

PUBLICATION

New Certification Process for Woman-Owned Small Businesses Effective July 15

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The Small Business Administration (SBA) Final Rule on Women-Owned Small Business (WOSB) and Economically Disadvantaged Women-Owned Small Business (EDWOSB) Certification (the Final Rule) takes effect on July 15, 2020, with some provisions delayed until October 15, 2020. Any business intending to seek government contracts set-aside for WOSBs or EDWOSBs should closely review this significant Final Rule.

The Final Rule results from Section 825 of the National Defense Authorization Act for Fiscal Year 2015, which became law on December 19, 2014 (the [FY 2015 NDAA](#)). The FY 2015 NDAA amended the Small Business Act to require that a WOSB or EDWOSB be certified by a federal agency, a state government, the SBA, or a national certifying entity approved by the SBA in order to be awarded a contract set-aside for the WOSB or EDWOSB program. Section 8(m) of the Small Business Act at [15 U.S.C. 637\(m\)\(2\)\(E\)](#) includes the language implementing this change. Section 825 was enacted after a Government Accountability Office Report ([GAO-15-54](#)) published in October 2014 found that more than 40 percent of the WOSBs and EDWOSBs that received contracts in 2012 and 2013 should not have certified their eligibility for those programs. While the FY 2015 NDAA was made into law in December 2014, the SBA's regulations enacting its requirements take effect on July 15, 2020. Below summarizes some of the significant provisions of the Final Rule.

Entities Seeking WOSB or EDWOSB Set-Aside or Sole-Source Contracts Must Receive Certification Which Entities Must Comply with this Final Rule?

The Final Rule applies to any business seeking an award of a WOSB or EDWOSB set-aside or sole-source contract. In general, a WOSB is a small business that is at least 51 percent owned and controlled by women who are U.S. citizens and that has one or more women managing the day-to-day operations and the long-term decisions. To qualify as an EDWOSB, the business must meet all of the requirements for WOSBs and the qualifying women owners must also meet the limits on personal net worth and adjusted growth income that are set forth in the regulations and discussed further below. *See generally* [13 C.F.R. §§ 127.200 – 203](#).

Since the passage of the FY 2015 NDAA, the Small Business Act technically prohibited self-certification for WOSBs or EDWOSBs and required that they instead be certified by a federal agency, a state government, the SBA, or a national certifying entity. However, until the issuance of the Final Rule, the SBA never enacted regulations or a process by which entities could obtain this certification. Contrary to the requirements of the Small Business Act, the SBA has allowed businesses to continue self-certification as a WOSB or EDWOSB. The Final Rule makes SBA's regulations consistent with the requirements of the FY 2015 NDAA by providing a process by which WOSBs and EDWOSBs can obtain the required certification.

Significantly, the Final Rule does not prohibit self-certification for entities that compete for contracts under full and open competition. Contracts issued under full and open competition are contracts that are not set-aside for either WOSBs or EDWOSBs per SBA's programs, but the agencies can still get small business credit for them if the awardee of the contract self-certifies that it meets the criteria. Businesses can continue to self-certify their status for contracts that are not set-aside for EDWOSBs and WOSBs. But any entity seeking the award of a WOSB or EDWOSB set-aside or sole-source contract under the SBA's WOSB Program must obtain certification under the regulations implemented by the Final Rule.

How Do WOSBs and EDWOSBs Seek the Required Certification?

Businesses seeking WOSB or EDWOSB certification can submit applications and documents for processing into a new certification platform that will be released by the SBA on July 15, 2020. The details related to this new platform and its associated requirements can be found at sba.gov/wosbready.

Beginning on July 15, firms may apply directly to the SBA for WOSB or EDWOSB certification at no cost. Firms that meet any of the following criteria will be considered certified on the date that the regulations become effective:

1. Previously received a WOSB or EDWOSB certification from an approved third-party certifier before July 15;
2. Are owned or controlled by one or more women and certified through the 8(a) Business Development Program before July 15; or
3. Were the subject of a status protest or a program examination that resulted in a positive decision in the preceding three years before July 15, 2020.

However, even the firms relying on one or more of these qualifying criteria must still upload documentation into the SBA's new certification platform to confirm eligibility.

Women-owned and controlled small businesses that have been certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation (CVE) as a Service-Disabled Veteran-Owned Business (SDVOSB) or Veteran-Owned Business (VOB) can submit evidence to the SBA of that prior CVE verification and of its ownership to obtain the WOSB certification. SBA will accept the CVE verification because size, socioeconomic status, ownership, and control are evaluated for verification under the CVE program See [38 C.F.R. § 74.1, et. seq.](#) Similarly, SBA will also accept a confirmation of CVE verification to achieve EDWOSB certification so long as the applying firm also submits documentation confirming that it is economically disadvantaged and women-owned and controlled.

A firm seeking certification as a WOSB or EDWOSB must submit documentation to the certifying authority confirming that it meets the eligibility requirements set forth in [Subpart B of 13 C.F.R. § 127](#). Therefore, an entity seeking WOSB certification should now prepare to submit documents confirming that it is:

4. At least 51 percent owned and controlled by women who are U.S. citizens; and
5. Has one or more women managing the day-to-day operations and the long-term decisions.

The required documents showing these qualifications include, without limitation:

- Records related to the entity's System for Award Management (SAM) registration,
- Proof of citizenship of the owners (i.e., birth certificate, naturalization paper, etc.),
- Existing joint venture agreements, and
- Documents showing the entity's ownership and control (i.e., articles of incorporation, corporate bylaws, stock ledger, etc.).

An entity seeking EDWOSB certification must submit all of the documents required for WOSBs, plus personal financial information to show the net worth and adjusted gross income of the qualifying economically disadvantaged women. The SBA provides a full checklist for preparing for WOSB and EDWOSB certification at <https://certify.sba.gov/prepare#wosb-anc>.

Firms seeking a WOSB or an EDWOSB certification would be wise to review the Final Rule, to organize their documents now, and prepare to apply soon after the Final Rule takes effect. Significant numbers are expected to apply through this process and a backlog of applications is likely.

Will the Final Rule Change Existing Contracts Awarded to WOSBs or EDWOSBs?

The Final Rule clarifies that the regulatory changes do not impact the contracts awarded to WOSBs or EDWOSBs before the Final Rule takes effect. Similar to other SBA programs, an entity that was awarded a contract as a WOSB or EDWOSB will remain small for the life of that contract. Therefore, a WOSB or EDWOSB that was awarded a contract under the prior regulations may continue to perform that contract and the procuring agency can continue to count the contract towards its WOSB goals. However, for long-term contracts in excess of five years, the WOSB or EDWOSB is required to get certified under the new regulations in order for the procuring agency to continue counting the award towards its goals.

Is Self-Certification of WOSBs and EDWOSBs Eliminated on July 15, 2020?

The current self-certification process will not be eliminated until October 15, 2020. Given that a significant number of businesses that will apply for certification, businesses should submit applications as soon after July 15, 2020 as possible to avoid any delay in the required certification.

The Final Rule Makes Consistent the Net Worth and Income Requirements for EDWOSBs and 8(a) Small Businesses

The Final Rule also makes significant changes to the 8(a) Business Development regulations at [13 C.F.R. § 124.104](#) and the EDWOSB regulations at [13 C.F.R. § 127.203](#) to ensure that the economic disadvantage criteria for the separate programs are consistent. Specifically, SBA wants to avoid a situation where a women-owned business could qualify as economically disadvantaged under the 8(a) Program, but not under the WOSB program.

- The regulations were updated to confirm that the qualifying woman's personal net worth must be less than \$750,000, excluding her ownership interest in the business and ownership interest in her primary personal residence, to qualify for economic disadvantage under both programs.
- The qualifying woman must also have an adjusted gross income averaged over the three preceding years below \$350,000 to qualify as economically disadvantaged under both programs.
- Under both programs, a woman will not be considered economically disadvantaged if the fair market value of all of her assets (including her primary residence and the value of the business concern) exceed \$6 million.

To review further how to calculate these numbers, applicants should review closely the above-referenced regulations.

Conclusion

The Final Rule that goes into effect on July 15, 2020 will make significant changes to the WOSB and EDWOSB programs that should be closely reviewed by all businesses seeking those certifications.

If you have any questions about the Final Rule or about SBA's small business programs, please contact your regular Baker Donelson attorney. Baker Donelson's [Government Contracts Team](#) has extensive experience assisting businesses with compliance with SBA's size and socioeconomic regulations, including without limitation, the preparation of operating agreements or bylaws to comply with requirements on ownership and control, mentor-protégé agreements, joint ventures under the SBA's Mentor-Protégé program, advice about SBA's affiliation rules, and handling SBA size protests.

