



Determining Dependence on Non-Veterans or Non-Veteran Entities

Issue:

This brief discusses dependent relationships with non-Veterans or non-Veteran entities that may affect a determination of eligibility for applicants.

(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(i)(7) provides that “[n]on-service-disabled-veteran individuals or entities may not control the firm. There is a rebuttable presumption that non-service-disabled veteran individuals or entities control or have the power to control a firm ...[when]...[b]usiness relationships exist with non-service-disabled veteran individuals or entities which cause such dependence that the applicant or concern

cannot exercise independent business judgment without great economic risk.”

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.

Below are examples that may support a Center for Verification and Evaluation (CVE) finding of dependence that will prohibit an applicant from receiving verified status:

- The applicant is receiving business resources such as employees, equipment, office, and/or warehouse space at little or no cost from a non-Veteran or a non-Veteran entity, and the applicant has not clearly demonstrated how it would be able to continue to operate outside of this relationship without great economic risk.
- The Veteran is a current or former employee of a minority owner of the applicant and the Veteran lacks the necessary experience, knowledge or expertise needed to manage the firm. These situations are indicative of potential dependence on non-Veterans or non-Veteran entities. The applicant bears the burden of proving that it is capable of functioning independently of a non-Veteran or entity without great economic risk and that such relationship is in the best interests of the concern.

Scope of Review

CVE reviews an applicant’s business

documentation as its primary means of determining whether there are dependent relationships with non-Veterans or entities. If your firm has been denied for failure to meet the requirements of 13 CFR § 125.13(i)(7), or if you feel that your business may have relationships with non-Veterans or entities that could lead to a denial of your business' application, the best way to address these issues is to provide a detailed written explanation and business documentation demonstrating that one or more Veterans have independent resources and make final controlling decisions with respect to the business operations.

Example

In the event that the applicant is co-located with a larger, more established firm, the applicant might demonstrate that there is no impermissible dependence on the non-Veteran or entity by providing:

- a lease agreement indicating that the applicant pays a fair market rate for its space
- pictures showing that the applicant occupies separately identifiable space
- documentation of the applicant's earnings, showing that the applicant is capable of making fair market rate payments for its office space
- legally binding contracts or agreements that provide for payment of a fair market rate for use of the non-Veteran's resources
- payroll records

The examples provided in this brief are for illustrative purposes only.

An applicant may be able to demonstrate compliance with 13 CFR § 125.13(i)(7) by providing other documentation and information. (Note: Providing the documentation described in this brief does not guarantee that the applicant will be found to

meet all eligibility requirements necessary for verification.)

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VA Office of Small and Disadvantaged Business Utilization

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