Understanding Unconditional Ownership

Issue:
This brief defines and explains unconditional ownership.

(For purposes of this brief, the regulations when referring to Service-Disabled Veterans apply equally to Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulations:
13 C.F.R. § 125.11 provides:

Veteran owned small business concern means a small business concern:

(1) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans. All of the provisions of subpart B of this part apply for purposes of determining ownership and control.

13 C.F.R. 125.11 provides “[u]nconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.”

13 C.F.R. 125.12 provides “[g]enerally, a concern must be at least 51% unconditionally and directly owned by one or more service-disabled veterans...”

13 C.F.R. 125.12(b) provides “[i]n the case of a concern which is a partnership, at least 51 % of aggregate voting interest must be unconditionally owned by one or more service-disabled veterans. The ownership must be reflected in the concern’s partnership agreement.”

13 C.F.R. 125.12(c) provides “[i]n the case of a concern which is a limited liability company, at least 51% of each class of member interest must be unconditionally owned by one or more service-disabled veterans.”

13 C.F.R. 125.12(d) provides “[i]n the case of a concern which is a corporation, at least 51% of the aggregate of all stock outstanding and at least 51% of each class of voting stock outstanding must be unconditionally owned by one or more service-disabled veterans. In the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) must be unconditionally owned by one or more veterans.”

13 C.F.R. 125.12(e) provides that “[i]n determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by service-disabled veterans. However, any unexercised stock options or similar agreements (including rights to convert nonvoting stock or debentures into voting stock) held by non-service-disabled veterans will be treated as exercised, except for any ownership interests which are held by

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investment companies licensed under the Small Business Investment Act of 1958.”

**What This Means:**

- Subpart B as referred to in 13 C.F.R. § 125.11 is saying that anywhere in the regulations where the term Service-Disabled Veteran is used, it is equally applicable to Veterans for purposes of determining eligibility.

- The determination as to whether an applicant meets the unconditional ownership requirement is decided by evaluating the facts and circumstances presented from the bylaws, operating agreements, and other documents relating to the formation and operation of the applicant.

- Unconditional ownership means that “[t]he Service-Disabled Veteran’s ownership of the challenged concern must be unlimited, with no restrictions whatever on their ownership, or their ability to dispose of their shares in any way they choose. The exceptions are agreements dealing with the death, incapacity or bankruptcy of a shareholder, and the pledge of stock as collateral if the terms follow normal commercial practices.

- Provisions in an operating agreement dealing with the bankruptcy of an owner do not render that individual’s ownership interest conditional.

- In most cases, ownership held 100% by one Veteran in a single member LLC does not trigger unconditional ownership issues, since, with only one member, there is no one else who could exert influence over that interest.

- Essentially, unexercised stock options and similar agreements held by Veteran Owners will not be counted against the 51 percent ownership interest held by Veteran Owners and are not a condition on ownership. However, stock options and similar agreements held by the non-Veteran will be counted against the non-Veteran’s ownership interest.

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**VA Office of Small and Disadvantaged Business Utilization**

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