



Understanding Control of Long-Term Decision Making and Day-to-Day Operations

Issue:

This brief explains what it means for Veterans to control long-term decision making and day-to-day operations in accordance with 13 CFR part 125.

(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 states “[d]aily business operations include, but are not limited to, the marketing, production, sales, and administrative functions of the firm, as well as the supervision of the executive team, and the implementation of policies.”

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) states that “[c]ontrol 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(k) states that “[t]here is a rebuttable presumption that a service-disabled veteran does not control the firm when the service-disabled veteran is not able to work for the firm during the normal working hours that businesses in that industry normally work. This may include, but is not limited to, other full-time or part-time employment, being a full-time or part-time student, or any other activity or obligation that prevents the service-disabled veteran from actively working for the firm during normal business operating hours.”

13 CFR 125.13(l) provides that “[t]here is rebuttable presumption that a service-disabled veteran does not control the firm if that individual is not located within a reasonable commute to firm's headquarters and/or job-sites locations, regardless of the firm's industry. The service-disabled veteran's ability to answer emails, communicate by telephone, or to communicate at a distance by other technological means, while delegating the responsibility of managing the concern to others is not by itself a reasonable rebuttal.”

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.

- Long-term decision making is conducted by Shareholders, Stockholders, General Partners, Managing Members and Boards of Directors. Long-term decisions are decisions that generally affect the direction the concern is headed such as adding a new line of business, purchasing a new headquarters building, mergers, and dissolution.
- Day-to-day operations are conducted by officers of the business such as Presidents, Managers, Vice Presidents, Chief Executive Officers, Chief Financial Officers, General Partners, and Treasurers.
- Examples of day-to-day operations of a business include marketing, production, sales, and administrative functions of the firm, as well as the supervision of the executive team, and the implementation of policies.
- A rebuttable presumption can only be defeated if sufficient evidence (i.e., a reasonable rebuttal) is produced that contradicts the facts that are stated as true.
- If the Veteran who manages the concern resides a great distance from where the applicant conducts its business operations, the Veteran must submit a letter of explanation (i.e., a reasonable rebuttal) demonstrating how he or she is able to manage day-to-day operations from a remote location.
- If the Veteran who manages the concern is not able to work for the firm during normal working hours that businesses in that industry normally work, the Veteran must submit a letter of explanation (i.e., a reasonable rebuttal) demonstrating how he or she manages day-to-day operations

without working normal working hours that businesses in the industry normally work.

- Provisions located in the applicant's business or organizational documents cannot restrict the Veteran's ability to manage the daily business operations of the subject company.

Fact Scenarios:

The following excerpts provide insight into common reasons why some applicants do not meet verification requirements:

- CVE regards control as including both the long-term decision making exercised by boards of directors and the day-to-day management and administration of business operations conducted by the corporation's President. An applicant or participant's management and daily business operations must be conducted by one or more Veterans or Service-Disabled Veterans. The applicant has agreed to operate under the terms of the Example, Inc. Franchise Agreement. However, the agreement restricts the Service-Disabled Veteran's ability to set long-term policy for the corporation and manage the day-to-day operations. For example, Article V, Section B.1 states that "[n]o other services other than those authorized by this Franchise Agreement may be offered or conducted from your office. Secondly, Section B.4 states that "[a]ny deviation from the suggested interior layout and design provided to you by us for establishing your new business must be approved in advance in writing. These provisions restrict the Service-Disabled Veteran's ability to manage the daily business operations of the concern and set long term policy. Therefore, CVE cannot reasonably conclude that the

requirements of 13 CFR § 125.13 have been satisfied.”

- CVE defines control to include the day-to-day management and administration of business operations. Here, all checks, contracts, and the applicant’s lease agreement have been signed by the non-Veteran member. Based on the documentation provided, CVE cannot reasonably conclude that the Service-Disabled Veteran is involved with managing the daily business operations of this concern. As a result, the requirements of 13 CFR § 125.13(a) have not been satisfied.”

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