



Proving Veteran is Highest Compensated Employee

Issue:

This brief explains the verification requirement that a Veteran or Service-Disabled Veteran must be compensated in an amount equal to or higher than any non-Veteran director, officer, or employee of the business. If a Veteran is not the highest compensated, the applicant must explain how the Veteran taking lower compensation benefits the concern.

(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)(2) 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...[if] one or more non-service-

disabled veterans receive compensation from the firm in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest-ranking officer (usually CEO or President). The highest-ranking officer may elect to take a lower amount than the total compensation and distribution of profits that are received by a non-veteran only upon demonstrating that it helps the 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.
- While receiving less compensation than non-Veterans may be found as a bar to establishing control of an applicant or participant, Center for Verification and Evaluation (CVE) may find that the requirement of 13 CFR § 125.13(i)(2) has been satisfied where the concern demonstrates that the Veteran receives total compensation in an amount more than the total compensation and distribution of profits received by the non-Veteran employee, director or owner. If the Veteran does not, CVE may find that this requirement is satisfied if the concern has provided a written statement explaining that the Veteran has elected to take less compensation and why doing so benefits the concern. This requirement may be satisfied where the applicant’s business documentation shows that the Veteran receives compensation at least equal to that of the non-Veteran directors, employees, and owners. Importantly, salary

is not the only factor in determining compensation. Total compensation including distribution of profits must be considered to determine whether the requirements of 13 CFR § 125.13(i)(2) have been met. For example, if a Veteran CEO is paid \$70,000 in salary and receives \$10,000 in dividends annually, and the non-Veteran president of the company is paid \$60,000 in salary and \$25,000 dividends annually, the requirement will not be met. The combined compensation of the Veteran does not equal or exceed that of the non-Veteran employee.

- If the Veteran provides an explanation that he or she elected to receive lower compensation, it is important to show how the concern benefits (rather than how the Veteran benefits personally). Explanations solely demonstrating personal benefits are insufficient to satisfy the verification requirement.
- Examples of adequate explanations can be: (1) that the Veteran will be able to retain highly skilled employees by electing to compensate those employees rather than taking a higher salary; (2) the current business and economic situations are such that revenue is not sufficient to compensate the Veteran and operational costs are more critical; and (3) the applicant is a start-up company and the Veteran must use resources for start-up costs to ensure the company's success. This list of examples is not all-inclusive. CVE will assess the totality of the circumstances of every applicant when making a determination of eligibility.

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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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