§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well founded reason to question the individual’s claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.


§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm’s previous three fiscal years, in excess of $22.41 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

§ 26.67 What rules determine social and economic disadvantage?

(a) Presumption of disadvantage. (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual’s net worth, you must observe the following requirements:

(A) Exclude an individual’s ownership interest in the applicant firm.

(B) Exclude the individual’s equity in his or her primary residence (except
any portion of such equity that is attributable to excessive withdrawals
from the applicant firm).

(C) Do not use a contingent liability
to reduce an individual’s net worth.

(D) With respect to assets held in
vested pension plans, Individual Retire-
ment Accounts, 401(k) accounts, or
other retirement savings or investment
programs in which the assets cannot be
distributed to the individual at the
present time without significant ad-
verse tax or interest consequences, in-
clude only the present value of such as-
sets, less the tax and interest penalties
that would accrue if the asset were dis-
tributed at the present time.

(iv) Notwithstanding any provision of
Federal or state law, you must not re-
lease an individual’s personal net
worth statement nor any documents
pertaining to it to any third party
without the written consent of the sub-
mitter. Provided, that you must trans-
mit this information to DOT in any
certification appeal proceeding under
section 26.89 of this part or to any
other state to which the individual’s
firm has applied for certification under
§ 26.85 of this part.

(b) Rebuttal of presumption of dis-
advantage. (1) If the statement of per-
sonal net worth that an individual sub-
mits under paragraph (a)(2) of this sec-
tion shows that the individual’s per-
sonal net worth exceeds $1.32 million,
the individual’s presumption of eco-
nomic disadvantage is rebutted. You
are not required to have a proceeding
under paragraph (b)(2) of this section in
order to rebut the presumption of eco-
nomic disadvantage in this case.

(2) If you have a reasonable basis to
believe that an individual who is a
member of one of the designated groups
is not, in fact, socially and/or economi-
cally disadvantaged you may, at any
time, start a proceeding to determine
whether the presumption should be re-
garded as rebutted with respect to that
individual. Your proceeding must fol-
low the procedures of § 26.87.

(3) In such a proceeding, you have the
burden of demonstrating, by a prepon-
derance of the evidence, that the indi-
vidual is not socially and economically
disadvantaged. You may require the in-
dividual to produce information rel-
vant to the determination of his or her disadvantage.

(4) When an individual’s presumption
of social and/or economic disadvantage
has been rebutted, his or her ownership
and control of the firm in question can-
not be used for purposes of DBE eligi-
bility under this subpart unless and un-
til he or she makes an individual
showing of social and/or economic dis-
advantage. If the basis for rebutting
the presumption is a determination
that the individual’s personal net
worth exceeds $1.32 million, the indi-
vidual is no longer eligible for partici-
pation in the program and cannot re-
gain eligibility by making an indi-
vidual showing of disadvantage.

(c) [Reserved]

(d) Individual determinations of social
and economic disadvantage. Firms
owned and controlled by individuals
who are not presumed to be socially
and economically disadvantaged (in-
cluding individuals whose presumed
disadvantage has been rebutted) may
apply for DBE certification. You must
make a case-by-case determination of
whether each individual whose owner-
ship and control are relied upon for
DBE certification is socially and eco-
nomically disadvantaged. In such a
proceeding, the applicant firm has the
burden of demonstrating to you, by a
preponderance of the evidence, that the
individuals who own and control it are
socially and economically disadvan-
taged. An individual whose personal
net worth exceeds $1.32 million shall
not be deemed to be economically dis-
advantaged. In making these deter-
minations, use the guidance found in
Appendix E of this part. You must re-
quire that applicants provide sufficient
information to permit determinations
under the guidance of Appendix E of
this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR
34570, June 28, 1999; 68 FR 35554, June 16, 2003;
76 FR 5099, Jan. 28, 2011]

§ 26.69 What rules govern determina-
tions of ownership?

(a) In determining whether the so-
cially and economically disadvantaged
participants in a firm own the firm,
you must consider all the facts in the
record, viewed as a whole.