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Title 13 —Business Credit and Assistance

Chapter I —Small Business Administration

Part 127 —Women-Owned Small Business Federal Contract Program

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Subpart B Eligibility Requirements To Qualify as an EDWOSB or WOSB

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Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

- (a) **Qualification as an EDWOSB.** To qualify as an EDWOSB, a concern must be:
 - (1) A small business concern as defined in part 121 of this chapter under the size standard corresponding to any NAICS code listed in its SAM profile; and
 - (2) Not less than 51 percent unconditionally and directly owned and controlled by one or more economically disadvantaged women who are citizens of and reside in the United States.
- (b) **Qualification as a WOSB.** To qualify as a WOSB, a concern must be:
 - (1) A small business as defined in part 121 of this chapter for the size standard corresponding to any NAICS code listed in its SAM profile; and
 - (2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are citizens of and reside in the United States.
- (c) **WOSB and EDWOSB certifications.**
 - (1) A concern must be certified as a WOSB or EDWOSB pursuant to § 127.300 in order to be awarded a WOSB or EDWOSB set-aside or sole-source contract.
 - (2) Other women-owned small business concerns that do not seek WOSB or EDWOSB set-aside or sole-source contracts may continue to self-certify their status, receive contract awards outside the Program, and count toward an agency's goal for awards to WOSBs.
- (d) **Size.** In determining whether a concern qualifies as small for WOSB/EDWOSB certification and recertification under the size standard corresponding to a specific NAICS code, SBA will accept the concern's size representation in the System for Award Management (SAM), or successor system, unless there is evidence indicating that the concern is other than small. SBA will request a formal size determination pursuant to § 121.1001(b)(7) of this chapter where any information it possesses calls into question the concern's SAM size representation.

- (e) **Federal financial obligations.** A business concern is ineligible to be certified as a WOSB or EDWOSB or to participate in the WOSB program if either the concern or any of its principals has failed to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing. However, a small business concern may be eligible if the concern or the affected principals can demonstrate that they are current on an approved repayment plan, or the financial obligations owed have been settled and discharged/forgiven by the Federal Government.
- (f) **Suspension and debarment.** In order to be eligible for WOSB and EDWOSB certification and to remain certified, the concern and any of its owners must not have an active exclusion in the System for Award Management at the time of application or recertification.

[75 FR 62282, Oct. 7, 2010, as amended at 85 FR 27660, May 11, 2020; 88 FR 26214, Apr. 27, 2023; 89 FR 102505, Dec. 17, 2024]

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

- (a) **General.** To qualify as an EDWOSB one or more economically disadvantaged women must unconditionally and directly own at least 51 percent of the concern. To qualify as a WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern. Ownership will be determined without regard to community property laws.
- (b) **Unconditional ownership.** To be considered unconditional, ownership must not be subject to any conditions, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity).
 - (1) The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.
 - (2) In determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by qualifying women. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by men or other entities will be treated as exercised, except for any ownership interests which are held by investment companies licensed under 15 U.S.C. 681 *et. seq.*
 - (3) A right of first refusal granting a man or other entity the contractual right to purchase the ownership interests of the qualifying woman, does not affect the unconditional nature of ownership, if the terms follow normal commercial practices. If those rights are exercised by a man or other entity after certification, the WOSB/EDWOSB must notify SBA. If the exercise of those rights results in qualifying women owning less than 51% of the concern, SBA will initiate decertification pursuant to § 127.405.
- (c) **Requirement for direct ownership.** To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business entity or a trust (including employee stock ownership plan) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, the trustee, and the sole current beneficiary of the trust.

- (d) **Ownership of a partnership.** In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.
- (e) **Ownership of a limited liability company.** In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women.
- (f) **Ownership of a corporation.** In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women, or in the case of an EDWOSB, economically disadvantaged women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.
- (g) **Dividends and distributions.** One or more qualifying women must be entitled to receive:
 - (1) At least 51 percent of any distribution of profits paid to the owners of a corporation, partnership, or limited liability company concern, and a qualifying woman's ability to share in the profits of the concern must be commensurate with the extent of her ownership interest in that concern;
 - (2) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and
 - (3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock or member interest owned in the event of dissolution of the corporation, partnership, or limited liability company.

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§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

- (a) **General.** To qualify as a WOSB, the management and daily business operations of the concern must be controlled by one or more women. To qualify as an EDWOSB, the management and daily business operations of the concern must be controlled by one or more women who are economically disadvantaged. Control by one or more women or economically disadvantaged women means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more women or economically disadvantaged women.
- (b) **Managerial position and experience.** A woman, or in the case of an EDWOSB an economically disadvantaged woman, must hold the highest officer position in the concern and must have managerial experience of the extent and complexity needed to run the concern. The woman or economically disadvantaged woman manager need not have the technical expertise or possess the required license to be found to control the concern if she can demonstrate that she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, if a man possesses the required license and has an equity interest in the concern, he may be found to control the concern.
- (c) **Limitation on outside employment.**

- (1) A woman or economically disadvantaged woman generally must devote full time to the business concern during its normal hours of operations. The woman or economically disadvantaged woman who holds the highest officer position of the business concern may not engage in outside employment that prevents her from devoting the time and attention to the business concern necessary to control its management and daily operations.
- (2) Where a woman or economically disadvantaged woman claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, SBA will assume that she does not control the business concern, unless the concern demonstrates that she has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management of the business.
- (3) Any qualifying woman or economically disadvantaged woman who seeks to engage in outside employment after certification must notify SBA of the nature and anticipated duration of the outside employment and demonstrate to SBA that the outside employment will not prevent her from controlling the business concern.
- (d) **Ownership of a partnership.** In the case of a concern which is a partnership, one or more qualifying women, or in the case of an EDWOSB, economically disadvantaged women, must serve as general partners, with control over all partnership decisions. At least 51 percent of every class of partnership interest must be unconditionally owned by one or more qualifying women or economically disadvantaged women. The ownership must be reflected in the concern's partnership agreement.
- (e) **Control over a limited liability company.** In the case of a limited liability company, one or more women, or in the case of an EDWOSB, economically disadvantaged women, must serve as management members, with control over all decisions of the limited liability company.
- (f) **Control over a corporation.** One or more women, or in the case of an EDWOSB, economically disadvantaged women, must control the Board of Directors of the concern. Women or economically disadvantaged women are considered to control the Board of Directors when either:
 - (1) One or more women or economically disadvantaged women own at least 51 percent of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or
 - (2) Women or economically disadvantaged women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.
- (g) **Involvement in the concern by other individuals or entities.** Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entities may:
 - (1) Exercise actual control or have the power to control the concern;
 - (2) Have business relationships that cause such dependence that the qualifying woman cannot exercise independent business judgment without great economic risk;
 - (3) Control the concern through loan arrangements (which does not include providing a loan guaranty on commercially reasonable terms);
 - (4) Provide critical financial or bonding support or a critical license to the concern, which directly or indirectly allows the male or other entity to significantly influence business decisions of the qualifying woman.

- (5) Be a former employer, or a principal of a former employer, of any qualifying woman, unless the concern demonstrates that the relationship between the former employer or principal and the qualifying woman does not give the former employer actual control or the potential to control the concern and such relationship is in the best interests of the concern; or
- (6) Receive compensation from the concern in any form as a director, officer, or employee, that exceeds the compensation to be received by the qualifying woman who holds the highest officer position (usually Chief Executive Officer or President), unless the concern demonstrates that the compensation to be received by non-qualifying woman is commercially reasonable or that the qualifying woman has elected to take lower compensation to benefit the concern. A certified WOSB or EDWOSB must notify SBA within 30 calendar days if the compensation paid to the highest-ranking officer falls below that paid to a man. In such a case, SBA must determine that that the compensation to be received by the man is commercially reasonable or that the highest-ranking officer has elected to take lower compensation to benefit the WOSB or EDWOSB before SBA may determine that the concern is eligible for a WOSB/EDWOSB award.
- (h) **Exception for extraordinary circumstances.** SBA will not find that a lack of control exists where a woman or an economically disadvantaged woman does not have the unilateral power and authority to make decisions regarding the following extraordinary circumstances:
 - (1) Adding a new equity stakeholder or increasing the investment amount of an equity stakeholder;
 - (2) Dissolution of the company;
 - (3) Sale of the company or all assets of the company;
 - (4) The merger of the company;
 - (5) The company declaring bankruptcy;
 - (6) Amendment of the company's corporate governance documents to remove the shareholder's authority to block any of the actions in paragraphs (h)(1) through (5) of this section; and
 - (7) Any other extraordinary action that is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

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§ 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

- (a) **General.** To qualify as an EDWOSB, the concern must be at least 51 percent owned by one or more women who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business. SBA does not take into consideration community property laws when determining economic disadvantage when the woman has no direct, individual or separate ownership interest in the property.
- (b) **Limitation on personal net worth.**

- (1) In order to be considered economically disadvantaged, the woman's personal net worth must be less than \$850,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence.
- (2) Income received from an EDWOSB that is an S corporation, LLC or partnership will be excluded from net worth where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the business concern or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce an individual's net worth.
- (3) Funds invested in an Individual Retirement Account (IRA) or other official retirement account will not be considered in determining an individual's net worth. In order to properly assess whether funds invested in a retirement account may be excluded from a woman's net worth, she must provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

(c) ***Factors to be considered.***

- (1) ***General.*** The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past three years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, will be considered in determining whether she is economically disadvantaged.
- (2) ***Spouse's financial situation.*** SBA may consider a spouse's financial situation in determining a woman's access to credit and capital. When married, an individual claiming economic disadvantage must submit separate financial information for her spouse, unless the individual and the spouse are legally separated. SBA will consider a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (e.g., an officer, employee or director) or has lent money to, provided credit or financial support to, or guaranteed a loan of the business. SBA may also consider the spouse's financial condition if the spouse's business is in the same or similar line of business as the EDWOSB or WOSB and the spouse's business and WOSB share similar names, Web sites, equipment or employees. In addition, all transfers to a spouse within two years of a certification will be attributed to a woman claiming economic disadvantage as set forth in paragraph (d) of this section.
- (3) ***Income.***
 - (i) When considering a woman's personal income, if the adjusted gross yearly income averaged over the three years preceding the certification exceeds \$400,000, SBA will presume that she is not economically disadvantaged. The presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage.
 - (ii) Income received by an EDWOSB that is an S corporation, LLC, or partnership will be excluded from an individual's income where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the EDWOSB or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce a woman's personal income.

- (4) ***Fair market value of all assets.*** A woman will generally not be considered economically disadvantaged if the fair market value of all her assets (including her primary residence and the value of the business concern) exceeds \$6.5 million. The only assets excluded from this determination are funds excluded under paragraph (b)(3) of this section as being invested in a qualified IRA account or other official retirement account.
- (d) ***Transfers within two years.*** Assets that a woman claiming economic disadvantage transferred within two years of the date of the concern's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. The transferred assets within the two-year period will not be attributed to the woman if the transfer was:
 - (1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or
 - (2) To an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

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