

1230.1603 SOCIAL AND ECONOMIC DISADVANTAGE.**Subpart 1. Presumption of disadvantage.**

A. Citizens of the United States or lawfully admitted permanent residents who are women, persons with substantial physical disabilities, Native Americans, Black Americans, Hispanic Americans, Asian-Pacific Americans, subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA are deemed to be socially and economically disadvantaged individuals. Applicants must submit a signed, notarized certification that each deemed disadvantaged owner is, in fact, socially and economically disadvantaged.

B. (1) Each individual owner of a business applying to participate as a socially and economically disadvantaged or economically disadvantaged area small business whose ownership and control are relied upon for certification must certify that the individual has a personal net worth that does not exceed the limit in Code of Federal Regulations, title 49, subtitle A, part 26.

(2) This certification must be supported with a signed, notarized statement of personal net worth on a form specified by the division, with appropriate supporting documentation. Where necessary to accurately determine an individual's personal net worth, on a case-by-case basis, additional financial information may be required from the owner of an applicant business including, but not limited to, information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company.

(3) In determining an individual's net worth, the following requirements apply:

(a) an individual's ownership interest in the applicant business is excluded;

(b) an individual's equity in the individual's primary residence, except any portion of the equity that is attributable to excessive withdrawals from the applicant business, is excluded. The equity is the market value of the residence less any mortgages and home equity loan balances. Home equity loan balances must be included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes;

(c) a contingent liability may not be used to reduce an individual's net worth; and

(d) with respect to assets held in vested pension plans, individual retirement 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 adverse tax or interest consequences, only the present value of the assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time, is included.

(4) Upon certification, an individual's personal net worth and any documents pertaining to it including but not limited to financial statements and federal tax returns must be returned to the individual or destroyed by the division.

Subp. 2. **Rebuttal of presumption of disadvantage.** An individual's presumption of economic disadvantage may be rebutted in two ways.

A. If the standard of personal net worth and supporting documentation that an individual submits under subpart 1, item B, shows that the individual's personal net worth exceeds the limit in Code of Federal Regulations, title 49, subtitle A, part 26, the individual's determination of economic disadvantage is rebutted.

For example, an individual with very high assets and significant liabilities may, in accounting terms, have a personal net worth of less than the limit in Code of Federal Regulations, title 49, subtitle A, part 26. However, the person's assets collectively, including high income level, an expensive house, a yacht, and extensive real or personal property holdings, may lead a reasonable person to conclude that the individual is not economically disadvantaged. The individual's determination of economic disadvantage may be rebutted under these circumstances, as provided in this subpart, even though the individual's personal net worth is less than the limit in Code of Federal Regulations, title 49, subtitle A, part 26.

B. If the statement of personal net worth and supporting documentation an individual submits under subpart 1, item B, demonstrates that the individual is able to accumulate substantial wealth, the individual's determination of economic disadvantage is rebutted. Factors that may be considered in making this determination include, but are not limited to, the following:

(1) whether the average adjusted gross income of the owner over the most recent three-year period exceeds the limit in Code of Federal Regulations, title 49, subtitle A, part 26;

(2) whether the income was unusual and not likely to occur in the future;

(3) whether the earnings were offset by losses;

(4) whether the income was reinvested in the business or used to pay taxes arising in the normal course of operations by the business;

(5) other evidence that income does not indicate a lack of economic disadvantage; and

(6) whether the total fair market value of the owner's assets exceeds the limit in Code of Federal Regulations, title 49, subtitle A, part 26.

Subp. 3. **Transfers within two years.**

A. Except as set forth in item B, any assets that an individual has transferred to an immediate family member, to a trust that has a beneficiary who is an immediate family member, or to the applicant business for less than fair market value, within two years prior to a business's application for participation in the socially and economically disadvantaged or economically disadvantaged area small business program or within two years of the business's certification, will be attributed to the individual claiming disadvantaged status, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

B. Any assets transferred by an individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements, will not be attributed to the individual claiming disadvantaged status.

Statutory Authority: *MS s 16C.19*

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