



Demonstrating Control of a Limited Liability Company

Issue:

This brief explains the verification requirement that Veteran business owners demonstrate control over a limited liability company (LLC).

(For purposes of this brief, the regulations when referring to Service-Disabled Veterans applies 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 CFR § 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 CFR § 125.13(a) provides that “[t]o be an eligible SDVO SBC, the management and daily business operations of the concern must be controlled by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran). Control by one or more service-disabled veterans means that both the long-term decisions making and the day-to-day management and administration of the business operations must

be conducted by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran).”

13 CFR § 125.13(d) provides that “[i]n the case of a limited liability company, one or more service-disabled veterans (or in the case of a veteran with permanent or severe disability, the spouse or permanent caregiver of such veteran) must serve as managing members, with control over all decisions of the limited liability company.”

13 CFR § 125.13 (m) provides that “SBA will not find that a lack of control exists where a service-disabled veteran does not have the unilateral power and authority to make decisions in “extraordinary circumstances.” The only circumstances in which this exception applies are those articulated in the definition.”

13 CFR § 125.11 provides

Extraordinary circumstances, for purposes of this part, are only the following:

- (1) Adding a new equity stakeholder;
- (2) Dissolution of the company;
- (3) Sale of the company;
- (4) The merger of the company; and
- (5) Company declaring bankruptcy.

What This Means:

- Subpart B as referred to in 13 CFR § 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 company documentation, such as the Operating Agreement, should designate at least one Veteran as the “managing member” of the LLC.
- The company documentation must not provide non-Veteran members with equal or greater authority over the day-to-day management and long-term decision-making of the LLC.
- The Veteran(s) designated as the managing member(s) in the company’s documentation must have control over all decisions of the LLC and must provide demonstrable evidence (e.g., provisions of the operating agreement) of this ability to control.
- In cases where there is a voting requirement, the Veterans must have actual numbers to outvote the non-Veteran members (e.g., if there are three members to the LLC, two Veterans each owning 35 member units and one non-Veteran, owning the remaining 30 member units, the LLC will have actual numbers to outvote the non-Veteran member, if the voting requirement consisted of an affirmative vote of a majority member interest to transact business).
- The Veteran(s) designated as the managing member(s) in the company’s documentation must be able to make strategic and day-to-day management decisions for the LLC without obtaining a non-Veteran’s consent and/or presence.
- An exception to the general rule that the managing member must have control over all decisions of the limited liability company are extraordinary circumstances as found at 13 CFR § 125.11.

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VA Office of Small and Disadvantaged Business Utilization

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