



Understanding Verification Requirements for Applicants Owned Through Trusts

Issue:

This brief explains how an applicant can be eligible for verification if a Veteran owns the concern through a trust.

(For purposes of this brief, Veteran applies equally to Service-Disabled Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulation:

38 CFR § 74.3(a) provides that “[o]wnership by one or more veterans or service-disabled veterans must be direct ownership. An applicant or participant owned principally by another business entity or by a trust (including employee stock ownership plans [ESOP]) that is in turn owned by one or more veterans or service-disabled veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust...”

What This Means:

In order for a Veteran who owns a firm through a trust to satisfy the ownership requirements of 38 CFR § 74.3(a), the trust must meet certain legal requirements: (1) the trust must be revocable; and (2) the Veteran must be the grantor, a trustee, and the sole current beneficiary of the trust.

Documentation must be provided which makes it clear that all of these requirements have been

met. If ownership is based on a trust, the trust agreement must be provided.

Because the trust must be revocable, the Veteran must be able to cancel the trust at any time. While there can be more than one trustee, the Veteran must be a trustee, the grantor, and the sole current beneficiary of the trust. To be the sole current beneficiary, the Veteran must receive the full income or other distributions from the trust.

Named beneficiaries who will receive benefits or distributions from the trust only after the Veteran's death do not conflict with the regulation, because upon the Veteran's death, the firm may no longer be eligible for verification and/or participation in the Vets First Program.

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VA Office of Small and Disadvantaged Business Utilization

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