Proving Veterans Are Entitled to Receive At Least 51 Percent of Annual Distribution of Profits

For corporations, partnerships, and limited liability companies

Issue:

This brief explains the verification requirement that Veterans must provide evidence of entitlement to receive at least 51 percent of the annual distribution of corporation, partnership, or limited liability company (LLC) profits.

(For purposes of this brief, the regulations when referring to Service-Disabled Veteran(s) 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 § 125.12(g)(1) provides that "[o]ne or more service-disabled veterans must be entitled to receive [a]t least 51 percent of the annual distribution of profits paid to the owners of a corporation, partnership, or limited liability company concern."

13 CFR § 125.12(g)(4) provides that "[a]n eligible individual's ability to share in the profits of the concern must be commensurate with the extent of his/her ownership interest in that concern."

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 applicant must furnish the Center for Verification and Evaluation (CVE) with documentary evidence that Veterans are entitled to receive at least 51% of the annual distribution of profits paid to owners of the company.

CVE reviews the company’s tax documents [Schedule K-1 (Form 1120S)], state and municipal statutes, and, to the extent applicable, the company’s by-laws, operating agreement, organizational documents, and other company business documents. CVE examines each owner’s percentage of ownership, entitlement to receive a distribution of profits, and historical receipt of profits.

Veterans are not required to draw profits from the company. The key concern is whether the Veteran(s) is entitled to receive at least 51% of the annual distribution of profits paid to the owners of the company.

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For more information about VA Small and Veteran Business Programs, visit http://www.va.gov/osdbu.

VA Office of Small and Disadvantaged Business Utilization

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