testify this morning. One of the little known facts of the SBA is that we provide disaster loans to homeowners and businesses, so with the recent flooding in Louisiana, we have been busy, and there is a hearing on Louisiana flood issues this morning.

This is of paramount importance to the administrator, the work that you all have been doing and that Barb and her team do here every day. She often tells the story that the first small business she visited as the SBA administrator was a cross-fit gym here in Washington, that was started by one of the inaugural class members of the Boots to Business program, and the owner of the gym told her that, you know, without -- but for the help of the Government and

Boots to Business, that there's no way he would have been able to start a business.

So, I think that sort of set the tone for her, for her entire tenure when it comes to veterans entrepreneurship issues, and so anyway, that's a long way of saying that she's keenly interested in this. It's also probably the closest that I will ever get to being at a cross-fit gym, as you can probably tell by looking at me.

Anyway, I just want to make a few points to kick things off just very briefly and then let us get to work. First, I just want to thank everybody so much. I know over the past year, particularly with our new list, and businesses, so with the recent flooding in Louisiana, we have been busy, and there is a hearing on FY '13 report is real progress, but it was stalled and is real progress, and then all of your work on the initial '18 recommendations has been really fantastic.

I think the goal of today is -- and what we would like to see in the coming months to take from the last June meeting, to build on the progress in the last June meeting. I know then there were a number of recommendations that sort of people determined were out of date or no longer relevant. There were new suggestions made. And then thank you to those of you over the past few months who have submitted additional recommendations. So, I'm hoping that today we can figure out exactly, you know, what the recommendations are for FY '17 so we've got a clean slate and can go forward with a common sense of purpose and know exactly where we're going.

And then, lastly, I would just remind everybody that though we did the FY '13 report and the FY '14-'15 report is I think just about done, we still have an FY '16 report coming up and we are hoping that that doesn't become like a three-year late report. So, folks will be reaching out to all of you and you don't even need to wait to be reached out to, if you-- I am hoping you'll do it proactively, get us the results early by November, by Halloween, for the FY '16 report so that we can get that completed in a timely fashion.

Anyway, with that, just thank you, and that's...
We have made enough progress that it's time to in that realm for each one of them. addressed and closed, but we continued to share updates proposed in 2011, and we have been working against them, to $50,000. Many businesses have a small barrier to entry as far as capital is concerned, and we see that those rates of use have maintained or fallen and we believe that we can effect change there. So, forgive me, one will stay. The next requires a pivot. We recommended closure but got a lively discussion in June, and so we look forward to getting input from the agencies that can help with this one, develop Government-wide tools and information to support buying activities based on market research sources, industry statistics, supplier-based requirements, and success stories. The suggested pivot was development and training on those systems that many of them do exist right now. So, I'm going to return it to comment for those members here in the room.

MR. WESLEY: So, this is Kenyata, DoD, for the folks on the phone. One of the things that we will do within the department, we just developed what we call MRCOE, which is our Market Research Center of Excellence platform. And it is a three to four -- right now it's three, but it will potentially grow to a four, have a fourth section to it, where it has data analytics, data intelligence. It has statistics, and we can actually do a comparison which most people in the department call MaxPrac, for maximum practical opportunities, which when we get to the next bullet, I will talk about that there, too.

But it allows us to kind of define and compare -- so, for example, one of the organizations in my -- under my umbrella within the Department of Defense has an IT main infrastructure. Well, I could turn around and compare that IT small business utilization or in this case veteran or service-disabled veteran utilization with other like organizations within the Federal Government, so we can find out how we are really doing. So, if we're doing 20 percent, which obviously might not be bad, but at the same time, another organization in the Federal Government is doing 35, I need to figure out what they're doing differently than us, or if it's the fact that they have access to companies we don't have access to. Things of that nature.

So, it allows us to now see what we couldn't see before, and it allows us to make sense of the data in a manner in which has never been seen before by the department. So, we will be willing to -- we actually already are partnering with the Veterans Administration on that, and Tom Leney. They will have a version of that tool as well. So, those who couldn't get in to talk to me within the department, as far as from a Federal agency standpoint, can also work with Tom Leney, because he will have his version of the tools come October 1. All right.

MS. CARSON: Thank you, this is Barb from SBA. May I ask as we move these pivots, to try and be specific about what our goal would be, how we measure it and what timeline. So, it sounds like this exists, but
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how will we do the outreach to contracting officers and veteran entrepreneurs so they know this resource is out there?

MR. WESLEY: So, this is actually, the way this is phrased is it's really for the buying activities and market research, not necessarily for the veterans group, the way this is phrased, okay? So, what I'm saying is, anyone who wants to learn what we have done within the Federal Government space, whether it be Treasury, Labor, doesn't matter where. I'm open to have a meeting with them, show them the tool, have my team demo it for them, and if they would like to potentially partner and team to use it or have a version of it built for their space, they can -- if they have the funds, they can do it.

Now, I can't give them mine, because it's set up for me, because there is some tailoring to the tool. But at least they can see it, and I can give them access to the company that designed it, built it, and it probably will not be very expensive. I can't give a price, but since they have already built the platform, it's Government-owned. I don't see that it would be probably too expensive to convert it over to any Government agency if they liked it.

So, at least they have some options, or if the SBA wanted to take it and do something Federal-Wide with it, you would have those options as well. All right?

And you could do that as immediately as after this meeting. I am fine with the timeline.

MS. CARSON: Thank you. Then what I'm going to take for the record is that I will get that from you, share it with the members of this body, and if I may ask for a presentation from DoD from subject matter expert in our December 2016 meeting?

MR. WESLEY: Consider it done.

MR. BLUM: Barb, this is Mathew Blum from OMB.

And also, as another step, we have a Federal benchmarking initiative where we have developed benchmarks, Government-wide benchmarks in the acquisition space. And what you just described in terms of helping agencies align themselves with other agencies with similar missions and buying practices, I think this tool might be an excellent way to help broaden consideration of small business achievement through the benchmarking initiative.

Though as agencies, if this is demoed and agencies start doing some piloting of it, we might also get some folks that are part of the Federal benchmarking initiative to be -- listen to those conversations and start socializing this more broadly, whether it SBA's lead or somebody else.

concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total of all prime contract and subcontract awards for each fiscal year. Now, we have heard over the years a great deal of oral speculation concerning exactly what contracts comprise the base on which this 3 percent is awarded. And we've heard, for example, that major weapon systems -- and I don't know if these are accurate or not, these are just things we've heard.

Major weapon system procurement from DoD, which obviously can't be awarded as prime contracts to small businesses, are excluded from DoD's base. Or that the VA does not award -- include certain types of awards on medical devices to -- in its base that it computes.

We know that and we've seen that subcontractor awards in the past have not been included in the contract base because those were considered as task orders and not contracts. Well, and the Kingdomware decision from the Supreme Court took care of that by, you know, essentially saying if it looks like a contract and quacks like a contract, it is a contract. No matter what you -- you know, what you say about it.

So, we're still at a quandary as to what exactly is the contract base for each agency, and I don't believe that this is Government-wide, I believe that

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some agencies do include all of their contracts, but
that's, again, just speculation on my part.
You know, so what exactly, then, is the contract
base on which the 3 percent is computed? You know,
106-50 says that it is the total value of all prime
contract and subcontract awards. We simply don't know,
and I think that if nothing else, if this is pure
speculation, we should put that speculation to rest, or
if there is accuracy here, then I think that we have a
situation that needs investigation.
And therefore, VVA proposes that we collect data
from all agencies relating to this issue, and probably
by March 2017, collect data, and then evaluate that data
over the next quarter until by our June '17 meeting, and
then we can come up with recommendations by basically a
year from now, or I think the September 2017 meeting.
We think this is an important issue, because we
believe and we've heard that agencies are playing with
the 3 percent figure by excluding whole portions of
their contract awards from the base on which the 3
percent should be awarded. And again, this may be pure
speculation, and, you know, I think that I have heard
and we've heard from enough people who are concerned
about this that it should be put to rest one way or the
other. Thank you.

MR. WESLEY: So, Victor, this is Kenyata Wesley
again, I'll go first. Because I think -- because the
first example you used was actually major weapon
systems, which falls in DoD. So, the first thing I will
tell you is that is pure speculation. There is no truth
to it whatsoever. The only exclusions that we have from
the calculation within the Department of Defense are
those listed in the FAR.
So, one of those is TRICARE, for example, all
right? Whether -- it doesn't matter whether you're a
veteran or HUBZone or woman-owned. As of right now,
there is no small business anywhere in the world that
actually can deliver the insurance for medical insurance
for our active duty service members and/or veterans that
may qualify for TRICARE utilization.
Immunizations is another. Right now, there's no
small business vaccine makers; therefore, vaccines are
out. All right? So, what I would caution everyone with
this discussion is to be careful what you ask for,
because this could lead down a path to where not just
veterans are harmed, but also regular small businesses,
woman-owned and so forth can be harmed.
I'm going to tell you how. We've had these
discussions, and when the late Ms. Penson used to have

the Veterans Conference for the Army, and one of the,
things that came up back then was small businesses,
specifically service-disabled veteran and veteran-owned
companies didn't have a lot of capital, and they wanted
to know exactly what kinds of opportunities were
available to them, so they didn't spend their wills and
waste resources going down a wrong path when it didn't
even exist at all.
I think what you really want us to do is give
clear opportunities, or clear classes of contracts that
are available for veterans, service-disabled vet and/or
small businesses. What we're doing now is dancing
around the issue, all right, and it's not how the goal
is calculated, it's about what opportunities really,
truly exist for veterans and service-disabled veterans.
I believe that's the real challenge. How do we make
sure that we're communicating well?
I've been around now for over 20 years and it
wasn't until the last seven years or so where we've
actually gotten to where I believe all the Government
agencies are communicating well with all of the veterans
groups and service-disabled vet groups. I think what we
don't do well is tell our success stories. We don't
tell you where the maximum opportunities are and how.
All right? And I think that's probably what we really
should be going after.
So, if I suggested a pivot to this, I would
suggest revamping this all together, not because I'm
afraid to tell you what's in the -- what's in our
exclusion, because it's in the FAR. It's in the FAR, we
have the exclusion, the only exclusion -- other
exclusions versus what's in the FAR that we have, and I
will tell you right now, are contingency environments.
So, if it's going down range, they're right now the
contracting officer may set that aside. And then, of
course, SOFA agreements, because -- status of forces
agreements is what SOFA stands for. I don't get a
chance to break that work out. If there's a status of
force agreement that says a host nation in Iraq or
Afghanistan has first right of refusal, we have to wait
until they refuse the work. That is the law. I don't
get a chance to even have anything to do with that.
But I think what we can do, specifically, is
honestly tell you based on our -- for example, the MRCOE
tool I was just telling you about. I now can tell you
where veterans have been performing well, and what our
future opportunities that are coming up, based on our
forecasting tool that we just developed as well, called
Sapphire, I will now be able to do those things, which
we just developed those this year. So, we weren't able
to tell you any of this before this year. All right?

Thank you.

MS. CARSON: I'm going to ask a clarification

question. It's Barb at SBA.

So, thank you for explaining. It sounds as if

it is transparent, you need to know where to look. So,

when you're, Victor, at VVA saying it's confusing or

people believe it doesn't -- it's not clear, that is it

an acceptable activity to take on the specific thing

that he asked, which was we would provide how, if at

all, agencies exclude opportunities from small business

general. If you're -- if you can accept that, sir, I

think that would meet the first mark on VVA's request.

MR. WESLEY: Agreed.

MR. KLINGELHOFER: And let me be clear about

this. We're not saying that TRICARE awards should be

made to SDVO SBCs. What we are saying, though, it is

the three -- it is the base on which the 3 percent is

calculated that we should look to make sure that that

base includes all contracts and subcontracts which is

what PO 106-50 requires.

You know, we agree that there are many contracts

where there are no small businesses. You know, there

are no small business vaccine makers. I agree. You

can't award to them, but that doesn't mean that the

contract -- total contract value of such awards should

not be included in the base on which the 3 percent is

computed.

MR. WESLEY: And that's where we kind of have a

fundamental disagreement, all right? And the reason I

have a fundamental disagreement on it is it should not

be included -- and maybe what we really need to do is

the next time I'm summoned to the Hill, I need to put it

in my testimony, because I'll have to do it soon, but

one of the things that I want to make sure that we do is

actually put out there that maybe what needs to happen

is the PO needs to change, because if it's leading

people to believe that it should be on the total base,

that's a problem. Because if you are sitting here

thinking, in any way, shape or form, that having --

moving the base or the denominator is going to help get

opportunities for service-disabled vets, that's not

going to happen. That's not how it works.

The way it works is based on the market research

that's conducted to see if an opportunity even exists,
or the companies exist. And by including numbers that

small businesses do not even have the opportunity for,
because they don't exist, we are now jading where

companies are potentially investing or wasting money to
go down. And what we don't want to do is have a company

go out of business because they are spending in the

wrong places, all right?

I truly am one of those folks that believe that

I want my industrial base, my small business industrial

base to be around. I need them around, because the

diverse mission and complex mission of the department is

important, and I can't have them not be here. When it

comes down to vet and service-disabled vets, I need them

more than I need most others, and I admittedly say that

publicly on the record.

The reason I say that is because who knows the

department mission better than those who have already

done it and performed it on active duty? But if I've

got them spending money in places to compete in places

where they don't even have minimum opportunity, then I'm

steering them down the wrong ship and I can't have that.

I need them around.

Does that make sense?

MR. KLINGELHOFER: I understand your position

and I think that the disagreement, shall we say, or the

differences of opinion here are precisely why we need to

look at this. And merely because it is a FAR exclusion,
you know, that's a regulatory exclusion, and it's our

position that that may conflict with the legislative

intent.

So, I just want to look at this and come up with

some ideas.

MR. BLUM: This is Mathew Blum. I believe that

the Government contracts and business development folks

here at SBA actually did a comprehensive review of this

issue more broadly, not specifically to the statute, but

if I recall correctly, in one of the recent NDAAs, I

think Congress directed some work in their way that

resulted in their counsel's office looking at this. And

I think part of that analysis, for example, folks may

recall, resulted in a significant change to start

including overseas work, OCONUS work in the calculation

of the goals.

So, it may be helpful to ask Barb for them to do

a presentation. It can either be done in advance or at

the next meeting, but I think that would be a helpful

first step, because I do agree with Kenyata that this --
it's an important issue, but it does have impact that

actually goes beyond just this community. And if we --

whatever change we make here, I think it needs to be

thought about for how small business goaling is

calculated in the other areas.

And also, if I hear you correctly, in saying

that you want to look at the issue, that this -- the way

it's currently written in the goal, it reaches a
MR. WESLEY: I'm fine with it.

MR. HEILMAN: This is Craig, SBA. So, with respect to retooling a recommendation, I would propose as potentially a compromise on the language that's in front of us here. You know, I guess what I would call denominator discovery, this is kind of the topic, would VVA, and Mr. Wesley, agree to review the policies of all Federal departments and agencies to investigate what is currently excluded from the 3 percent base, and make this more of a -- because to Mr. Wesley's point, there's legitimate reasons why things are in the FAR and excluded. And to add them back could potentially be misleading to small businesses.

So, would that be an acceptable compromise language to say, you know, instead of to ensure that nothing is excluded, to determine what is currently excluded across the Federal Government.

MR. WESLEY: I'm fine with it.

MR. KLINGELHOFER: Yes, we can certainly make a change like that, because that was really the intent.

And I apologize for my wording. You know, I think if we investigate which types are classes of contracts are excluded, which they're excluded, and come up with some possible recommendations, then that would be fine.

MS. CARSON: Thank you. This is Barb at SBA.

So, we will make that modification when the transcript comes out, we will use that and also in a summary to everyone and make that public as well. And we will stick to the timeline that you proposed from VVA for action. And finally, we will have a presentation from the Small Business Administration Government Contracting Development Office on that study and what we learned.

Thank you, we're moving on, you seek legislation to create a business development program for economically disadvantaged service-disabled veteran-owned small businesses modeled on the SBA's 8(a) Program. This was proposed by Vietnam Veterans of America. I'll turn it to you, sir, for further discussion.

MR. KLINGELHOFER: As an initial matter, the reason for this is that approximately 70 percent of the SDVO SBC's, or more, actually, I think it's more than 70 percent, are owned by Vietnam-era veterans, and there's nothing wrong with Vietnam-era veterans, but we think that it is important to start trying to increase the numbers of more recent veterans. And, you know, speaking from personal knowledge, a lot of the reasons why the younger veterans are not developing their own small business concerns is many of the reasons for which 8(a) companies seek assistance. You know, this is not support -- meant to change what we have now with regard to the program, it is meant to augment the program by basically helping economically disadvantaged veterans.

Now, having said that, I realize now that this is not an appropriate goal for this task force. You know, this task force is not supposed to recommend legislation, and so I think we need to withdraw this proposed recommendation and instead pursue it on the Hill. Thank you.

MS. CARSON: Any comment within the room?

We have one. Just one moment, sir, while we get a microphone for you.

MR. WYNN: Good morning. This is Joe Wynn, VET-Force VVA. I'm going to have to disagree with my colleague of pulling that off the table. Maybe this task force doesn't need to propose legislation, but it definitely needs to support a program for service-disabled vets that will move the needle and get more service-disabled vets opportunities for contracting.

I think most of you are familiar with the -- familiar with the 8(a) Program, and how it works. For quite some time, we have talked about trying to get some type of vehicle that would allow contracting offers and agencies to offer more opportunities to service-disabled vets. This type of program that is being proposed would, in fact, do that. And, so, you know, to have -- and, so, to have, you know, an opportunity to have such a program that would increase opportunities for service-disabled vets, I think we need that.

We're not necessarily -- when we had our discussion of this, we weren't talking about -- and this has been talked about before -- trying to get service-disabled vets into the 8(a) Program. That kind of was not, you know, viewed very favorably among many of the veteran-owned businesses, but what we are talking about here is some type of program, some type of vehicle that will offer or an incentive and also authorization to contracting officers to be able to award contracts to service-disabled vets, particularly, as you know, there's a key feature in the 8(a) Program where they can make direct awards to 8(a) contractors. Why not have that same opportunity for service-disabled vets?
Thank you.

MS. CARSON: This is Barb from SBA.

I value the intent of this recommendation, but find some barriers and obstacles I would like to discuss. One would be that it would be perhaps worthwhile to look at how much 8(a) is utilized as a tool in contracting right now, and for us to feel that we have a variety of measures that we can take to ensure that veteran small business owners are prepared to compete, have the opportunity, and those may not be served best by this.

So, there are a couple of things that I broke this down. They do need business development. We are taking action in that arena. One of them is by the expansion of the Veteran Business Outreach Center Program, for example. Another is the increasing attention of our resource partners of SBA on veteran business and training them. We've increased our numbers significantly in how we're reaching people and catching them in the beginning of their business life cycle to make them, as Tom Leney would say, procurement-ready. Finally, we have made, as an agency, a significant investment in a very successful program specifically for procurement and that's the Veteran Institute for Procurement, where so far, we have almost 800 graduates of that program, they're very successful in Federal procurement and they're turning around and serving in their communities to mentor others, in conjunction with our existing resources.

Another measure that we are taking is evaluating why the programs that exist now are not being utilized. Sole source authority, a current 8(a) Program in general, not -- I'm looking at it, you know, what would happen if I tried to get SDB in there, and I'm seeing some challenges that this body can continue to investigate.

My concern, Mr. Wynn, is that we would increase the flow, but haven't changed the success in getting opportunity. And, so, I'm really working on those measures as well. So, if you can help me, I believe we need to take this one back for further action, and I would not believe that we could accept it as it is written at this time, but I'll stand by for comment.

MR. WESLEY: Okay. So, this is Kenyata Wesley.
The -- we get down into what are we trying to get? I think that's really the important question.

MS. CARSON: Yes.

MR. WESLEY: The way this is worded right now about going for legislation, I agree with you, that's not the -- that's not what this body is for, to seek legislation. So, it would have to be rewritten, period.

Two, I believe what the service-disabled vet community and the veteran community want is an 8(a) type rule, which also seeks legislative change. We don't have the authority within this body to do that. That is a legislative change. And, so, if that is the end result, which I don't think many people in here probably object to, but if that's the end result, we, this body, isn't the one.

Now, when you say support it -- I'm looking at Wynn -- when you say support it, you've got to have something to support, and I don't think there's anything -- any legislative proposal by your committees or your teams and organizations sitting on the Hill for us to support or disagree with right now. So, I think the leg work right now is on you to give us something to go support. Does that make sense?

Now, when you talk about service-disabled vets not having a sole source provision, we do have one, it's just not -- and the reason you said why isn't it being used? I will tell you why it's not being used in the department, I can't speak for other organizations, but the reason it's not being used widely, that's the key, because it is used periodically. The reason it's not being used widely is because it requires a justification and approval document, and that number counts against competition in a negative manner.

The Congress is telling us, compete, compete, compete. Well, by telling us compete, compete, compete, if you then turn around and do a sole source action that requires a justification and approval, which then counts against the number negatively, that discourages people from using that provision. So, we've got to be very careful that we are all moving towards the same direction. Does that make sense?

MS. CARSON: This is Barb at SBA.

We have two comments. I'm going to go first to Mathew Blum at OMB.

MR. BLUM: Thanks, Barb.

So, I think this has been a very healthy conversation, and one process point, just for future reference, it is awkward, it would be awkward for this board to propose legislation, but there are ways in which this body can be very helpful in doing the leg work that might inform this or the next or a future administration in work.

So, for example, just as a thought, because I heard, Bill, if I heard you correctly, it sounds like your organization will pursue legislation on the Hill, which is certainly your prerogative, and it probably, I
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<td>don't want to speak for you, but my guess is that it</td>
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<td>would be -- you would welcome the opportunity, I'm</td>
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<td>guessing, or your organization and the other folks here,</td>
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<td>to use this body to have a conversation to figure out</td>
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<td>what might make sense in a legislative proposal.</td>
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<td>So, one thing, for example, that this body could</td>
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<td>business development program for economically</td>
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<td>disadvantaged SDVO SBCs modeled on the SBA's 8(a)</td>
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<td>At the last board meeting, I believe that our</td>
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<td>friend Max Kidalov had done a rather lengthy</td>
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<td>presentation of not only what Kenyata said, but some</td>
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<td>other issues with respect to the fact that the lack of</td>
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<td>business development was a drawback in the use of the</td>
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<td>tool. I'm not giving it credence, the proper credence.</td>
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<td>That doesn't mean that there aren't other tools, as you</td>
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<td>mentioned, Barb, and maybe those tools are, you know, on</td>
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<td>obviously has a cost and complexity with it.</td>
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<td>But just to state, I think, you know, rather</td>
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<td>than having some members go propose legislation and then</td>
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<td>getting frustrated that other members of this board who</td>
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<td>aren't quite on board, maybe we can try to have a</td>
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<td>had, building on it. That paper could also include</td>
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<td>components, you know, that are either built on 8(a) or</td>
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<td>maybe different from the 8(a) Program and, you know, we</td>
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<td>could present that paper to the SBA administrator, could</td>
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<td>be presented to the OMB director, however we wanted to</td>
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<td>So, you know, then a future administration, if</td>
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<td>they wanted to propose legislation, you would</td>
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<td>potentially be in sync.</td>
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<td>MR. KLINGELHOFER: We certainly would have no</td>
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<td>conduct an analysis of the benefits and drawbacks, I</td>
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<td>believe was a term you used, relating to possible</td>
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<td>creation of the business development program.</td>
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<td>MS. CARSON: We have a comment in the room. Go</td>
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<td>MR. PHIPPS: My name is Michael Phipps, I'm with</td>
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<td>the Advisory Committee on Veteran Business Affairs that</td>
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<td>meets the day prior to this. I also testified on the</td>
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<td>Hill about the Kingdomware decision, and all of this is</td>
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related. Just to give you guys an idea, this is about a five-page document where I have gone back to 1974 that talks about creating a business development program for services -- [inaudible portion of proceeding] -- I will give you a short answer, but there have been, for any number of reasons, issues over the last 20-something years that have stopped the service-disabled veteran-owned business development program. When I started doing this 10 years ago, the Vietnam guys used to come up to me and complain about it, and I had no idea what they were talking about until I kind of -- until I had been involved. So, it's something that's an earned benefit that we definitely need, and actually we're putting together right now in our committee why we think there doesn't need to be too much additional legislation, if any, on how that could be done, and I'm more than happy to share that with this committee, to individual organizations, and the agencies on this committee.

We have a number of really informed law firms that are assisting in this. The reality is, according to max Kidalov's report is that even with all of this additional assistance for service-disabled veterans, their participation in Government contracting is declining. And if that's the case, then we know that

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these -- and granted, the work that Barb and Craig are doing has not had a chance to filter through, but we understand that it's a business development issue, and that was a topic of our last committee hearing.

And, so, the lack -- Kenyata hit it on the head with why the sole source isn't being used. There's a number of other reasons. Basically it's equivalent to just a regular small business setaside. The service-disabled language, contracting officers really can't use it, it's not just in DoD, it's Government-wide.

We did a search in FPDS. We found seven when we did our search, and to try to figure out how often it's been used. There may be more, maybe we did our search wrong. Even if we did it wrong, those numbers, it's not going to grow from seven to 10,000. So, that being said, I would really appreciate this body considering revamping that language to keep this agenda item going. Thank you.

MS. CARSON: This is Barb from SBA.

Mr. Phipps, would you accept the language that was proposed to assess the benefits and drawbacks, and present to this body in December of 2016 with what you've learned at that point?

MR. PHIPPS: What I would suggest is that this
body look at what needs to be done in order to establish that program as opposed to the drawbacks. I think we know the drawbacks, there's plenty of information about the drawbacks, but to examine what would need to be done, and that could include drawbacks for such a program.

MR. WESLEY: Okay. So, given what you have just said, given what both of the veteran groups that are -- or two of the three veterans groups that I represented here, at least in the room, I heard what you said, all right? And I'm going back to what Barb said for those who are on the phone, so I looked at Barb when I said "you."

Barb listed several initiatives that are ongoing. I think the challenge here goes back to what I said the department doesn't do well, which is brag on ourselves, and I think what you haven't done in the SBA is organize it in a manner in which it is set up as a veterans development program, and couch it in the form to be fully transparent with the group as far as that is our veterans development program. This is what it encompasses, make it -- outline it. Because I keep hearing it doesn't exist, but you just outlined at least five initiatives that are ongoing. I just think we just haven't put it together, put it out on our websites, each of our websites, that says hey, this is the service-disabled veteran or veteran development program, and it encompasses these three footstools, or four footstools, or five, however many it may be, and how each of them work. That way, everyone will know it does exist. That's the first thing.

B, then everybody can actually give comment that says, this is positive, we should tweak this, and then the only thing that I believe would be remaining would be whether or not some type of legislative change would need to be put forth on the changing or tweaking of the sole source provision, but that, of course, wouldn't come from this body.

But I think what the body really should be doing is taking a look at how you have a current program. Because it does exist, it just hasn't been advertised and told the story. And then we go after the sole source thing in a different avenue.

MR. BLUM: So, I'm sorry, Kenyata. So, are you suggesting that we develop some sort of outreach program? Is that what you're describing?

MR. WESLEY: Well, they already have it. You know, there is a veterans outreach program now within the --
MR. PHIPPS: This is Michael Phipps again. What Kenyata just said is exactly where our recommendation is going. There are a lot of programs to help service-disabled veteran-owned businesses and veteran-owned businesses. The issue is that it's not under one single business development program that is laid out.

There are disparate assistance programs, and we need to bring it in under one umbrella, exactly like Kenyata is talking about with the legislative change that allows that sole source authority, the direct award authority, similar to what the 8(a) programs have, and I think really what Barb and Craig and their organization is doing, they have the exact -- they have that program, they have it under one roof, it just needs to change into a single program.

MR. HEILMAN: It sounds like there are two things here that are coming out of the conversation. One is kind of the easy one in terms of us coming back and telling you how are these things going to integrate and how could they better integrate if we looked at it a little bit broader. I think the integration of these disparate programs that Mr. Phipps is referring to has been a key part of our strategy, but we may not have amplified that enough to this board, and certainly our efforts to get that out into the broader community of all of our stakeholders is paramount as well.

The second part of that, though, going back to the original recommendation with respect to trying to study this a little bit further to get at some of the technical things, like what Mr. Wesley said around you do a J&A and you're not -- you don't have competition. And what is, you know, what are the things and, you know, from an OMB perspective that would loosen that a little bit that could potentially make a huge -- a small step that could potentially make a huge difference for all the contracting officers out there that say I really want to do this, but I just can't, because I've got conflicting goals.

And that certainly is what came across loud and clear in the Kidalov report, and when we had the contracting officers from DoD that kind of testified to that. So, potentially, I think that we can do both of those things and leverage the authority of the advisory committee and this board to have SBA go do some more research on the topic.

MR. KLINGELHOFER: Yes. I mean, one of our key goals in doing this is trying to figure out a way to increase the direct awards. I've been doing government contracts for 35 years now. I know of one direct award, and that was because it was a service-disabled veteran-owned company that had a particular skill set that was needed and they basically wrote the justification around that, you know, requirement.

And, you know, that should -- direct award should not be limited to such situations. And I agree that with the twofold approach.

MS. CARSON: Since we don't have the exact wording done, then in the draft fiscal '16 report that we are going to craft as a body, I will put down the best representation that we can for members, and you represent VVA, you'll go back and make sure that we've got it, and this will be one of the deliverables of our fiscal '16 report is getting these exactly right, but that won't stop us from being accountable for the actions you requested, and we will present on that.

We have completed the discussion on the -- we've bucketed recommendations into different categories. This one was increased growth opportunities for veteran-owned small business. We are going to pause on the recommendation review to turn to two topics that are on top of mind, and we have representatives here from the Small Business Administration to address, and those are the Mentor-Protege Program, and the other is the impact of the Kingdomware decision across Government, SBA's position, and others who are members of this body.

So, at this time, I would like to turn it over to Ken Dodds for a description of what's ahead in Mentor-Protege. And again, for those of you who are on the phone who joined late, we are looking at presentations, and you, too, if you write to us, via email, and I will send them to you after the meeting.

The email address that you should write to is veteransbusiness@sba.gov, and that veterans is plural.

MR. DODDS: Thank you, Barb.

Let's go to the first slide. Congress created, or we created a Mentor-Protege Program for 8(a) businesses back in the late '90s. In 2010, Congress gave us authority to create one for women-owned small businesses, HUBZones and SDVOs. In 2013, they gave us authority to create one for all small businesses. So, we've been working on that.

We did a proposed rule, issued a final rule, and it was effective August 24th, but we will not begin accepting applications until October 1. We're trying to do this electronically. I'm getting information every hour about how that's going. It looks like it will be definitely available October 1, but some parts of the electronic application will not be available until November 1, and so we may have to adjust or accept paper
applications, thing like that.

So, small businesses out there need to check our website, you know, periodically to see how it's going. You know, they're working on it every day, as we go along, to try to get it up and running.

Some of the things that we've kind of clarified in this rule are, you know, joint venture agreement must be in writing. A joint venture cannot be populated. Under our prior rules you could have employees that are just employees of the joint venture, but it was difficult for us to tell whether the protege was actually doing any of the work or benefitting, so under this new rule, the joint venture may not be populated.

We did clarify in this rule that our setaside programs are available outside the U.S. There's some -- you know, the way the FAR is written right now, some agencies interpret that as they can't do setaside outside the U.S. We've always taken the position that they have the discretion to do it, if they choose to do so, and if it's in the best interest of the Government, that kind of language. And I know that there's a FAR case that's been opened to kind of address this as well.

We are going to require under this, just like we do in 8(a), you're going to have to, as a joint venture, certify to us that you are going to meet the performance requirement and then report to us on how you're meeting those performance requirements.

Go to the next slide. Because of the way SAM has been developed to help the Government make sure that payments are basically paid to the right parties, you're going to have to, as a joint venture, be an entity in SAM in order to participate in the Mentor-Protege Program. Because we've had issues in the past where the agency didn't know who to pay because the entity wasn't there. They didn't want to pay the mentor, they didn't want to pay the protege, and that's not really the entity, that's the contractor. So, that's a requirement now under this rule.

Mentor-Protege agreements will be approved by the Office of Business Development, which is the same office that currently reviews 8(a).

We have, you know, basically clarified that a mentor can have up to three proteges at a time. A protege can qualify as small, basically under their NAICS, or secondary NAICS, if that's an area we do business in. And then, a protege can have up to two mentors in the existence. So, it could be two in the 8(a) Program, it could be one in the 8(a), one all-small. It's up to the firm to decide, but it's a limit of two throughout their life. At that point, you should be developed enough to compete on your own without a mentor.

Next slide. We are not going to be doing a full-blown verification of your size or socioeconomic status. Of course, your size and socioeconomic status of the protege could be protested if you win a contract.

Now, we, of course, have the discretion if we think it's questionable whether you're really small or really HUBZone or whatever, we can always do that, but we're not going to do that in all cases.

We allow the relationship to be transferred.

We've had issues in the past where a company, a mentor is bought, and, you know, we -- it was unclear whether the new -- the buyer was now the mentor and how that works. So, we clarified that that's allowed. And you can also, if you're in the 8(a) Program, you can, you know, basically transition out, and continue the relationship as an all-small Mentor-Protege. So, if you get your Mentor-Protege agreement, maybe in year six in the 8(a) Program, you will be able to continue it later outside the 8(a) Program.

We did clarify in this rule that the project manager cannot be a former employee of the mentor, and that's a question that we've been getting a lot. We've got a lot of issues with that, but that's what the rule says right now.

Let's go to the next slide. As I said before, I think it's a three-year relationship, and we can extend it up to three years. Also, we're going to annually review to see whether the protege is actually getting the benefits that the mentor outlined in the agreement that they are going to provide the protege, make sure the protege is actually performing the required amount of work.

So, it is a -- it's a three-year with a three-year extension, but every year we're going to review it, and we may decide to not allow the relationship to continue if the benefits aren't being done properly.

We did clarify in this rule that the past performance and experience of the members of the joint venture should be considered by the CO. We've had situations where the agency wrote the solicitation in such a way that they only wanted to consider the past performance or experience of the joint venture itself and not the members that are actually going to be performing, even though the members are the ones who are, you know, going to do the performing and had all the past performance and experience.
And this was supported, actually, by legislation, after we proposed the rule, there was legislation I think in the NDA of 2016 that kind of said this.

And then one of the key things is that at the conclusion of the relationship, we're going to require you to report to us on whether you benefited and how you benefited, because we've been getting, you know, questions from GAO to let us -- you know, what is the benefit of the Mentor-Protege Program, and it's difficult for us to say at this point because we don't have information and data. So, that's one of the things that we're going to require of all participants.

Same performance requirements, you know, you have to do, as a protege, 40 percent of the work that you're collectively doing as a Mentor-Protege joint venture, and that's at any level. You didn't try to become a -- you know, a mentor can't be a third-tier subcontractor and somehow perform more, it's 40 percent of all that's done in the aggregate.

We changed the HUBZone joint venture rules to make that program like other programs and allow a HUBZone to joint venture with another small business. Up until now, their rules required the HUBZone joint venture with another small business. And there is a way to subcontractor and somehow perform more, it's 40 percent of all that's done in the aggregate.

Next slide. Okay, so there's a citation to the rule. It was effective August 24th. Again, October 1 is when we're going to start with this all-small Mentor-Protege Program that applies to all small businesses.

And the next slide is the other rule -- no, that's not it. Okay, so for other Mentor-Protege programs under this, the law, we have to review them.

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So, other than DoD, if an agency, like GSA or DHS or whatever, they have their own Mentor-Protege Program, they have to come to us within one year of August 24th, so that would be August of 2017, and kind of tell us why their program should continue, and then we have to make a decision about their continuing.

And now, the next slide, I think is the other rule I wanted to mention. It was a direct final rule, it's effective October 3rd, it's an implementation of the NDA of 2016, and it basically changes the eligibility for HUBZone. It expands the base closure area to areas that are connected to the base, not just the base, basically. It allows, if there's a declared disaster for firms to qualify as HUBZone, and then it also now allows native Hawaiian organizations to own a HUBZone concern.

And I think the next slide is just my contact information. So, are there any questions about

Mentor-Protege before I turn it over to Sam? Yes, sir?

MR. KLINGELHOFER: One of the points in the Mentor-Protege and basically joint ventures has been a whole matter of discussion at my office for several years now. What is the legal form that a Mentor-Protege or any joint venture, frankly, must establish to meet your requirements? You know, a partnership is a legal entity of itself, an LLC is a legal entity of itself.

Should all Mentor-Protege joint ventures be LLCs? They should be incorporated? You know, it is really unclear as to what the SBA requires for -- with regard to the status of the entity for approval.

MR. DODDS: I mean, from what I've seen, it's usually an LLC. We kind of left that open, but it is a -- it still has to be for a limited purpose, right? A joint venture, usually in the common law, was to do one contract. We created this exception that allows you to go after up to three, you know, get three contract awards in a two-year period to try to ease the burden of having to do a new joint venture agreement every time you did an offer.

So, we were trying to help there, but then it's more of an ongoing entity, but it still can't be perpetual, because then that's no longer a joint venture, that's more of an ongoing business affiliation.
So, I think as long as you -- I don't know, Sam is here from the Office of General Counsel, but as long as there's evidence in your organization documents that it's for a limited purpose, that it's a joint venture, I think it could take an LLC, a corporation or any type of form. I don't think we've taken the position that it -- anything is out of bounds.

MR. KLINSELHOFER: Okay.

MS. CARSON: Ken, it's Barb, SBA.

There was lively discussion last evening at a veteran organization centered around Federal procurement, that's why they organized. A number of them are on the line, so I am going to turn it to them in a second, but VA did speak at this event, and mentioned that there was some risk to -- and said that they have been coordinating with SBA on CBE certification and the potential to lose it through some of the provisions of the Mentor-Protege Program.

And I'll also ask at this time, Dave Thomas or Tom Leney, if either of you are on the line at the moment, if you could reframe the question as I understood it. So, I will pause for a second and see if they are on line.

(No response.)

MS. CARSON: Okay, if they join us later, and if it doesn't sound familiar, then I'll follow up in writing and share that with those who are attending.

MR. DODDS: Yeah, definitely let me know. I met with --

MR. DENNISON: Hey, Barb? Barb, this is Scott Dennison with National Veterans Small Business Coalition.

MS. CARSON: Go ahead.

MR. DENNISON: Yeah, thank you.

Yeah, the issue -- the reason I raised it last night was yesterday morning I had the opportunity to go to a training program on the Mentor-Protege Program that Blair Omaza [ph.] did, and John Klein from SBA spoke, and one of the issues from a veteran perspective is that the new Mentor-Protege Program allows for the small business to give up to 40 percent interest in its firm to the mentor.

And my concern was that if you are verified by VA veteran or service-disabled vet and you give up 40 percent of your company, that will probably put your VA verification in jeopardy. So that the issue is that we, from a veteran perspective, we have set of rules for SBA, and for the VA. So, if, in fact, the service-disabled veteran or veteran-owned business is going to get into the SBA mentorship program, the recommendation is they need to sit down with VA and make sure that whatever they plan does not impact negatively their VA verification.

MR. DODDS: Yeah, and I think, you know, I think the VA's rules are similar to ours and they require 51 percent ownership by service-disabled veterans, which means a large business could own up to 40 percent of the firm. Where you get into trouble is where it's just not ownership, but you add all these controls along with your purchase, I get to say this to this and this to that and I have to have approval of this and that. That's when the control will be a problem and you might be found to be ineligible.

There are some minority shareholder protections that are, you know, based on state law that we've said in the past in cases are okay, but a lot of the things we see go far beyond those state law protections, and that's where you could be found to be ineligible. It's not the ownership, really, it's the control that you write into those agreements that may jeopardize your ability.

MR. DENNISON: You're right. Absolutely. Thank you for the correction.

MS. CARSON: Are there any questions in the room before we move to the phones on Mentor-Protege Program?
You might have seen a case that came out of the Supreme Court earlier this year about search and seizure rights, where Justice Sotomayor wrote a very long dissent getting into some of the things that have happened across the country, but particularly in Ferguson, Missouri. That case was heard that day as well. So, that was a very busy day at the Court.

You probably already know the outcome of the Kingdomware case. The Government and the Department of Veterans Affairs lost the case, unanimously. The Supreme Court found unanimously, and without Justice Scalia, so being eight to nothing, that the Veterans Benefits Act of 2006 requires the setaside of Federal supply schedule orders for veteran-owned small businesses issued by the Department of Veterans Affairs where the rule of two is satisfied. The rule of two is the contracting principle that where the agency finds that two or more of the particular categories, in this case, veteran-owned small businesses, are available, responsible, and able to perform the requirement at a fair and reasonable price, then the agency must set that contract or in this case order, aside for that category. So, in this case, it's VOSBs.

There are two important legal conclusions that the court came to in the Kingdomware decision. The first addressed the argument that was raised by the VA and that actually won at the lower court, which was the Court of Federal Claims, and at the appeals court, which was the Court of Appeals for the Federal Circuit. So, if you're keeping track, the VA won twice before getting to the Supreme Court, but then lost unanimously at the Supreme Court.

But in the first two cases, the VA had argued that the structure of the Veterans Benefits Act of 2016 relieved the VA from the requirement to set aside those Federal supply schedule orders, where the VA had met the contracting goals. The statute stated roughly that for the purposes of meeting the goals, the VA shall set aside contracts for veteran-owned small businesses where the rule of two is satisfied.

And the VA argued successfully at those two courts that the purposes portion of that statute was a prerequisite to setting aside the contracts, and therefore the VA had been meeting its goals, and the VA argued that it had been meeting its goals, then the VA was relieved from the setaside responsibility.

The Supreme Court rejected that argument. The Supreme Court relied on earlier cases, and including some cases interestingly involving the second amendment, to find that that purposes clause was not a prerequisite, that it was a statement of intent by Congress, and a statement of expectation that the VA would meet the goals, but it did not create a legal prerequisite to the setaside requirement, and therefore, regardless of whether the VA had met the contracting goals, the VA still was required under the statute to set aside a contract for small businesses.

The second issue came up at the first time before the Supreme Court, and you can tell from the decision issued by Justice Thomas that the justices were not particularly pleased with the Government for raising a new argument at this point probably three years into the litigation.

The Government argued, for the first time before the Supreme Court, that the term "contract" in the Veterans Benefits Act of 2006 did not encompass Federal supply schedule orders. You may have heard of the GSA schedule or multiple award schedule. All these terms refer to the same thing, GSA schedule, multiple award schedule, Federal supply schedule.

The Government argued that when Congress used the term "contracts" in the statute, stating that the VA shall set aside contracts for veteran-owned small businesses, Congress did not intend to include in that term orders that are issued under multiple award schedules such as the GSA schedule.

The Government relied in part on previous interpretations of the Small Business Act, and that's really the reason that I was there that day. SBA has interpreted the statute multiple times, as you know, for service-disabled veteran-owned small businesses, HUBZone businesses, 8(a) concerns. The one that the Government focused in on was Section 15(j) of the Small Business Act, which states that the agency shall set aside a contract for small businesses at the dollar level between $3,500 and $150,000, so long as the rule of two is satisfied.

And the Government had argued that the FAR when it interpreted this Section 15(j) setaside, and in previous cases, this setaside had been found not to apply to Federal supply schedule orders.

The Government also argued that orders are understood in Federal contracting to be separate and distinct from what might be called a new contract. For example, when an agency goes out on FedBizOpps and says that it has a new requirement and opens it up to either full and open or a subset of that. That's considered a new contract, whereas when an agency issues an order, it goes only to businesses that have an existing contract.
with the GSA schedule.

   The Supreme Court rejected that second argument as well, first stating, and I think criticizing the Government for bringing up this argument for the first time before the Supreme Court, but also finding that the term "contract," both in its dictionary definition, and in its FAR definition, includes orders that are issued off of the GSA schedule.

   The Court found, also, that an order on the GSA schedule has the same structure as a contract in that it's an agreement between two parties that has a price that is negotiated. It may have terms and conditions that are not already part of the GSA schedule contract.

   The Supreme Court did not say specifically how the VA would implement this new interpretation of contracts also including orders, but I think the Supreme Court made it clear that there's no exception in the Veterans Benefits Act of 2006 that allows the Department of Veterans Affairs to avoid setting aside GSA schedule orders for veteran-owned small businesses, provided that the rule of two is satisfied.

   There was one more finding on that second point, which is that the Government had also argued that GSA schedule orders are often small dollar values, specifically the Government said they're often under the $150,000 simplified acquisition threshold. And the Court rejected that argument and criticized it based on the facts of Kingdomware itself. In Kingdomware, the VA had procured an IT system, it was an emergency alert system, and the Court found, based on that, and some other elements of the record, that the VA was using the GSA schedule for not just small dollar orders, but for much larger orders as well. And even if the VA were using the GSA schedule for small orders, the Court said that the GSA schedule has an abbreviated process for orders under the simplified acquisition threshold.

   So, really, it was not much more of a burden on the VA to set aside under the GSA schedule under the simplified acquisition threshold.

   So, that decision was issued in June. Now, I'm with the SBA, so I can't really get into everything that the VA has done, but one thing I did do was I attended a Senate hearing that was held shortly after the decision was issued, representatives from the VA, Tom Leney was there, and there were representatives from veteran-owned small businesses that attended as well.

   The VA and SBA also testified at that hearing. The VA and SBA were asked what their reactions to the decision were, and what the implications of the decision were. Shortly after that hearing, the VA issued its policy memo with a very nice flow chart. The memo is fairly long, but there's an easy-to-flow chart that goes along with it that's available on the VA website that you can find.

   And that policy, the way that I read it, and again, I'm not with the VA, but the way that I read it, I think the two big elements of that are first the VA is going to refer service-disabled veteran-owned small businesses over veteran-owned small businesses. So, they will look at SDVOSB where going to VOSD. I think that's always been part of their policy.

   And then the second part of it is that the VA is still going to try to do setasides using the schedule before going outside of the schedule, where it makes sense to use the schedule.

   So, if the market research shows that this requirement can be offered on the schedule, the VA looks like it's going to look at that schedule, see if they're verified SDVOSBs, or verified VOSBs, on that schedule, and potentially issue a setaside on that schedule before going outside of the schedule.

   From a looking forward standpoint, I think there are further potentials for litigation that come out of this Kingdomware decision, both as it applies to the VA, and as it might apply outside of the VA. So, within the
mean, all you have to do is pick up a dictionary and see
what a contract is.

In that regard, GSA issued a memorandum to the
acquisition officers in mid-July stating that its policy
on setasides outside of the VA was to run unchanged.
SBA, for their part, had a case before GAO just very
shortly before Kingdomware was heard about whether the
set aside in Section 15(j) of the Small Business Act
applied to GSA schedule orders between $3,500 and
$150,000, that threshold in the statute.

GAO found in that case that the mandatory set
aside in 15(j) did not apply to GSA schedule orders.
Now, we think that it did, we think that GAO was wrong
on this and we argued that 15(j) should apply to orders
between $3,500 and $150,000, and there may be
opportunities to relook at that and to discuss that now
that Kingdomware has been issued.

Certainly GSA has come down and said that it
degrees with the decision by GAO in that case, which was
Aldevra, you can probably find it on GAO's website, but
that issue may come up again.

You'll probably also see some discussion about
what implications that order has or contracts
distinctions has in other areas of Federal contracting.
The Federal Government has -- at least the OMB has

issued several policies concerning management and
strategic sourcing.

There was also discussion at the runup to the
Supreme Court hearing about other areas in Federal
procurement law that use the term "contracts." I think
there's something in the sealed bidding rules about how
you're supposed to prefer sealed bidding for contracts
and the question will be whether the Kingdomware
decision, which defines a contract as including an
order, might change the way that the Federal Government
applies some of these other external sources of law.

Other than that, you know, I don't think
there's -- I don't think there's much more than, you
know, seeing what happens out of litigation and seeing
what happens with particular contract awards. I don't
know other than this Court of Federal Claims case what
active litigation is out there on this issue, but I
think the fact that the Supreme Court took the case, and
it doesn't always need to take cases, as you probably
know.

The fact that the Supreme Court took this case
and came down so strongly against the Government
suggests that there is a lot to be determined on what
the implications of Kingdomware are.

MS. CARSON: Thank you so much, Sam, for the
presentation. I'm going to turn in the room and see if
there are questions here before we go on the line.

MR. WESLEY: So, I'm not sure if you were here
at the last meeting, but when my team came back that was
here at the last one, they came back with some messages
for me, so I want to clarify. One was I think you
touched on it a little bit, but I just want to be very
clear. When it comes to how the SBA is interpreting the
Kingdomware decision so far, that's the key, so far, is
that the things that are in the statute that are
vet-first provisions are only applying to the VA right
now; however, when it comes down to the orders
provision, versus contract, that could be why it's
spread over the Federal Government. Is that what I'm
hearing?

MR. LE: Well, to clarify, there's been no
agency-wide statement of policy on what the Kingdomware
case might do for Federal Government contracting or
small business contracting as a whole. The only
policies that I know of are the VA policy and the GSA
policy.

What I was referring to was the legal position
that SBA took before Kingdomware came out, before GAO.
We said that we thought that that 15(j) setaside applied
to orders between $3,500 and $150,000, but GAO rejected
that argument in the decision. So, I think that's part
of the thing that remains to be seen as to whether, you
know, SBA is going to follow in the footsteps of VA and
GAO in issuing something about the implications of
Kingdomware.

MR. WESLEY: And the reason I'm asking the
question is because the small business jobs, and Ken and
I had discussions a couple of years ago when I first
came in the job, the Small Business Jobs Act of 2010, in
my opinion, actually clarified this decision a long time ago.

So, how this even bubbled up, I don't know, but
it says in the Jobs Act of 2010 that contracting
officers may apply setasides to the GSA schedule. So,
to me, at that point in time, that became clear. The
only question I have is are we changing now because of
the Kingdomware decision that "may" option to "shall"
for regular setasides? Because I know, for example, the
Department of Defense doesn't have a vet-first option.

So, I can't go -- even though I personally have
been on record saying that I would love a vet-first
option, not mandatory, but option, the -- and my boss
has agreed with that, we would love to have that tool in
the toolbox, it's just not there yet. But since we
don't have that option right now, we do not -- we cannot
do a vet-first set aside, so we can do everything in parity per the SBA's previous ruling.

So, I just want to clarify that piece.

MR. DODDS: Yeah, and I think we do plan to issue guidance on what our position is. I understand your position. The opposite of that is that 15(r) applies to above $150,000, and then 15(j) controls, you know, orders below $150,000. That's kind of the argument that we'll be making.

But, you know, what we're going to try to tell agencies is that you do market research, and if you -- if small business can do the work, then you use small business. You either do a contract, you do an order, you do an order under one of your contracts, you do an order under someone else's. It doesn't matter. You've done market research and if small business can do it, our guidance is going to be you should use small business.

MR. BLUM: Mathew Blum.

We had an interesting situation a number of years ago, actually in this administration, folks might remember in parity, and there was confusion because I think there was court action that -- a GAO opinion, I think it had to do with how the HUBZone setaside worked, and that the HUBZone preference would trump others, and eventually that was fixed by Congress.

But in terms of process that Kenyata was raising, the FAR counsel was also engaged, OMB was engaged, because ultimately, this needs to be clarified, or whatever clarification is needed needs to appear in the FAR, because that's what contracting officers are going to follow.

So, just to go back to the hearing that Sam was mentioning, Ken's boss, John Shoraka, testified that the SBA will be conferring with Justice, the Small Business, become an advisory counsel, GSA and the FAR counsel, to discuss this matter. And as you mentioned, and I think correct me if I'm wrong, but the Kingdomware decision was silent on the interpretation of the Small Business Act, right?

In other words, I know as you -- and please correct me, because all I know is the opinion, and the briefs I guess did speak to the interpretation of the Small Business Act, but the language on the face of the opinion I think only spoke to an interpretation of the VA statute.

So, an open question, and I'm not speaking, you know, for OMB's counsel's office and I'm not offering an opinion, but one question that is likely to be looked at by the FAR counsel attorneys with SBA attorneys and the Department of Justice, is the fact that the Small Business Act, which actually has a separate provision -- has two provisions dealing with setasides, right, one with contracts, which is 15(j), and one that deals specifically with orders, 15(r), right?

That's different from the statute that the Supreme Court was opining on, which only talked to contracts. And I thought the language said something to the effect of there's nothing in the statute that distinguishes between contracts and orders. That's the VA statute. Which is different from the -- from the Small Business Act.

MR. WESLEY: That was one of my questions.

MR. BLUM: Yes. So, I'm not offering opinion today, but that is just to give -- to flesh it out.

That's the issue, an issue, that will be discussed to -- and that needs to be addressed in order to understand the impact moving forward. As Ken mentioned, it sounds like SBA's view of how to rationalize all of this is to say that the language of 15(j) makes setasides mandatory under $150,000, or under the simplified acquisition threshold. But that's a matter that needs to be further discussed.

MS. BULLARD-MARSHALL: This is Maggie. May I say something? Chairman?
opportunities are going to large business.

Now, of course, that could mean a number of things, the number of small businesses available to do it, et cetera, et cetera. But contracting officers are being taught, use FSA, then you don't have to go small business right now.

Thank you for your time.

MR. WESLEY: So, this is Kenyata at DoD. Since you used me as an example, I'm going to go ahead and just clarify something, all right?

So, there's a couple of things that we need to really think through when we use examples, because I think that we need to be fully transparent with them. With the examples you use, there are certainly rules that kick in with non-manufacturing, and so forth, when it's also distribution. This is a difference between manufacturing and selling an ice machine.

And, so, when the CO sat down to do a review, there were no small business manufacturers of the ice machine which were small business distributors of ice machines. That's a very different discussion.

Two, the law actually in the way the FAR reads does not designate that all small business under the simplified act possession threshold go to small business, and it gives contracting officer discretion, gentleman from OMB indicated. So, stay tuned.

MS. CARSON: Thanks, Maggie. This is Barb, SBA.

We will -- and if there's anyone else on the line who has a question, we probably have about three more minutes to spend on this. We have a really ambitious schedule to get through the recommendations of the Interagency Task Force and retooling those. I do want to respect the rights of the members of the public to get on record, but I don't want you to think that's your only venue. You are welcome to send in a question, and I can provide it to the members and we can provide a response at our next meeting so that we maintain our transparency, but we will run out of time.

And again, on the email, I'm going to say it again, veteransbusiness@SBA.gov. One last question on impact of Kingdomware.

(No response.)

MS. CARSON: Okay. Thanks for participating, and I thank my colleagues from SBA for joining us for this portion.

We're going to return to the recommendations of the Interagency Task Force and the way forward. We have -- I'm going to give you an idea of what's ahead.

We have one hour left and we have three bodies of work to go through, and they are to improve and expand assistance, the next is to reduce barriers to growth and improve coordination, and the final is research and policy.

We have lost a few members for just a moment, but I believe these next two recommendations, and they will return, but these next two recommendations I believe are fairly clear-cut, and but we will get your feedback on those.

The first is under Improve and Expand Assistance, to ease navigation and create or leverage an existing web portal that allows veterans to access entrepreneurship resources from across government. The recommendation for this was to close it or to pivot it to something that is relevant, because at least part of this recommendation was addressed by the creation of businessUSA.gov and other resources. The recommended pivot was conduct outreach and training and identify new opportunities for mapping the landscape of state and Federal programs.

Are there any comments on the proposed change?

(No response.)

MS. CARSON: We will accept this one as written. The next is a new recommendation, and it's coming from the Department of Labor, I will read it.

Add to the curricula used in Boots to Business reboot
and other veteran entrepreneurship training programs that teaches and encourages participants to familiarize themselves with the public workforce system known as AJCs, and others, to use them as their human resources support for staffing. I'll turn it to you, Mr. Metheny.

MR. METHENY: Okay, thank you. So, the idea here is as we continue to get information out to veteran entrepreneurs, I know yesterday's advisory committee talked about marketing and business development. Another piece of this is the human resources size of hiring as they grow, and so a great opportunity to find and hire employees, particularly veterans, would be through the job centers that are part of the public workforce system. There are almost 2,500 of them around the country that can help link up these business owners who are now employers with potential employees. So, the idea behind this is to add a bit of language and information in the different curricula that teach veteran entrepreneurs about this resource that's available to them, as they grow. MS. CARSON: Anything else?

MR. METHENY: And to get to your point of specificity, I think what we -- and I don't want to sign up the SBA since I don't own the curriculum for these, but I think by our next meeting, we could have some draft language to update a curricula for each of the programs.

MS. CARSON: This is Barb at SBA. That's a reasonable goal. We are on a cycle on some of those programs either by grant or an interagency effort, where there's a set cycle on when we may change curricula, but we do agree and are already supporting getting the word out on this resource.

We find it valuable not just in our entrepreneurship development programs, but would encourage member agencies that this is something that you would discuss. As people are winning contracts with you, they are going to need to staff them well, and we may have a good resource in the agencies and we would like to reinforce that.

So, I believe the consensus is that we will accept this.

MR. WESLEY: Just one add, it may be beneficial to make sure the PTACs are aware of this. So, as they are helping companies, and not just the PTACs, but the SDVCs are aware of this as a resource, because as they're helping small businesses win contracts and service-disabled vet companies win contracts, they will be able to help them staff up by using this as a potential source. Just FYI.

MR. HEILMAN: So, we can change the language, this is Craig at SBA, and for this last component of it, veteran entrepreneurship training programs such as available through procurement technical assistance centers, and other SBA partners, of which small business development centers would be included.

MR. METHENY: And this is Bill Metheny from DoL, that's -- and then lead agencies, I suspect, would be SBA, DoL, DoD on it, or no? MS. CARSON: Yes, as a minimum.

MR. METHENY: Okay.

MS. CARSON: Is a representative from GSA is on the line? Do you feel that you have any particular contribution in that, Jerome?

(No response.) MS. CARSON: Okay, we will keep it with us, the three of us. Thank you. And we will modify that. We're moving on to the third body of work, which is reduce barriers to growth and improve coordination. This recommendation will stay as it was stated, which is find and reduce barriers that impede service-disabled veteran-owned small businesses from contracting with the U.S. Government. I would like to see more specificity in that, because it's really hard to report on and it will never be closed the way that it's written, and perhaps that's the intent, but it would be really nice to be able to measure our successes there to Mr. Wesley's point earlier.

So, unless there's a solution in mind, and at hand, we will continue this one as written, but we will look at the end of next fiscal year to find a way to measure this in a more meaningful way.

MR. WESLEY: Do we even have a baseline on where we are with it? Because you can't measure growth or success without knowing a baseline. Do we have a baseline?

MS. CARSON: We have a baseline of perceived problems, but they are not all -- are barriers. And if I can just spend one second on that, that's a great question. Access to capital, the business development opportunities would be two, the current structure of contracting officers perhaps being perceived as having a lot of risk in using the programs that are available to them, for example, sole source.

MR. WESLEY: So, I think maybe if you want to have a measurable outcome, maybe we should just, first we have to say where we are. So, when we say -- you've mentioned contracting officers not using sole source provisions for service-disabled vets that exist. If we
find out where we are, today, then we can set a percentage rate that we are trying to increase for and what we're doing to work towards those increases.

Then we start talking about increased to new technologies. Well, you know, Department of Defense is driving hard in that area right now, where we set up organizations like DIUx and increase the utilization of SBIR, rapid innovation funds. All of those things within the Department of Defense, but what we did is we figured out where we were, and then went to start pushing for a percentage of improvement.

I think if you're trying to do that in here, first establish what the baseline is, then go after an increase of some kind to show that we're heading in the right direction.

MR. HEILMAN: Craig at SBA. I mean, I would just add to Barb's comments that our baseline is certainly our scorecard in terms of what utilization is today, but the stakeholders tell us that we can do more, and the business development discussion has been, you know, the main driver of that.

I think this could tie back to what we decided on 1.4 where we were going to conduct an analysis of the pros and cons for a new business development program, and in so doing that research could include trying to come up with a methodology for a baseline, which the Kidalov study that this body had received sort of was, you know, working towards, and we needed to continue on to that.

So, I think it relates, and we could just add that as part of a 1.4.

MR. WESLEY: I agree, just combine the two together and come up with an outcome.

MS. BULLARD-MARSHALL: This is Maggie. I think, correct me if I'm wrong, Kenyata, but maybe Andre Gudger, maybe when you came in that role, I think there was a survey done by DoD about barriers for SDVOSBs. Is that any kind of research that you could share with this team?

MR. WESLEY: There was --

MS. BULLARD-MARSHALL: I remember participating in one, but I don't remember -- I don't know what happened to it.

MR. WESLEY: I have to go back and look. I know we've had a series of studies that were done and then there is one that's still pending, and it's one study, but it has seven parts to it, and that's a Hill study. So, if it's in that one, it's still ongoing.

So, I can't release any of it until it's actually complete. But I'll go back, I'll have Shannon go back, and we'll double check to see if it's in that study. If it's in that one, the answer is no, but if it's in one that was previously completed, then yes, I don't mind sharing.

MS. BULLARD-MARSHALL: Great. I think that would be a great resource for the committee.

MS. CARSON: The proposal is that this would be no longer a stand-alone recommendation, it will become a part of 1.4, which we discussed earlier, the BVA remember recommendation. Is that acceptable? And again, the wording will be provided to you members in the draft fiscal '16 report for your comment.

MR. KLINSELHOFER: This is Victor Klingelhofer.

So, you're proposing that 1.4 be amended again to read conduct an analysis of the benefits? I'm trying to remember exactly where we were. Benefits and drawbacks relating to possible creation of a development program for economically disadvantaged SDVOSB modeled on the SBA's 8(a) Program and identify --

MR. HEILMAN: So, in terms of precise language, there was a concept, not precise language yet, but that we could include in that analysis trying to determine what a baseline ought to be for 3.1, so that 3.1 could become measurable. And, you know, and then perhaps close that goal until we've got a baseline, if we think it doesn't make sense to have something that we can't report out on.

MS. CARSON: What was the wording on that one?

MR. KLINSELHOFER: I think we have to identify the barriers and come up with recommendations on how we overcome those barriers is probably the easiest way to handle that.

MR. WESLEY: I think we're all saying the same thing, just a little differently.

MR. KLINSELHOFER: Yes.

MR. WESLEY: We have to come up with a baseline, and to do that, you have to identify the barriers and so forth. So, I think we're all saying the same thing, we're talking around ourselves.

I think Wynn has a question. You have to come to the table, Wynn.

MR. WYNN: Thanks. Just a quick question. I don't understand how 3.1 ties into 1.4. 3.1, find and reduce barriers, versus supporting or looking at 1.4, we're talking about support for a program. So, I don't see how you can define --

MR. WESLEY: They go hand in hand, Wynn, because think about it, in order to actually have a good development program, you need to know what's affecting you. You need to know what barriers exist. Because if
you don't, what you're doing is you're just going to
create a development program that has generalities in
it, but doesn't address any specificity at all on what
people need or what the veteran community needs.
So, going out and identifying the barriers and
helping shape the curriculum that would be needed is
important.
MR. WYNN: It's important, but I still don't see
why we would combine the two.
MR. HEILMAN: Let's go the other direction,
perhaps. Perhaps instead of combining 3.1 into 1.4, we
reference 1.4 in 3.1. So, in that way, we could say
that in order to do a better job at this, that we
reference the analysis to be completed in 1.4 to give us
a baseline in 3.1. Did you follow that? Is that
clarified?
MR. WYNN: If anything, I would combine 3.1 and
3.2, you haven't got to that yet, but when you look at
it, if you're going to look at the barriers, you could
also look at the regulatory burdens, combine those two.
MS. CARSON: Okay, thanks for the feedback.
We're going to keep them separate, but we will refer to
1.4 within recommendation 3.1, which is currently find
and reduce barriers that impede service-disabled
veteran-owned small businesses from contracting with the
U.S. Government. Thank you.
Moving to 3.2, it's going to be pivoted. It was
reduce regulatory burdens by offering comment to
agencies as they conduct their regulatory lookback
analysis under Executive Order 13563, which is improving
Federal regulation and regulatory review. Recommended
language that came forward was promote the use of
innovative practices that reduce the burden for
veteran-owned and service-disabled veteran-owned small
businesses and increase access to new technologies
produced by these entities.
This is a proposal recommended by the Office of
Management and Budget. Mathew Blum?
MR. BLUM: And I think, to refresh folks'
memories, at the last meeting, we were talking about a
number of the initiatives that our office is undertaking
to promote more innovative practices that are
streamlined and simplified and if you will reduce the
tyranny of complexity and geared in many ways so far to
be helpful to companies that are providing digital
services, products and services to help fight cyber, and
many of these companies are small businesses, and we
have found in some of their efforts to, for example, in
breaking work into more manageable pieces, whether you
call that unbundling or agile in terms of software
development, using prototypes to demonstrate
capabilities, greater use of oral proposals, some of our
legislative work, which we're hoping Congress will act
on to create a new innovation setaside for new and
emerging small businesses to get their feet wet in the
Federal marketplace, that having some greater focus on
these activities and making sure that our acquisition
advocates, innovation advocates and our small business
advocates are working together.
I think we have already seen a lot of wins in
uses of these flexibilities in making awards to small
businesses and thought it might be good to have a
greater focus on this, too, to make sure that, you know,
we're highlighting these.
MS. CARSON: Thank you for that proposal. A
quick comment on this. We only recommended closure or
pivot because this is a requirement of agencies anyway,
and we -- there were still elements that we could bring
forward in the same vein, but were different. So, I
don't want anyone to think that agencies will no longer
have an eye to regulatory burden specifically. We do
have to report out.
MR. BLUM: My sense has been, you know, over the
years, that through the good conversations we've had at
the task force, that most of the regulatory issues get
addressed through some of the other recommendations,
since we have so many that are specifically focused on
contracting.
I don't have any objection if we wanted to, you
know, combine this, you know, and make this a focus or a
sub-focus of another recommendation if there was a
desire to do so, but on the other hand, I think
innovation, you know, is kind of an important pillar of
an acquisition and other activity and thought it might
be good to try to find a way to elevate it in the work
of the task force.
MS. CARSON: Again, we may tie, if you -- if I
have your concurrence, that this belongs with how we do
outreach, that people may have these tools available to
them and not know it.
MR. BLUM: Yes.
MS. CARSON: And, so, we may make a linkage in
these recommendations.
MR. BLUM: Great.
MS. CARSON: Okay, we're moving on to one that
is going to stay as it is written, it continues,
coordinate and centralize information on veteran and
service-disabled veteran-owned small business
contracting opportunity across the Federal Government.
Any comment?
prime, but what I'm hearing is this needs to be pivoted
to say targeting into subcontracting opportunity with
the large primes, it's written wrong, from what I'm
hearing.
And even then, still, we need to know what
the -- what we're doing. Is it just to try to put
together initiatives in order to meet -- help primes
meet the goal? Is that what we're going after, set some
initiatives? Okay, I can set up for that. That's fine.
MS. CARSON: Thank you for signing up for that,
sir, and would you also be willing to propose some
language that you think encapsulates that, either in the
fiscal '16 report or --
MR. WESLEY: Okay.
MS. CARSON: Thank you.
MR. WESLEY: But the key to this is, and I --
there's one caveat to this, since we're talking
subcontracting. That data goes into ESRS directly from
the primes, and there is no way to validate that data.
We've been venting and complaining about that for 15
years.
And, so, I know that GSA, and I think my
counterpart over at GSA has hung up, but if he is
still -- or dialed back in, he could chime in, but I
know GSA is trying to develop a new subcontracting
reporting tool, but I don't know if verification and all
those things are a part of it.
So, the data -- the metrics that we do are only
as good as the data that's in the system, and we don't
control it. So, just FYI.
MS. GARCIA: Thank you. And also noticing that
GSA and DoD are working together on this or have been
assigned to, the reporting element I think is really
kind of the focus as well. I know in our office we've
talked a little bit more about digging in deeper to some
GSA FPDS data specifically for veterans.
So, maybe -- I don't want to speak, obviously,
for GSA, but an idea, for example, would be to have some
standard reporting from FPDS on veterans data that's
coming out of there. That type of thing as well.
MR. WESLEY: So, you have standard data -- you
have standard metrics and reports in FPDS-NG for the
prime numbers. So, I can get veterans numbers, and I
can get service-disabled vet numbers. I can even tell
if those service-disabled vets or veterans are
minority-owned companies. I can do that.
But when we get to subcontracting reporting,
that's different. That goes in ESRS, and that's where
the reporting challenges lie. So, the way I'm going to
word this for now, it can evolve as we go forward, is
Mr. Klingelhofer: Well, isn't one of the real problems here verification? I mean, how are you going to verify -- you know, one of the problems that we've seen over the years is that, you know, prime contractors come up with great subcontracting plans and goals and all of that, and no one enforces them. And, you know, virtually no one enforces those goals.

Mr. Wesley: Yeah, we can actually talk through enforcement and what we have done this year about that, because we actually are doing enforcement now. Now, the question is, obviously, DoD writes tens of thousands of contracts per year and we don't have the staffing to audit all of them, but we have now stood up a section within DCMA, and each of the small business professionals within an organization has to do so many compliance reviews per year, which is what we call surveillance.

And, so, we're -- and then we can take them out of cycle. So, meaning they may not have been on a schedule or plan to be audited that year, but if I get wind that something may be awry, or even the prime, and this has happened, when the prime has said, can you come in and survey me to make sure that I'm actually doing what I'm supposed to do, because I'm not even sure what I'm supposed to do. So, because what you will be surprised to hear is that most of them actually want to do the right thing, they just don't even know what the right thing is, because no one has ever gone through and looked at them before. So, we have actually started doing that, and so as a part of our initiatives brief, we could talk through that as well.

Mr. Klingelhofer: Yeah, I know that one of the complaints I hear from small business contractors are that they're included in the proposal by name, by everything else; once a proposal is awarded, or a contract is awarded, suddenly they're out. And I would be very excited to hear DoD's report.

Mr. Wesley: Yeah, that's the bait and switch.
here have a chance to report on topics beyond this, if
we can at all possible.

The next we’ll keep, increased collaboration on
Federal contracting opportunities between national
veterans advocacy groups and SBA’s Office of Veterans
Business Development. In 3.6, a recommendation then
from Vietnam Veterans of America is, it’s a closed
pivot, I know Mr. Wesley likes that word, so I am going
to keep using it. It did say in the past develop a
streamlined, efficient and clear certification process
to be used by veterans and service-disabled veteran-
owned businesses in Federal procurement.

This goes to our earlier conversation, I'll turn it to
you, sir.

MR. KLINGELHOFER: Yes, I recognize that we
cannot seek legislation, so instead I would recommend
that this be modified to read, conduct an analysis of
the benefits and drawbacks relating to having a single
government-wide program to certify SDVO status and
recommendations on how such could be established.

MS. CARSON: If the assessment led one to the
conclusion that should occur.

MR. KLINGELHOFER: Yes. Yes.

MS. CARSON: Would you include -- because I know
this has also come up, are you also asking for a
comparison of any elements of the self-certify compared
to the --

MR. KLINGELHOFER: I think that's certainly part
of it. I mean, because, yeah, if you establish a
Government-wide certification program, then the
self-certification would be out. So, I think
necessarily, that is part of -- already part of this.

MS. CARSON: To work towards what we had
discussed, which is getting specific, measurable and a
time frame for doing it, may I ask for further VVA
comment that we could include in the fiscal ’16 report
on what elements we should include? It doesn't have to
be now, I'm asking for when you receive your draft of
the report, can we --

MR. KLINGELHOFER: Yes, I'll revise this to
include dates and try to break it down a little further.

MS. CARSON: And elements that you would want to
see in the analysis.

MR. KLINGELHOFER: Yes.

MS. CARSON: Okay. Thank you. Any comments?

MR. WESLEY: We are just talking 3.6 right now?

That's what we're on, 3.6?

MR. KLINGELHOFER: Yes.
Mr. Wynn: Well, you've got to be certified by some government process. Certification process.

Mr. Wesley: Right, but the certification.

Mr. Wynn: Just one comment. This really is -- came about because of the CBE, you know, verification program at the VA. The reason why DoD, your predecessor previously had sounded like they supported some discussion on this in looking into a Government-wide program is because even though there has been issues over the years with people not feeling like that CBE verification program is a benefit to all veterans, when we look at the stats of the program, the Vets First Program, we have to admit, they have surpassed every percentage above every agency in the Federal Government. So, the idea here is this task force support looking at an agency -- a Federal Government-wide program that would increase opportunities for service-disabled vets across the Federal Government. That's the only thing this is really looking at.

Mr. Wesley: But that's not what it says. This is talking about a Government-wide approval process, all right? Certification process.

Mr. Wynn: Well, you've got to be certified by somebody.

Mr. Wesley: Right, but the certification process should be -- and actually, so, in writing, we have turned this in as public record, and I've been down there on public record several times. We support the certification process, it just needs to be with the VA and we have said openly the VA needs to be funded and staffed before they -- the Government does that. Because what you don't want to have is a backlog of veterans' applications because we go -- it says DoD, Department of Treasury, Department of Labor, no one can award a service-disabled vet contract before these guys are certified and then there's a backlog to get them certified. That's a problem.

Ms. Carson: Can I take a moment? It's Barb from SBA.

Your points are valid, but again, we are not able to do this as the proposal is written to propose legislation. I believe it's reasonable, and not -- it's the right amount of ambition to investigate and compare what, to your point, how has it been successful and what was it, because there was certification that they've been successful, compared to then the rest of Government, which is self-certification. And what would the elements be going forward?

So, I propose that we stick to the investigation that DoD does not have a part in that, they are a member of the Interagency Task Force and will have a voice and obligation to contribute some input after we have done the analysis. Okay, thank you.

We have a new one proposed by the Office of Management and Budget, and it is help veteran-owned and service-disabled veteran-owned small business understand and meet existing and emerging requirements for cyber security protections in Federal acquisitions.

Mr. Blum: Thank you, Barb.

At the last task force meeting, Deputy Administrator Kramer expressed an interest in having some relatively narrow tailored recommendations to address some specific emerging issues, and we talked a little about cyber, and this is the thought here is actually relatively soft, but at least as a -- as one step, you know, recognizing that the -- you know, the acquisition space is complicated by these emerging requirements for cyber security protections, and they're going to be more requirements on all of the acquisition community, not -- this isn't just for small business, but the -- some of you may be aware that there's been a fair amount of work on the controlled unclassified information that has been led by NARA in accordance with executive -- an executive order and is designed to try to make sure that when agencies have similar types of
helpful to make sure, and this task force, I think, has been very helpful in making sure that the appropriate agencies are paying attention to small business impact, and in this instance, at least as one step, making sure that, you know, things as simple as a fact sheet that would -- that could be easily digested by the small business community and kind of deconflicting some of this information as it gets finalized.

We can build on this recommendation as we move forward, but it wasn't immediately apparent to me in terms of, you know, I think it's premature to talk about what exceptions and whatnot. I don't know if, you know, how that plays, but, you know, clearly as a first step, just making sure they understand that responsibilities would be helpful.

MR. WESLEY: Hey, Mathew, we at DoD can sign up to help you. We actually already completed this task under the leadership of Dr. Galvin, who normally participates in this task force. He already put a pamphlet together, has some quick points of reference, it even talks about reporting, just everything you just discussed, we've already completed it and got a series of handouts, and there's actually one on the DoD small business website currently.

So, feel free to take that, use it, if you want to tab in or ask us any questions. Ours are specific to DoD as well as normal, because we have some DFAR clauses that, of course, affects how you do business with Department of Defense, but we are willing to share that with any of the Federal agencies that would like it. And for any of the veterans groups, it's right on our website, if you have any companies that are doing business with the department, I suggest they get it, because it is extremely important that they understand how to protect their data and their information.

It's not just protecting the department that matters, because you are a part of our industrial base and supply chain. You may be a sub to a large prime, but the -- and what I will say to you is, it's not just the primes that people are going after, they're going after our supply chain, because if it goes -- if you go into one, it's a way in, an avenue into something else.

So, just keep that in mind. So, I actually strongly concur with Mathew's recommendation, and we will give any of the information we have to the group.

MS. CARSON: Thank you. Thank you. We will have perhaps a minor edit to provide veteran business owners rather than help, and may I ask if we can put Dr. Galvin on the spot to provide an update as a baseline in December, and then we can iterate from that?

MR. WESLEY: He's been voluntold.

MS. CARSON: Yes, voluntold. That's right. We are moving to our final bucket of recommendations, and that's in the research and policy realm. We have four of them, two are Department of Labor, so I know we will -- we will make it through these a little faster. As I said, it's important that the members get a chance to speak. So, we will get through them.

The American Legion's representative has taken a new position, so he is no longer here, but before he did leave or vacate his position, he provided input to 4.1, and that one is sustained, that's their proposal, to best the GI Bill benefit as a property right, allowing veterans to use funds both for education and small business creation activities, such as counseling and business financing.

They are not here to provide further context. I do have those in writing. We will provide them in the fiscal '16 report. Are there any comments?

MR. WESLEY: That's another one that has DoD listed. If you want us to play a part of it, somebody needs to just tell us what role, but I don't see a role for us there either.

MS. CARSON: I agree, you did not manage the GI
little bit of a different place than what we were
talking about earlier.

MS. BAINTON: Amanda from MOAA. Just a question
for the group, and this is just because I feel like the
language is very vague here, is there a need or do you
think we should add something that specifies that there
should be some requirements met prior to awarding or
transferring these GI Bill benefits? Should we be
successful with that?

MS. CARSON: Yes. This feels good. I know how
Mr. Wesley feels when you feel like you've done the work
already to provide some clarity on that. So, our office
with great presidential management fellows and others on
the team have come up with some criteria for how this
might look if it were enacted, and we would be happy to
present on that at any time.

All right, we're going to move to two others
that Department of Labor will comment on, and these were
recommended to change slightly. First was research and
direct policy effort around current veteran
macroeconomic issues by conducting more in-depth
analysis of veteran unemployment, employment and self
employment. The change requested by DoL would be
explore the availability of data from BLS, Bureau of
Labor Statistics, that may address the data gaps, and
where BLS is not able to provide data, seek other data
sources.

Go ahead, Labor.

MR. METHENY: This is Bill Metheny.
So, I think we just needed some clarity on the
wording here, and so what I would propose is that within
the next few weeks I set up a coordination conference
call with representatives from Bureau of Labor
Statistics to have a conversation about what it is that
we're trying to answer, and why. And then ask the
question about whether they have the data available to
answer those, or if they're aware of other sources to
get at that.

And then based on what we come out of that
conversation with, in December, we can provide back what
the questions are, what will be looked at and where we
need to go further to get at this. And part of this,
too, is the macroeconomic issues will be great,
obviously at a broad scale, but what we find is a lot of
these issues are very local and regional focused. So,
that might be something that shapes our conversation as
well.

MS. CARSON: Thank you. And SBA would like to
contribute what we have been learning about potential
research opportunities with Census and DoD as well. So,
that we can then review and then distribute across the
country to allow states to learn from each other as a
community practice. Where they can make changes, who
can make those changes, and where it fits into Federal
process.

MS. CARSON: Thank you. Any comments in the
room?

MR. WESLEY: Again, you have the DoD listed
again.

MS. CARSON: Thank you. Appreciate that. And,
finally, I’m going to check in again and see if
Department of Veteran Affairs has a representative on
the line.

(No response.)

MS. CARSON: Okay, we may save this one. The
existing recommendation was examine ways to further
increase attention given to employment of veterans by
Federal contractors. VA did have a proposed new
recommendation, unless there's anyone who is comfortable
briefing at this point.

MR. BLUM: Sorry. This is Mathew Blum.

I think actually the original proposal was
different. It was the -- to -- I think it was the
creation of a new small business procurement initiative
for firms whose total work force is comprised of at
least 35 percent or more veterans. That was the
original proposal. This was the alternative of a
strawman just being floated for consideration.

And just to refresh people's memories, there was
a fair amount of research done, and I think the
conclusion was reached that we would need legislation in
order to, you know, have any sort of requirement that
would -- could exclude entities based on the fact that
they didn't meet that 35 percent threshold. In other
words, if you want a program that looks like the HUBZone
program, you're going to need Congress to endorse that.

So, in the course of conversation, I think at
the last meeting, and it's actually also in the draft --
most recent draft report to Congress, Tom and his team,
Leney, from VA, discussed a criteria factor that they
put in -- an unemployment criteria factor that they put
into their Transformation Twenty-One Total Technology
Next Generation contracts, T4NG, where it requires
offerors, regardless of size status, to include a
veterans employment and vet certification report
identifying the total number of veterans employed with
their firm, along with the total number of employees
working at the firm at the time of the proposal.

And he was going to report back or give us an
update on, you know, what the impact of that -- you
know, success of that -- what that looks like, and I
think we talked a little bit about maybe sharing that
information to see if it makes sense, and it's something
that other agencies might want to look into.

The second piece of this was that just to remind
folks that the FAR counsel opened up a case in the
context of past performance to start evaluating
compliance, contractor compliance with various laws that
are incorporated into their contracts, which would
include, you know, small business requirements,
including Aldevra, for example, and the affirmative
responsibility that they have there to create
affirmative hiring plans.

So, at this point, we didn't -- OMB didn't have
the specific position other than I thought based on some
of what we were informing the public through our
reports, that, you know, there may be some interest in
continuing the conversation and pivoting to something
like this as opposed to just eliminating the
recommendation all together.

MR. WESLEY: Just a question. So, you said a
lot there. So, are we -- are we actually considering or
has it been proposed by whether by the VA or whoever,
that we alter the service-disabled vet, the procurement
side of this, to include a number of employee
requirements, like a 35 percent requirement?

MR. BLUM: Sorry, just to be clear, my
understanding, and I'm sorry that VA is not available,
or not in our group, because they could speak to this
more definitively. The original one would have said if
you don't have 35 percent -- the original recommendation
was explore creating a floor, and if you don't have at
least 35 percent, then you wouldn't qualify for the
procurement. What I think -- right -- and we said that
would need legislation and that's a larger conversation.

MR. WESLEY: Oh, I'll tell you now, just for the
record, the public record, I know it's on there, if they
did that, at least while I'm in this seat, and I'm
pretty sure my current boss would agree with me, we
would not support that. Because now you're talking
about potentially eliminating a services vet --
service-disabled vet-owned company from qualifying for a
procurement. And we don't want to eliminate a small
business owner that's a veteran from competing if they
qualify.

MR. BLUM: So, I think what -- again, Barb got
it right, that's why she is sitting at the head of the
table, in terms of deferring this until VA can be on
part of the conversation. But I think to avoid that
specific, you know, unintended and potentially bad
Consequence, is to instead make it a -- make a criteria to say how many people are you employing, so that it becomes an evaluation factor, not an elimination factor. So, it would be -- and that also may be something that --

**MR. WESLEY:** Yeah, just -- I got you, because I'm not shooting the messenger, so don't think that.

**MR. BLUM:** You can. **MR. WESLEY:** Even if you make it an evaluation criteria, that means we would be giving up preference, which could potentially eliminate a veteran company who might be highly technically qualified, and I, for one, would not want to have a potential mediocre successor or awardee versus a highly qualified one, if technical was more important.

So, I just want to make sure we are thinking through these suggestions, as we do them, because the last thing I need is to be standing out in front of whatever conference I'm at and I've got a bunch of veterans screaming like they used to, because I mean, we've come a long way, and everybody keeps forgetting how far we have come. I remember when the veteran goal first was proposed and we were at like 0.5.

**MR. BLUM:** Right. **MR. WESLEY:** 0.5, all right, and now we're above 3 percent and rocking the -- and we're continuing to improve every year. Do you want to put something forward that will now make us digress back that doesn't give you an actual true improvement to what you are working on? Because what you're working on now are procurements. If you want to now make it an actual veterans hiring initiative, that's a separate discussion that we should have, but I don't think you want to now take away from your current opportunities that you've been successful building. That's all I'm saying.

There's another way to do this that I don't think you want to take away from what you currently have been successful building as a group or as a team.

**MS. CARSON:** Thank you, those are good comments. It's Barb at SBA. I would like to continue the conversation.

First it will be in writing, in the fiscal '16 report, and we can get clarity on exactly what is proposed, and it will come back at the December meeting, unless there are any other comments.

(No response.)

**MS. CARSON:** Okay. Thank you. That closes out what we were charged to do today, and I'm grateful for the effort that was put into it. That doesn't mean we can put all the papers away. I do want to give a chance really quick to go around the table and get feedback, input, comments from our members. So, I'll start with Vietnam Veterans of America.

**MR. KLINGELHOFER:** I have nothing at this point. I already said enough.

**MS. BAINTON:** Amanda with MOAA. I am not going to talk a whole lot. A lot has already been said, and it's very encouraging. Something that our organization is really focused on now, not me, because I'm not a lobbyist, but is preserving the GI Bill transferability, which directly affects what we're doing here, and specifically recommendation 4.1. So, that's something that we will continue to pursue and obviously you'll hear all the updates.

The other thing that I just want to mention, as a service organization, sometimes what we're finding is that people have a really hard time figuring out what benefits are available, and I've mentioned this many times before, you all have different initiatives and different programs. There's websites, there's tools, and I know we've had many discussions about bringing it all together, but that is something that we're focused on as an organization, is really being able to provide these resources to not only our members, but everyone who is serving.

So, that is one initiative we have. So, anything that you all have that you want to send to us that you want us to promote to our members, that would benefit not just our members, but anyone in the military community, I would gladly take it and do what I can to promote it to help the greater good. And that's all.

**MS. CARSON:** And I want to thank MOAA for their partnership. This is one we've strengthened our collaboration, and an example was the Air and Space Museum where you did offer transitioning service members and spouses opportunities to learn what about was available in education, employment and entrepreneurship. You've been an incredibly helpful connection of resources.

And I cringe, I try not to do it too publicly. When we try and put things in one place, not everybody goes to one place, they want to find the right thing for them wherever they may touch, which is hard. Which is why collaborative relationships are important. We're in one wheel and we've got spokes, and they do cross and we refer to each other, if we've got something valuable to offer, I should be talking about what Labor is doing for entrepreneurship, right?

And, so, that's where we see the most room for growth. And on a personal note, I want to thank the
transition event, because you helped my husband active
duty find what is next for him. So, I personally found
the work that you're doing incredibly valuable. Thanks
for that.

MS. BAINTON: And thank you, and we actually set
our date for next year's, and it's going to be in
October, and I invite all of you to attend. We would
love to bring all the resources together in one room,
along with other organizations who provide things. The
whole point is we don't want to re-invent the wheel
here, we want to just bring the best opportunities.
I am very happy to hear that and we are very
grateful to SBA for your support with all that.

MS. CARSON: Thank you. I'll turn to Mathew
Blum.

MR. BLUM: Thanks, Barb.
Just very briefly. Just an update on our
work with the NDAA conferees and keeping our fingers
crossed that they will adopt some of the proposals that
we recommended, including the innovation setaside for
new and emerging businesses so that new entrants can get
their feet wet in the Federal space. And also potential
increase in the simplified acquisition threshold to help
in providing use of -- expansion of simplified

procedures and reduced compliance burdens for the many
small businesses that compete and get work between that
$150,000 and $500,000 space.

MS. CARSON: Thank you. I am going to start on
this side of the table with Bill Metheny, Department of
Labor. Any updates, please?

MR. METHENY: You probably all saw the great
news for the August unemployment numbers, the veteran
unemployment rate is 4.3 percent, maintaining a lower
level than overall unemployment rate again. It
continues at a 24-month trend where there was only one
exception that was off by 0.1 percent. So, continued
great news there.

Additionally, unemployment rate for 18 to
24-year-olds is 6.5 percent, which is significantly
lower from a year ago when it was 9.2. So, good news on
the unemployment numbers.

We continue to focus on the transition
assistance program, and our Department of Labor
Employment Workshop, the new curriculum is out on the
street and being used, with focus areas on especially
extra time on resume writing, interviews and
consultation to help folks adjust in the workplace.
Along those lines, Amazon has offered, and we
have taken them up on their offer, to put the Employment

Workshop Handbook in an e-book, and it's on Amazon, and
you can get it in a variety of formats, and it's for
free. So, that way, folks can get it whenever, wherever
they want it, and take it down on a submarine while they
want to study.

And lastly, as we're trying to continue those
relationships that Barb referred to, both at the
national level, all the way down to the local level,
some examples of where interagencies are partnering from
roundtable discussions on a recurring basis that include
state and Federal labor agencies, the small business
teams that are in the states, and the Federal
representatives. Those are continued on.

And VA is not here, but I will give a plug for
one of the efforts they're leading that are through the
MyVA community, and the community veterans engagement
boards that are tying in all the different players
around 100 cities and growing that pulls in the public
workforce systems, and whatever shape that community
wants to take a look at and focus on. So, a lot of good
things happening up and down across the country.

Thank you.

MS. CARSON: Thank you. That's outstanding.
And I think it would be meaningful if we could talk
about in a future meeting, probably December is already
packed, but March, the collaboration between agencies
not only in D.C., but locally, I think we have some
great examples of how that's happening.

Wesley? Nothing for the record, okay.
I'm going to turn to on the line, do we have
anyone from GSA, Veterans Affairs, or Treasury?

(No response.)

MS. CARSON: Okay. Then I'm going to speak like
an auctioneer and just give a few quick SBA updates,
because I'm not going to get all the way through, but I do
want you to know that they will be a part of the
public record, because I'm about to post them on your
screen so you can look at them, and if you have
questions, you can come back to them later.

So, Jerry, if you wouldn't mind, can you go to
the one that looks like this. Thanks.

And for those, if you have to leave, I've got
maybe six minutes of your time, maximum. I want you to
know that Amy and I will be reaching out to members on
September 26th for the first phone call on what we're
doing with the fiscal 2016 report. I know it's
ambitious, but we would at least like to frame it for
you. Not asking for any deliverables until about
Halloween, because we know it takes time to get that
day of-year data on the recommendations.
And, so, top line, National Vets Small Business went to be kicking off on Halloween, and it will conclude on 4 November, because there is a Presidential election happening, let's get focused on the vets fully the week prior. There will be a social media kit and more coming to you. The theme is veteran entrepreneurs success across generations. We want to talk about the resources that were available after World War II, we've got some great exemplars of entrepreneurs then and some of the opportunities and challenges in legislation and groups, what have made veteran entrepreneurs successful.

We'll be kicking off with a policy breakfast with DoD and others on, you know, what are some of the challenges that are out there for service members as they look to entrepreneurship as the next step. Real quick, Veteran Business Outreach Centers. We increased those by seven since we were last together. So, we're a total of 20, a map is included in the brief on where they are. We've just concluded a training event, to ensure that we have consistency across the network of resources available, especially to the transitioning service member population.

Boots to Business, the bumper sticker here is that they have ever provided, and there are more developments to come on that.

I had hoped I would be able to announce publicly that SBA has -- is going to award four service-disabled veteran entrepreneurial development training grants. They have been recommended to the administrator and approved, but we need to finalize those awards before I can name them, but I can tell you they're incredible and we will spend more time on that topic in December.

Veteran Institute for Procurement, the next upcoming classes, and the focus, all listed there. Barbara Ashe, thanks for joining us, if anyone has questions on that. How to get procurement ready. She's the person that we truly count on for a lot of feedback.

Next slide. A first for us. SBA accelerators that are focused on -- they won awards from SBA, but they're accelerators focused on veterans. Our office put in money to ensure that we would get such people competing and winning, and we are -- have awarded to Bunker Labs in Chicago, New York University's Tandon School of Engineering in Brooklyn, and the Rosie Network in San Diego, which serves not only service members and veterans, but also military spouses.

In contracting, you've received an update on well as the decision on Kingdomware and its impact.

For capital, there is a change ahead, and this one is really hard to do in two minutes or less, but I'm going to try real fast. Last year, a law was enacted that allowed -- it provides for permanent fee relief to veterans for loans under $350,000 as part of the SBA Express program. Make sure I get that contract. Yes.

That will continue by statute, you know, unless SBA does not remain subsidy neutral. We can have a different discussion on what that means, but generally one sentence would be the fees that people pay up front in order to have that extra backing of the Government that we're going to cover them if they default, those fees are what keep us at neutral subsidy. If too many people default, that uses up the money.

So, the provision in the legislation said we had to remain subsidy neutral in order to have that provision continue. In order to get that to continue in fiscal '17, we had to reduce the fee relief that we were providing on loans to veterans. So, it had been up to $5 million, it's now up to $500,000. This was -- it's the administrator's prerogative for anything above $350,000, so we still have something above and beyond what the law provides for and that is because the administrator really values what veteran entrepreneurs...
can bring to the American economy. So, fee relief does continue from $350,000 to $500,000, and more details are on the slide there. If there's more to talk about, I will do that in December. Next slide. This is work we've already completed. So, I want to thank you for a really meaningful convention today, and for the input of those that are in the room and who joined us on the phone. Any questions, final comments?

MS. BULLARD-MARSHALL: Barb, this is Maggie. Just a final comment, I know Tom wasn't able to make it from the VA, but the VA conference is coming up in November, and it's a wonderful opportunity to achieve many of the goals this task force is working on. So, encourage attendance and participation.

MS. CARSON: Thanks for the reminder. That's November 1 to 3 in Minneapolis, Minnesota. The National Veterans Small Business Engagement, hosted by the Department of Veteran Affairs. One more comment from Mr. Phipps.

MR. PHIPPS: Quick comment. The ACVBA, the committee that we sit on, is an independent body that makes policy recommendations and we can make legislation recommendations to Congress, the White House and to the SBA. We're an independent body. We submit those recommendations directly to Congress, the White House and the SBA without any influence from many agencies. As I've noticed today, a lot of these recommendations have been changed because you guys have said you cannot make legislative changes. You could make suggestions to our committee to make legislative changes. So, anything -- I would just like to open the floor up for you guys, or open that dialogue up, that if you do have recommendations that you think could be legislative changes, we would be more than happy to take those on as we have a lot of commonality in what we're doing in terms of the veteran business space. Our report is due in December, and there's I'd say a number of topics that you guys are addressing that we are going to be making legislative recommendations for. So, I just wanted to put that out to your committee.

MS. CARSON: Thank you for that. It's Barb. I would make one clarification, the members who could most efficiently do that would be our military organizations, VSOs. Thank you for that.

The next meeting of the Advisory Committee on Veteran Business Affairs is December 7, here in SBA headquarters, and the next meeting of this body, the Interagency Task Force for Veteran Small Business Development is on December 8, also here. With that, we're complete. Thank you very much.

(Whereupon, at 12:10 p.m., the conference was adjourned.)

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