

certifier must not use the Uniform Certified Application. The certifier must obtain from the firm documentation sufficient to demonstrate that the entity meets the requirements of paragraph (c)(2)(i) of this section. The certifier must also obtain sufficient information about the firm to allow the certifier to administer its program (e.g., information that would appear in a UCP directory).

(iii) If an ANC-related firm does not meet all the conditions of paragraph (c)(2)(i) of this section, then it must meet the requirements of paragraph (c)(1) of this section in order to be certified.

[89 FR 24969, Apr. 9, 2024]

§ 26.65 Business size determinations.

(a) *By NAICS code.* A firm (including its affiliates) must be a small business, as defined by the Small Business Administration (SBA). The certifier must apply the SBA business size limit in 13 CFR part 121 which corresponds to the applicable primary industry classifications (NAICS codes). The firm is ineligible when its affiliated “receipts” (computed on a cash basis), as defined in 13 CFR 121.104(a) and averaged over the firm’s preceding five fiscal years, exceed the applicable SBA size cap(s).

(b) *Statutory cap.* Even if a firm is a small business under paragraph (a) of this section, it is ineligible to perform DBE work on FHWA or FTA assisted contracts if its affiliated annual gross receipts, as defined in 13 CFR 121.104, averaged over the firm’s previous three fiscal years exceed \$30.72 million (as of March 1, 2024). The Department will adjust this amount annually and post the adjusted amount on its website available at <https://www.transportation.gov/DBEsizestandards>.

[89 FR 24970, Apr. 9, 2024; 89 FR 55089, July 3, 2024]

§ 26.67 Social and economic disadvantage.

(a) *Group membership*—(1) *General rule.* Citizens of the United States (or lawfully admitted permanent residents) who are women, Black American, Hispanic American, Native American, Asian Pacific American, Subcontinent Asian American, or other minorities

found to be disadvantaged by the Small Business Administration (SBA), are rebuttably presumed to be socially and economically disadvantaged. A firm owner claiming the presumption must specify of which groups in this paragraph (a)(1) she or he is a member on the Declaration of Eligibility (DOE).

(2) *Native American group membership.* An owner claiming Native American group membership must submit a signed DOE as well as proof of enrollment in a federally or State-recognized Indian Tribe. An owner claiming Native Hawaiian or Alaska Native group membership must submit documentation legally recognized under State or Federal law attesting to the individual’s status as a member of that group.

(3) *Questioning group membership.* (1) Certifiers may not question claims of group membership as a matter of course. Certifiers must not impose a disproportionate burden on members of any particular group. Imposing a disproportionate burden on members of a particular group could violate Title VI of the Civil Rights Act of 1964, paragraph (b) of this section, and/or 49 CFR part 21.

(i) If a certifier has a well-founded reason(s) to question an owner’s claim of membership in a group in paragraph (a)(1) of this section, it must provide the individual a written explanation of its reason(s), using the most recent email address provided. The firm bears the burden of proving, by a preponderance of the evidence, that the owner is a member of the group in question.

(ii) A certifier’s written explanation must instruct the individual to submit evidence demonstrating that the individual has held herself/himself/themself out publicly as a member of the group for a long period of time prior to applying for DBE certification, and that the relevant community considers the individual a member. The certifier may not require the individual to provide evidence beyond that related to group membership.

(iii) The owner must email the certifier evidence described in paragraph (a)(3)(ii) of this section no later than 20 days after the written explanation. The certifier must email the owner a decision no later than 30 days after receiving timely submitted evidence.

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(iv) If a certifier determines that an individual has not demonstrated group membership, the certifier's decision must specifically reference the evidence in the record that formed the basis for the conclusion and give a detailed explanation of why the evidence submitted was insufficient. It must also inform the individual of the right to appeal, as provided in § 26.89(a), and of the right to reapply at any time under paragraph (d) of this section.

(b) *Rebuttal of social disadvantage.* (1) If a certifier has a reasonable basis to believe that an individual who is a member of a group in paragraph (a)(1) of this section is not, in fact, socially disadvantaged, the certifier must initiate a § 26.87 proceeding, regardless of the firm's DBE status. As is the case in all section § 26.87 proceedings, the certifier must prove ineligibility.

(2) If the certifier finds that the owner is not socially disadvantaged, its decision letter must inform the firm of its appeal rights.

(c) *Rebuttal of economic disadvantage—*

(1) *Personal net worth.* If a certifier has a reasonable basis to believe that an individual who submits a PNW Statement that is below the currently applicable PNW cap is not economically disadvantaged, the certifier may rebut the individual's presumption of economic disadvantage.

(i) The certifier must not attempt to rebut presumed economic disadvantage as a matter of course and it must avoid imposing unnecessary burdens on individual owners or disproportionately impose them on members of a particular group.

(ii) The certifier must proceed as provided in § 26.87.

(2) *Economic disadvantage in fact.* (i) To rebut the presumption, the certifier must prove that a reasonable person would not consider the individual economically disadvantaged. The certifier may consider assets and income, free use of them or ready access to their benefits, and any other trappings of wealth that the certifier considers relevant. There are no assets (including retirement assets), income, equity, or other exclusions and no limitations on inclusions. A broad and general analysis suffices in most cases: the owner has, or enjoys the benefits of, income

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of X; two homes worth approximately Y; substantial interests in outside businesses Q, R, and S; four rental properties of aggregate value Z; etc. The certifier need only demonstrate "ball-park" values based on available evidence. The reasonable person is not party to detailed financial information. S/he considers the owner's overall circumstances and lifestyle.

(ii) The certifier must proceed as provided in § 26.87.

(d) *Non-presumptive disadvantage.* An owner who is not presumed to be SED under paragraph (a) of this section may demonstrate that he is SED based on his own experiences and circumstances that occurred within American society.

(1) To attempt to prove individual SED, the owner provides the certifier a Personal Narrative (PN) that describes in detail specific acts or omissions by others, which impeded his progress or success in education, employment, and/or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.

(2) The PN must identify at least one objective basis for the detrimental discrimination. The basis may be any identifiable status or condition. The PN must describe this objective distinguishing feature(s) (ODF) in sufficient detail to justify the owner's conclusion that it prompted the prejudicial acts or omissions.

(3) The PN must state how and to what extent the discrimination caused the owner harm, including a full description of type and magnitude.

(4) The owner must establish that he is economically disadvantaged in fact and that he is economically disadvantaged relative to similarly situated non-disadvantaged individuals.

(5) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant.

(6) This rule does not prescribe how the owner must satisfy his burden of proving disadvantage. He need not, for example, have filed any formal complaint, or prove discrimination under a particular statute.

Example 1 to paragraph (d): A White male claiming to have experienced employment discrimination must provide evidence that his employment status and/or limited opportunities to earn income result from specific

prejudicial acts directed at him personally because of an ODF, and not, *e.g.*, an economic recession that caused widespread unemployment.

[89 FR 24970, Apr. 9, 2024; 89 FR 55089, July 3, 2024]

§ 26.68 Personal net worth.

(a) *General.* An owner whose PNW exceeds \$2,047,000 is not presumed economically disadvantaged. The Department will adjust the PNW cap pursuant to paragraph (d) of this section.

(b) *Required documents.* Each owner on whom the firm relies for certification must submit a DOE and a corroborating personal net worth (PNW) statement, including required attachments. The owner must report PNW on the form, available at <https://www.Transportation.gov/DBEFORMS>. A certifier may require an owner to provide additional information on a case-by-case basis to verify the accuracy and completeness of the PNW statement. The certifier must have a legitimate and demonstrable need for the additional information.

(c) *Reporting.* The following rules apply without regard to State community property, equitable distribution, or similar rules. The owner reports assets and liabilities that she owns or is deemed to own. Ownership tracks title to the asset or obligor status on the liability except where otherwise provided or when the transaction results in evasion or abuse.

(1) The owner excludes her ownership interest in the applicant or DBE.

(2) The owner excludes her share of the equity in her primary residence. There is no exclusion when the SEDO does not own the home.

Example 1 to paragraph (c)(2): The owner and her spouse hold joint title to their primary residence, for which they paid \$300,000 and are coequal debtors on a bank mortgage and a home equity line of credit with current combined balances of \$150,000. The owner may exclude her \$75,000 share of the \$150,000 of total equity.

(3) The owner includes the full value of the contents of her primary residence unless she cohabits with a spouse or domestic partner, in which case she excludes only 50 percent of those assets.

(4) The owner includes the value of all motor vehicles, including

watercraft and ATVs, titled in her name or of which she is the principal operator.

(5) The owner excludes the liabilities of any other party and those contingent on a future event or of undetermined value as of the date of the PNW Statement.

(6) The owner includes her proportional share of the balance of a debt on which she shares joint and severable liability with other primary debtors.

Example 2 to paragraph (c)(6): When the owner co-signs a debt instrument with two other individuals, the rule considers her liable for one-third of the current loan balance.

(7) The owner includes assets transferred to relatives or related entities within the two years preceding any UCA or DOE, when the assets so transferred during the period have an aggregate value of more than \$20,000. Relatives include the owner's spouse or domestic partner, children (whether biological, adopted or stepchildren), siblings (including stepsiblings and those of the spouse or domestic partner), and parents (including stepparents and those of the spouse or domestic partner). Related entities include for-profit privately held companies of which any relative is an owner, officer, director, or equivalent; and family or other trusts of which the owner or any relative is grantor, trustee, or beneficiary, except when the transfer is irrevocable.

(8) The owner excludes direct payments, on behalf of immediate family members or their children, to unrelated providers of healthcare, education, or legal services.

(9) The owner excludes direct payments to providers of goods and services directly related to a celebration of an immediate family member's or that family member's child's significant, normally non-recurring life event.

(10) The owner excludes from net worth all assets in qualified retirement accounts but must report those accounts, the value of assets in them, and any significant terms and restrictions concerning the assets' use, to the certifier.

(d) *Regulatory adjustments.* (1) The Department will adjust the PNW cap by May 9, 2027 by multiplying \$1,600,000 by the growth in total household net