

February 15, 2016

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Office of Policy, Planning and Liaison
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Re: RIN 3245-AG75 – Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification, U.S. Small Business Administration, Advance notice of proposed rulemaking

The Small Business Administration (SBA) has the opportunity to reset the Women Owned Small Business Program and lay the groundwork for a legacy of achievement for women-owned federal suppliers. The U.S. Women's Chamber of Commerce encourages the SBA to seize this opportunity for leadership; women-owned business leaders are watching and waiting.

BACKGROUND

For decades, the federal government has failed to reach the paltry goal of five-percent contracting with women-owned firms. When Congress established the Women Owned Small Business Program in 2000, it intended to provide a set-aside program that would assist legitimately women-owned businesses to secure federal contracts. Even today, as the Small Business Administration announced the federal government has finally met this goal for the first time in FY2015, the U.S. Women's Chamber of Commerce would strongly assert (as detailed below) that there is no reliable data and verification that supports this claim. Rather, we believe the percentage awarded to women-owned small businesses to be, at a minimum, fifty-percent inflated.¹

Before addressing the specific questions tendered in RIN 3245-AG75, we offer the following snapshot of reality for women-owned businesses active in or seeking federal contracts.

Firms who receive a ED/WOSB set-aside, and are third-party certified are among the few firms who have received any legitimate verification of their women-owned status. This fact alone makes the ED/WOSB program vitally important to the thousands of legitimately women-owned firms who are competing daily against firms who have incorrectly or fraudulently reported their status as "women-owned" and who the federal government incorrectly includes in the deeply flawed annual goaling achievement reports.

¹ This estimation takes into consideration many documented issues in federal data and reporting, GAO and Office of Inspector General Reports on the verification challenges in the WOSB program, numerous reports by Inspectors General from other federal agencies reporting fraud and abuse in contracting, counting large businesses as small, failures to verify firm eligibility and unwarranted exclusions to small business contracting.

Our estimation is that approximately \$287M was awarded through ED/WOSB set-asides in FY2015.² This is just 1.61% of the \$17.8B the federal government claims as awarded to women-owned firms in FY 2015. Billions are being misattributed as awarded to women-owned firms each year – ***without any verification whatsoever***. Given what the Government Accountability Office (GAO) and SBA Office of Inspector General (OIG) (and our own certification examinations) have found, billions of dollars in awards that the federal government claims to have been placed with small and women-owned firms in fact, have not been. Therefore, we can reasonably conclude that the federal government is still not even coming close to meeting the modest five-percent contracting goal.

Congress acted to remove the self-certification option from the ED/WOSB program because the Government Accountability Office (GAO) and SBA OIG identified high levels of ineligible firms receiving ED/WOSB set-asides. The GAO also found that the SBA has not appropriately verified the majority-women-owned small business (or economically disadvantaged) status of firms and reported that between FY2012 and FY2013, more than forty-percent of businesses that previously received contracts under the ED/WOSB program should not have attested they were WOSBs or EDWOSBs at the time of the SBA review.³ The SBA OIG found numerous awards given to firms with absolutely no documentation whatsoever and awards were given to firms that had not proven control by the woman/women owner(s).⁴ These investigations also reported that verification problems with the WOSB Program are magnified by the use of self-certification (where firms simply assert their status without verification).

The SBA has countered that firms may protest awards and/or challenge the status of a firm as ED/WOSB certified and that these options protect the integrity of the program. However, this is not so simple. First, the GAO and SBA OIG both noted that the SBA has failed to uphold its important role in the verification of firms who self-certify their status after being denied by a third-party certifier and investigation of potential fraud reports. Second, the U.S. Women's Chamber of Commerce (as a third-party certifier for the WOSB Program) wonders how a business owner would be able to discern the following characteristics/issues of the competitor firm which are part of the determination of "women-owned" and/or "economic disadvantaged" status so as to provide a protest or challenge:

1. Has the competitor previously been denied certification?
2. What are the competitor's revenues? Is the firm small?
3. How many employees does the competitor have? Does she share her employees with any other firm?

² USASPending.gov -

<https://www.usaspending.gov/Pages/AdvancedSearch.aspx?sub=y&ST=C&FY=2015&A=0&SS=USA&CT=WOB>, data downloaded 2/11/16. Firms that are 8(a) – where the 8(a) certification is gender-based, are not included in this number.

³ Women-Owned Small Business Program: Certifier Oversight and Additional Eligibility Controls Are Needed, November 7, 2014, U.S. Government Accountability Office - <http://gao.gov/products/GAO-15-54>

⁴ Evaluation Report 15-10: Improvements Needed in SBA's Management of the Women Owned Small Business Federal Contracting Program, May 14, 2015, Small Business Administration Office of Inspector General - <https://www.sba.gov/oig/evaluation-report-15-10-improvements-needed-sbas-management-women-owned-small-business-federal>

4. Is the woman owner(s) in control of the daily operation as well as all financial, legal and long-term decisions making for the firm?
5. Is the women owner the highest compensated? Do the itemized payroll documents back up this claim? Do W2's and taxes back this up?
6. Does the woman owner(s) legitimately own 51% or more of the firm? Do all legal documents and tax documents back this up?
7. Is ownership direct? Is there a trust? Is there a holding company?
8. What is the background of the woman owner of the competitor firm? What is her work/ownership history? Does she have the experience to control the firm?
9. Did the woman owner make a financial investment in the firm? Was the investment commensurate with the value of the firm?
10. Does the woman owner own any other firms in the same industry? Does her husband or other male partner/relative?
11. Do the legal documents for the firm provide unconditional control for the woman owner? Do the legal documents contain any supermajority voting requirements that blunt the woman-owners control? Can the woman owner control the sale of the firm and independently make all financial, business and legal decisions? Are there special shareholder agreements or franchise agreements?
12. Do the stock certificates and stock ledger prove ownership?
13. Do the firm's taxes confirm 51% or more ownership? Are profit distributions in alignment with ownership percentage?
14. Is the lease for the business primary facility signed by the woman? Signed independently?
15. Does the firm have any loans/lines of credit or other obligations? Are the debt instruments for these transactions signed/guaranteed by the woman owner? Are any males also signers/guarantors for these debts?
16. Who are the officers and board members of the company? What other firms do these board members/officers own?
17. Do the business documents name the chief executive of the firm and define that control? Is the title assigned to that control the same title as held by the woman?
18. Does the woman-owner work anywhere else or is she devoted full-time to the firm? Do the taxes, W2's and 1099's support this claim?
19. Do the financial documents for the firm show that the firm is not just passing through work to another firm?
20. Does the firm share location, equipment, employees with another firm?
21. Is the woman owner(s) qualified as "economically disadvantaged"? What are her assets/liabilities, average adjusted gross income? Is her personal net worth less than \$750,000?
22. Who signs on the bank account for the firm? Are there any limits on the size of checks that may be signed by the woman/women owner(s)?
23. May the woman owner independently act to establish agreements/contracts on behalf of the firm?

24. What are the capital assets of the firm? Do these stated assets make sense when compared to the work performed? What are the value of these assets? How were they acquired?

The above investigations and determinations can only be made by a legitimate certifier and well-trained examiner. So much of “control” and “benefit” is hidden from public view; it is very difficult for small, legitimately women-owned firms to even consider taking on a competitor they believe not to be women-owned. And, government policies make it very hard and expensive for her to do. This is why we must create an environment of quality, clarity and verification so that we know the contracts the federal government counts as being awarded to women-owned firms are truly being awarded to legitimately women-owned firms – so that that the program established by Congress will work to achieve the stated objectives.

Now that Congress has acted to support legitimately women-owned firms and improve the integrity of the WOSB Program, the Small Business Act no longer authorizes WOSB self-certification. The Congressional directive is now to require certification by a federal agency, the SBA, state governments or third-party certifiers approved by the SBA. Achieving this objective will greatly improve the veracity of the outcomes attributed as being awarded to a “women-owned” or “economically disadvantaged” “women-owned” small business.

BEST OUTCOME

While the current process for which the SBA is seeking comments is specifically centered around how to end self-certification and how to improve the system overall, the U.S. Women’s Chamber of Commerce believes the litmus test for achieving a positive outcome should include:

1. Are legitimately women-owned firms securing more contracts through the use of the program? Or, is this program awarding set-asides to firms that are not legitimately women-owned?
2. Is the burden on women-owned firms reduced? Is the burden on women-owned firms commensurate with the value and opportunity of the program?
3. Is the burden on taxpayers limited?
4. Is there consistency in the certification/verification process?
5. Is it easy and practical for agencies and contracting officers to use the set-aside?

The U.S. Women’s Chamber of Commerce has consistently asserted that the WOSB Program intended for the certification process should include both federal government and state government options as well as third-party certifiers. The program was originally established by Congress in this manner for a number of reasons:

1. To enable women-owned firms that have already secured authoritative women-owned certifications from a state government or qualified third-party certifiers to save time/money so as to leverage their existing certification for the WOSB Program. Many firms are forced to hold numerous certifications already – let them leverage a good existing certification for multiple purposes.

2. To enable women-owned firms that already hold a U.S. Department of Transportation DBE/WBE certification to leverage this certification for the WOSB Program.
3. To spread the burden of “certification” across a number of experienced, quality facilitators thereby reducing the burden and expense incurred by tax payers.
4. To enable women-owned firms to take part in the WOSB program quickly (using a broad range of certifiers) – rather than set-up a large backlog and onerous responsibility exclusively on the SBA.

Women-owned firms who have responded already to this request for comments and previous requests for comments make many valid points about the challenges they face in securing access to federal contracts and to the many different certifications required across the spectrum of federal and state governments as well as corporate supplier diversity programs. The U.S. Women’s Chamber of Commerce agrees: It would be a much better environment for women business owners if women could secure our fair share of contracts without set-aside “preference” programs. But, the sad facts continue: Women face discrimination and market shortcomings that require these programs to help us overcome these unfortunate obstacles. “Set-Aside” preference programs require verification. Without verification and integrity, they are a useless waste of business owner and taxpayer funds and vulnerable to legal challenges.

BUDGETING FOR THE WOSB PROGRAM, NO FUNDS FOR WOMEN

The U.S. Women’s Chamber of Commerce points out that the President’s proposed Small Business Administration FY2017 Budget does not show any significant increase in spending to support the WOSB Program. Incredibly, while the President’s FY2017 budget allocates approximately \$8,608 per 8(a) firm and \$2,898 per HUBZone firm, it only allocates \$25.00 – yes, “twenty-five dollars” – per ED/WOSB firm.

The facts are this: Without funds allocated to operate a successful certification program “in house” by the Small Business Administration, the SBA must rely on other governments and third-party certifiers to support the WOSB Program.

President Obama’s FY 2017 Budget for Management of Federal Set-Aside Programs

- \$58.3M 8(a) Set-Aside Program Budget
- \$15.7M HUBZone Set-Aside Program Budget
- \$1.1M WOSB Set-Aside Program Budget

Budgeted Amount Allocated Per Business Registered for the Program (as of 2/11/16)

- \$8,608 8(a) Program (total firms registered for the program = 6,778)
- \$2,898 HUBZone Program (total firms registered for the program = 5,426)
- \$25.00 WOSB Program (total firms registered for the program = 45,006)

With a clear-eyed view of the President’s budgetary priorities, we must look at the best alternatives for the undervalued women’s business supplier marketplace. The lack of commitment to

legitimately women-owned contractors is especially troubling in view of 2012 U.S. Census data which illuminates the issues women-owned businesses are having achieving revenue growth.

- Women own 35.76% of all firms in America - but produce only 4.23% of the revenues.
- Between 2007 and 2012, while all other types of firms increased revenues -- women-owned firms average revenues dropped \$9,835. (Male-owned firm's revenues increased \$27,768 and public firms average revenues increased \$24.4M.) Women-owned firms were the only type of firm to show decreased revenues.
- Only 10% of women-owned firms have employees.
- Black women own 15.4% of all women-owned firms, but produce only 2.97% of the revenues.
- Hispanic women own 14.88% of all women-owned firms, but produce only 5.54% of the revenues.
- Only 1.74% of women-owned firms have revenues of over \$1M/annually (compared with 6.22% of male-owned firms and 6.82% of equal male/female-owned firms)

The issues detailed above are representative of why Congress committed to providing greater access to contracts and capital, and developing positive ways to overcome discrimination and obstacles in the marketplace. The U.S. Women's Chamber of Commerce is deeply disappointed to see the breathtakingly small financial investment in the President's FY2017 budget to support the WOSB Program. But, living within the limited commitment/framework we have – we submit that the strongest possible outcome must be achieved to support legitimately women-owned firms gain access to federal contracts and begin the steps to achieve growth and financial success.

GENERAL VIEWS ON HOW TO ACHIEVE VERIFICATION GOALS

1. Change Women-Owned Small Business (WOSB) requirements so as to accept U.S. Department of Transportation DBE/WBE Certification (and others)

When the federal government established the guidelines for certification, it followed many of the same standards as found in the 8(a) BD program (without the economic disadvantaged requirement). There are some differences between the ED/WOSB and the 8(a) own/control/manage/operate requirements, but generally the eligibility requirements developed for the WOSB Program are more similar to the 8(a) BD requirements than the own/control/manage/operate eligibility requirements for the U.S. Department of Transportation (DOT) DBE/WBE program. This is unfortunate, because the DOT DBE/WBE program (due to its age and broad impact) has had a great influence on the women's business certification standards all across America. In many states, there is reciprocity between certification for the DOT DBE/WBE program and other state or county women-owned business programs.

The divergence between the SBA's WOSB program and the DOT DBE/WBE program was noted in the initial regulations for the implementation of ED/WOSB program and was also stated in the

WOSB Program Compliance Guide.⁵ The SBA cited these differences as the reasons why they could not allow the acceptance of the DOT DBE/WBE certification in the ED/WOSB program. The U.S. Women's Chamber of Commerce wonders if another reason the SBA did not choose to accept the DOT DBE/WBE certification from the beginning was DOT's reticence to have their certification included as an acceptable certification for the WOSB Program. Prior to the launch of the program, our leadership met with small business leadership at the DOT and learned that they feared (should the DOT DBE/WBE certification be accepted for the ED/WOSB program) their team would be overwhelmed by women-owned firms seeking DOT certification – even if the firms applying did not fall within the stated industry needs of their program.

We believe it is possible this reticence ended up thwarting the SBA's commitment to utilize DOT and other state government certifications as acceptable for the WOSB Program. If the SBA would alter the requirements for the WOSB Program to be in alignment with the standards (for own/control/operate) as is found in the DOT DBE/WBE program, this certification and a wide range of state level certifications would be immediately available for use with the WOSB Program and thousands of women-owned firms would instantly become eligible to provide their certifications to satisfy the verification requirements for the WOSB Program.

We note that the DOT DBE/WBE does have its own specific set of financial limitations (economic disadvantage requirements). Consequently, not all firms that would be eligible for the WOSB certification would also be eligible for the DOT DBE/WBE certification. Regardless, thousands of existing DOT DBE/WBE firms would be eligible for the WOSB Program the moment DOT DBE/WBE becomes accepted.

The non-federal women-owned certifications provided by most of the existing third-party certifiers are in line with the requirements for owns/controls/manages/operates as per the DOT DBE/WBE program. There are many reciprocal agreements in place allowing women-owned firms to leverage their DOT certification for state certification and for corporate supplier diversity markets.

We also want to note: The U.S. Women's Chamber of Commerce developed our certification requirements and application for the ED/WOSB program so as to specifically fit the federal regulations for the ED/WOSB Program and the requirements of the Small Business Administration for third-party certifiers. Every requirement we have for the ED/WOSB certification process and eligibility was designed to do all we could to adhere to the federal regulations and SBA's requirements. We do not require firms to secure one of our other certifications first – and then add on a ED/WOSB certification because there are differences between our standard “NWBE” (National Women's Business Enterprise) certification and the federal ED/WOSB certifications. We acknowledge that, should we require that a firm first receive one of our other certifications, we would be imposing different standards on the firm and potentially blocking their ability to secure a WOSB or EDWOSB certificate inappropriately.

⁵ Women-Owned Small Business (WOSB) Program – Small Entity Compliance Guide, Small Business Administration, April 2011, Page 11 - <https://www.sba.gov/sites/default/files/files/WOSB%20Compliance%20Guide%20April2011.pdf>

Also, we offer both the WOSB and EDWOSB certifications. The original SBA application for third-party certifiers included the requirement to provide both certifications. We do not know how one of the third-party certifiers ended up only offering the WOSB certification or requiring that their own certification be acquired as a contingency for seeking the WOSB as an additional certification.

2. Accept Appropriate State (and other Government) Certifications

Many states (and other governments) have worked out reciprocal certification arrangements whereby they are in essence offering the same certification – based off of the same requirements (typically driven by the DOT DBE/WBE requirements). These arrangements provide exactly the type of responsible cooperation and quality control that the SBA should seek in opening up certification for the WOSB Program to additional experienced, quality providers.

3. Establish a panel of stakeholders to review and recommend quality certifiers to be accepted by the SBA as proof of WOSB status

We recommend a panel of stakeholders be established (women-owned firms who are already certified as eligible for the WOSB Program, all third-party certifiers already selected as acceptable for the program, SBA and other agencies) to proactively secure and review the standards and processes of potential, existing government certifiers so as to recommend state/local government certifiers to the SBA for consideration as acceptable certifiers for the WOSB Program. This process would reduce the burden on the SBA and assure that those stakeholders who seek to assure a quality standard is met may work together to achieve and monitor this standard.

4. Special attention must be made for the EDWOSB program – and its specific “economically disadvantaged” requirements.

The standards established by the SBA for “economic disadvantage” are important and have withstood legal scrutiny over time. It is important, for the veracity of the EDWOSB program, that the “economic disadvantage” standard be maintained within the program. This standard is different than the standards within the DOT DBE/WBE program in part due to the specific industries and needs of the DOT.

Currently, only three of the four third-party certifiers provide EDWOSB certification. We think all four of the existing third-party certifiers should be required to provide the EDWOSB certification. It is a privilege and honor to support the ED/WOSB program – and all of us who have been selected to specifically provide certification services for the program should perform equally.

However, we also believe – due to the uniqueness of the specific “economic disadvantage” requirements – only select third-party certifiers who specifically review the “economic disadvantage” requirements should be eligible to provide this certification.

5. 8(a) awardees should also receive an EDWOSB certification.

Currently, the SBA instructs firms holding the 8(a) certification to upload evidence of their 8(a) standing to show their EDWOSB eligibility. Not all 8(a) awards are based on gender. When an 8(a) firm is also found to be women-owned, the SBA should simply flag them as EDWOSB in the SAM

database. Further, we feel any woman owning/operating/controlling a firm within a NAICS that is accepted as EDWOSB should also be eligible for consideration of acceptance into the 8(a) program. The federal government's own studies and data display the deep disparity these firms are facing. This disparity can only be attributed to the very same social and economic disadvantages entrepreneurs face who are eligible for the 8(a) BD program today.

6. Bring an end to the repository and the process that turns Contracting Officers into de facto certifiers

The repository system and process which forces Contracting Officers to act as de facto certifiers (and forces Contracting Officers to protest their own awards should they find a firm they have awarded to be potentially non-compliant) was flawed from the beginning. This system does not work, is virtually impossible to use responsibly, provides no verification and disincentives Contracting Officers from use of the WOSB Program.

We recommend an interactive online tool be created (as part of SAM) which enables a business owner to attest their standing as WOSB/EDWOSB, complete and sign the form 2413 (WOSB) or 2414 (EDWOSB) and upload their certificate as provided by a third-party certifier, DOT or accepted state government provider. The SBA should review and approve the receipt and acceptance of these documents and be the only authority which may indicate the standing of a firm as WOSB or EDWOSB. This would greatly simplify the process for all stakeholders, and bring authority and verification to the process while enabling a Contracting Officer to easily discern the standing of a firm eligible for a set-aside award.

Answers to the Questions Posed in RIN 3245-AG75

Third Party Certification

1. How many third party certifiers would be needed to adequately serve the full community of WOSBs and EDWOSBs seeking certification?

If the SBA takes appropriate steps to open up certification providers to include the DOT DBE/WBE certification and other appropriate government providers, no more third-party certifiers are required. It is very important to remember the specific challenges, experience and costs involved in being a third-party certifier. To our knowledge, outside of existing government providers and the current set of third-party certifiers, there are no other qualified, experienced providers of women-owned certifications that meet quality standards in existence today. Additionally, to remain viable and affordable, the third-party certifiers already supporting the WOSB Program need to continue to support enough application processing so as to maintain the infrastructure necessary to provide a quality and efficient output at reasonable prices.

2. Should SBA modify its regulations to add more information about the procedures and processes used by third party certifiers to certify firms as WOSBs and EDWOSBs for SBA's WOSB program?

The U.S. Women's Chamber of Commerce found the original requirements as detailed by the SBA when we filed our application to be a third-party certifier to be quite clear and provided an excellent foundation for assuring clear and standard procedures, processes and requirements. However, because the SBA has not ever reviewed our process or procedures, we are unable to be assured we are meeting all of the SBA requirements or that other certifiers are meeting these requirements. Should third-party certifiers be held to common standards, the SBA information on certifiers would be clear and sufficient.

3. Should SBA regulations contain information on how to become an approved third party certifier?

The SBA should release a request for third-party certifiers at such time as it determines there are not enough third-party certifiers providing quality services to meet market demand. If the SBA will accept DOT DBE/WBE and other state/regional government certifications, there will be plenty of certifiers. Additionally, through this model, we believe those existing certifiers with the experience and investments in infrastructure needed will already be active in support of the program.

4. What type of notice should be required to identify third party certifiers?

Should the SBA find that the existing certifiers – with the addition of DOT DBE and authoritative state/local government providers are not meeting satisfactory targets, then we recommend the use of a notice similar to the previous notice that was sent when first seeking third-party certifiers as the previous notice was generally comprehensive and appropriate.

5. Should cost to EDWOSB and WOSBs be part of the criteria that SBA considers when deciding whether to approve one or more additional third party certifiers? If so, what if any methodology should SBA utilize when considering cost?

We feel the SBA should always have the right to consider the fees charged by third-party certifiers to assure market pressures are adequately managing the certifier's fee structures. Having served as a third-party certifier for some time, we understand the costs incurred to establish and maintain infrastructure, staff, customer service, communications, legal, reporting, training and quality control. Our observation has been that the market has an acceptable level of difference between the fees charged by third-party providers, but remains fully in line with what it costs an entity to responsibly provide these services.

6. Should SBA consider the ongoing cost of recertification when evaluating third party certifiers?

See #5 above. Also, it is important to understand – recertification is not a simple, less complex process when compared to first-time certification. Actually, recertification (while it may require less documents from the firm than the first-time certification) requires a different type of scrutiny and assessment. The examiner doesn't just look at the current set of documents; s/he must also review prior documents and communications to verify that what was stated and asserted previously is still in alignment. The examiner has to closely review changes in the firm, the firm's ownership, their financial condition, staffing, payroll, taxes, etc. Often, firms make certain assertions in their first certification that are not backed-up as they recertify. Finally, changes in business ownership, delivery of service, size, etc. all must be reviewed.

We understand how the untrained business owner or small business professional could believe recertification is easier or less costly as they have not actively engaged in the review of thousands of documents and do not understand fully the process of determining ownership/control/management/operations within the framework provided. Also, regardless of whether an application is new or under renewal, the third-party certifier still must support the same process as the first time the firm's standing is assessed. Consequently, compliant certifiers must charge the same fee to cover the costs of recertification.

7. Should SBA determine the term period a third-party certification is valid? If so, what should be an appropriate term for certification validity?

The time period for review should remain annually (or, whenever there are changes in ownership/control/management/operations of a firm – whichever comes first). We see tremendous changes in firms year after year and know that the veracity of the certification process would be greatly diminished if a time period of greater than one year was accepted for this program.

8. Should SBA authorize a third-party limited access to an applicant's repository file for the purpose of directly uploading approved certification documents?

No. We recommend the repository process be closed and authenticated certificates, along with the form 2413 or 2414, be the only documents provided to the SBA to prove one's status as WOSB or EDWOSB.

9. Should SBA change its current processes regarding denials by third party certifiers?

No. To function well as a third-party certifier, the required appeal period should be provided by the third-party certifier. Beyond this, the certifier must act as an authority (and be an authority).

10. In the future, should SBA consider allowing third party certifiers to approve mentor-protégé agreements and joint venture agreements involving EDWOSB and WOSB participants?

No.

Certification by States and Other Federal Agencies

1. Should the authority to certify WOSBs and EDWOSBs be extended to States generally? If the authority should be extended, how should SBA authorize individual States to participate as WOSB and EDWOSB certifying entities (i.e., what sort of approval process should be implemented to ensure that SBA's WOSB and EDWOSB requirements are properly applied)?

First, the SBA should acknowledge that the specific requirements established by the federal government to prove eligibility today are arbitrary. The underlying details required to prove that a woman (women) owns/controls/manages/operates a concern have been arbitrarily established by the federal government for this program. There are a number of different methods (and requirements) used by authoritative certifiers in the marketplace to assess and establish the determination of the “women-owned” standard.

Second, the current system and its requirements are only covering a very limited number of the firms active in the program. This is because, (a) the rules are quite detailed and require a deep understanding of certain legal and financial issues – firms that are self-certified cannot possibly be expected to correctly understand and comply with these requirements, and (b) self-certified firms receive no scrutiny/verification. So, for the vast majority of firms, the standard today is no standard whatsoever.

We believe the SBA should change its stance to a broader stance of simply proving owns/controls/manages/operates and then provide a method to select and include which certifiers adequately provide a high standard of authority and proven experience in assessing and determining this eligibility standard.

The SBA would then be positioned to accept a wider array of methodologies through which qualified and experienced certifiers may accomplish the mission of determining ownership/control/management/operations for the purpose of certification.

We recommend a panel of stakeholders be established (women-owned firms who are already third-party certified as eligible for the WOSB Program, all third-party certifiers already selected as acceptable for the program, SBA and other agencies) to proactively secure and review the standards and processes of potential, existing state/local government certifiers so as to recommend state/local government certifiers to the SBA for consideration as acceptable certifiers for the WOSB Program. This process would reduce the burden on the SBA and assure that those stakeholders who seek to maintain a quality standard may work together to achieve and monitor this standard.

2. Should SBA accept DBE certifications for women-owned firms as conclusive of WOSB ownership and control status or should SBA look further at one or more specific eligibility requirement(s)?

Without question, the SBA should accept DOT DBE certifications as conclusive of WOSB ownership and control status. While the DOT DBE may actually exclude some firms that would be eligible for WOSB (due to the DOT's own economic disadvantage requirements), thousands of women-owned firms would immediately become eligible for the WOSB Program and have the opportunity to leverage certifications they hold today. If the DOT has concerns over the number of new applications they may receive, the DOT could publish a list NAICS that are eligible for their program and not accept applications that fall outside of that list.

3. What other State entities might have sufficient expertise to make WOSB and EDWOSB certifications?

See our recommendation for the creation of a panel to survey the market, engage with other providers, examine the requirements/processes of other providers and make recommendations to the SBA for providers that should be acceptable in meeting a high and proven quality standard.

4. Should SBA consider other Federal agencies as entities that can certify WOSBs and EDWOSBs? If so, how should that occur? Should an agency be able to certify a WOSB or EDWOSB only for purposes of a specific WOSB or EDWOSB contract with that agency? Which office within those agencies should bear the responsibility for this certification authority?

No.

5. Should there be a protest mechanism that would allow an interested party to protest the WOSB or EDWOSB status of a firm certified by a State or other Federal agency to SBA?

No. The certifying entity will already have an appeal process.

SBA Certification Program

SBA States: If SBA were to set up its own ED/WOSB certification program, SBA would want to ensure that it creates an efficient system that enables eligible firms to become certified in a reasonable amount of time, with a reasonable amount of effort, while also providing the necessary oversight to ensure that this Program is not used by ineligible firms. In carrying out these objectives, there are many different forms and structures that SBA could adopt. For example, SBA could adopt a framework under which only minimal documentation is collected and reviewed at the time of application (such as corporate documents and some

financial records). In such a scenario, SBA could then use its authority to conduct program examinations and carry out status protests to serve an oversight role. This approach would provide for a faster application and certification process, while still maintaining oversight by providing in-depth examination and protests relating to specific contracts. On the other hand, SBA could adopt a method that includes a detailed initial review, requiring extensive document production. Such a certification process would be similar to the 8(a) BD certification program. This would be a more thorough review providing additional oversight, and would be more time-consuming for both the SBA and ED/WOSB applicants.

Our response to the above: What SBA has described above in the first scenario displays, in our view, the same faulty reasoning that has caused many of the problems we are currently facing in the certification and verification process and has cost business owners billions in wasted time and opportunity. Any professional active in the accreditation of certification standards would recognize the “minimal documentation” approach is just not acceptable. Furthermore, we are not alone in this belief. The notion of SBA conducting program examinations and relying on protests has been totally dismissed by the GAO and OIG. The SBA Office of Inspector General, “Report on the Most Serious Management and Performance Challenges in Fiscal Year 2016,”⁶ underscores why the SBA should not be allowed to create another, in essence, self-certification / repository system to replace the old self-certification / repository system – but, this time call it “certification.” We fervently believe that this would simply be an attempt by the SBA to manipulate the intent of Congress and sustain the poor verification procedures currently in place.

The SBA Office of Inspector General states, “Absent a certification program, the Government is more likely to award WOSB contracts to ineligible firms.” As stated above, we remain very concerned that the SBA has not budgeted enough funds to take on any legitimate effort to certify firms. The budget figures alone display how little the SBA plans on supporting this program and engaging in program examinations and protests.

1. Should SBA limit its WOSB and EDWOSB certifications only to those made through the 8(a) BD program, as is currently authorized in SBA's regulations?

No. Previously addressed above.

2. Should SBA's regulations be clarified to specify how a women-owned firm applying to the 8(a) BD program can simultaneously receive certification as a WOSB and EDWOSB?

Yes, and we believe with the right process in place, any firm receiving an 8(a) whose status has been confirmed as “women-owned” should simply be reflected as ED/WOSB eligible in the government database without further effort by the business. As the government manages the posting of 8(a) status, they should simply also and automatically reflect the firm’s ED/WOSB status.

⁶ Report on the Most Serious Management and Performance Challenges in Fiscal Year 2016, Small Business Administration Office of Inspector General, October 15, 2015 - <https://www.sba.gov/oig/report-most-serious-management-and-performance-challenges-fiscal-year-2016>

3. Recognizing that SBA has limited resources, should SBA create a new certification program specific to WOSBs and EDWOSBs? If so, how should SBA structure such a certification program so that the limited resources do not cause the time period for certification to be overly lengthy? How should SBA handle the likelihood of a large number of firms seeking certification once the certification process is operational? Should SBA consider or attempt to establish an online ED/WOSB certification program, with dynamic feedback during the certification process?

See our previous responses. (1) SBA does not have the budget to provide anything even resembling a quality certification program for the ED/WOSB program. (2) Thousands of firms already hold quality, authoritative existing certifications that should be easily leveraged to participate in the program. (3) SBA should move to a different standard and process that leverages existing certifications, maintains third-party certifiers to assure the full breadth of ED/WOSB opportunities are available. (4) The SBA should use an experts and stakeholder panel to assist with the process of determining which providers of certifications meet quality and experience requirements so as to be accepted as certifiers for the program.

4. What, if any, documents should SBA collect when certifying a firm as a WOSB or EDWOSB? Are the current repository document requirements unnecessary or significantly burdensome and if so, why?

Refer to our answer to #6 on page 9.

5. Should SBA and third-party certifiers utilize the same processes for certifying concerns as EDWOSBs and WOSBs?

No – the SBA does not have the funds and has not shown the required commitment of assets or initiative to serve as a certifier for this program.

6. How long should the ED/WOSB certification process take? How would this compare with the current amount of time required for self-certification?

Different certifiers vary on the amount of time it takes to get certified. This is part of an open marketplace for quality/experienced/authoritative providers. Additionally, as an experienced third-party certifier, we recognize that the time it takes to process and examine a firm's application varies due to a number of variables including – how long it takes the applicant to provide the initial documents, how forthcoming the applicant is in providing said documents and answers to questions, the business structure/partnerships/affiliations of the firm which may compel the need for additional documents.

The current amount of time required for self-certification is moot because it was ineffective and cost business owners time and money for no real purpose. Due to the fact that it did

not work and did not ensure that firms meet the standards for the program, per Congressional action it is no longer an available option.

7. Should firms that SBA finds ineligible during the application process have the right to a request for reconsideration or an appeal of that decision? If an appeal, should it be to SBA's Office of Hearings and Appeals (OHA)? Currently, firms denied certification for the 8(a) BD program may appeal to OHA.

No. Given the President's (and SBAs) incredibly low commitment of funds for the management of this program (Just \$1.1M reported in the President's FY2017 Budget for the WOSB Program compared with \$58.3M for the 8(a) Program), we recommend the SBA employ a wholly different process for this program leveraging a variety of external providers of certification. The appeal process should remain with the entity providing the certification.

8. How long should a certification be valid? Currently the System for Award Management (SAM) requires users to update and verify their information annually. Should firms certified by SBA as EDWOSBs or WOSBs be required to update their certifications manually?

All certifications should be in place for one year. When a firm updates SAM per their annual requirement, they should be required to update their certification. When the certification expires, their record should no longer reflect their status as ED/WOSB eligible.

As mentioned above on page 8, we recommend an interactive online tool be created (as part of SAM) which enables a business owner to attest their standing as WOSB/EDWOSB, complete and sign the form 2413 (WOSB) or 2414 (EDWOSB) and upload their certificate as provided by a third-party certifier, DOT or accepted state government provider.

9. Should firms need to be recertified annually? If not annually, how long should WOSB or EDWOSB certification last? How should a firm be re-certified as a WOSB or EDWOSB once the time period for certification expires: should it have to re-apply anew, or should it be able to submit only those items to SBA for review that have changed since its initial certification? Should there be an online process that facilitates application or re-certification? If no changes have occurred, should the firm be able to submit an affidavit or declaration to that effect and be automatically re-certified?

Firms should renew their status with the SBA annually and re-certifications with the original provider (or the provider of their choice) should be required annually. This requirement should be part of the quality/authority review considered by the stakeholder panel to assure the quality of the program.

10. If a firm was previously certified by a third-party certifier, should it be able to apply to SBA for certification (or re-certification), or should it be permitted to apply only to the entity that originally certified it?

As we recommend that the SBA does not have the funds to act as a legitimate certifier and recommend that certifications be provided by the DOT, state/local governments and third-party certifier, the applicant should have the right to secure their certification/re-certification from any provider on the list of acceptable providers.

ADDITIONAL COMMENTS

1. BUSINESS SIZE

The SBA is already charged with making business size determinations. This should remain separate from the certification of “women-owned” and/or “economically disadvantaged.” This would make it easier to accept the certifications from other certifiers (who may not have made the federal determination of “small”). A firm should not be allowed to represent that they are WOSB or EDWOSB if they are not recognized as “small” in their primary NAICS by the federal government.

2. TRANSITION

As self-certification is ended and real certification required, firms should be required to secure a real certification on/by whatever date they are required to update their firm in SAM or whenever their existing certification (self or third-party) expires. Under no exception should this process of transition extend beyond one year.

3. CERTIFIER OPTIONS AND DETAILS

The SBA should create a chart of the accepted certifiers showing what the certifier is approved to certify. For instance, DOT certifiers should be shown that not all WOSB eligible firms may be eligible for DOT due to their own economic disadvantage requirements. And, certain accepted certifiers may not offer EDWOSB. Just provide a simple, clean chart so that it is easy for firms to see their options.

4. WOMEN'S BUSINESS CENTERS, SBDC'S OR PTAC'S AS CERTIFIERS

Some have suggested that Women's Business Centers, SBDC's or PTAC's should become certifiers for the ED/WOSB program. We consider this to be a terrible recommendation for a number of reasons:

- The primary purpose of these entities is assistance, education, coaching, connecting to resources and encouraging businesses. Certification is wholly different from these processes. A certification denial could well push a business owner away from using the services of the WBC, SBDC or PTAC for the primary services which Congress intended these entities provide.

- The certification process (to be effective and authoritative) requires that the team involved be independent and uninfluenced by the applicant.

- Certification requires consistent and professional training, infrastructure, communications and data management systems along with customer service and a large enough team to provide checks and balances in the system so as to assure quality and the protection of the business applicant in the process. For instance, we require that multiple professionals agree on awards and denials and additional review on appeals.
- Volume is important. A certain level of activity must be sustained to support the infrastructure and keep those experts who are examining the applications sharp and performing their work to acceptable levels of professionalism. This also helps keep the price of certification processing and examination down.

5. USWCC FEES AND DISCOUNTS FOR BUSINESS/SUPPLIER MEMBERS

One or more respondents claimed that it was inappropriate for the U.S. Women's Chamber of Commerce to provide discounts for our Business and Supplier members for certification services. The USWCC has a long history of: (a) Providing discounts to our members on our services (as these members typically also take part in a number of activities which help pay for the work we perform on their behalf as a trade association); and (b) Our philosophy has always been to ensure that our services are available to the widest possible set of women. We typically allow non-business/supplier members to access our other activities provided by the USWCC at a cost that is higher than our members. This assures they can take part. . . even if they, (1) cannot afford membership, or (2) do not choose membership.

6. LOGO AND EXPENSIVE CONSULTANTS

We have found a number of high cost “consultants” that charge firms to do nothing more than either upload the firm's documents to the repository or submit the firm's documents to third-party certifiers. We believe a specific and acceptable logo should be provided for firms who have received a certification that is from an eligible provider showing this status to stop the fake logos being used. We have found a significant number of firms who have taken a portion of our logo and are using this to claim they are WOSB or EDWOSB certified. If the federal government established an authoritative logo and made it clear that only authorized firm may use the logo – this false advertising would stop. We also believe ending the repository and self-certification system will put a good number of these vultures out of business.

7. TIME, COLLECTION OF DOCUMENTS

One respondent mentioned that it took her 40-60 hours to collect the documents required for certification. We challenge this statement. The documents we (and other) certifiers require are standard business and financial documents that firms use for a variety of purposes in their day to day business, legal and financial activities. The assertion that 40-60 hours is required to collect the required documents is not supported by our experience.

Thank you for this opportunity to provide our comments on this matter. Again, we believe the Small Business Administration has the opportunity to reset the Women Owned Small Business Program and lay the groundwork for a legacy of achievement for women-owned federal suppliers. The U.S. Women's Chamber of Commerce encourages the SBA to seize this opportunity for leadership; women-owned business leaders are watching and waiting.

Sincerely,



Margot Dorfman, CEO
U.S. Women's Chamber of Commerce

When we focus our power, we shape our world.