

WBENC'S STANDARDS AND PROCEDURES

Revised March 2008

Table of Contents

I.	PURPOSE	3
II.	APPLICABILITY	3
III.	MARITAL STATUS	4
IV.	DISCLOSURE AND CONFIDENTIALITY	4
V.	RESPONSIBILITIES	4
VI.	NATIONAL CERTIFICATION.....	4
VII.	DEFINITIONS	5
VIII.	WBE AND SWBE ELIGIBILITY STANDARDS.....	9
IX.	CERTIFICATION COMMITTEES	16
X.	CERTIFICATION PROCEDURES.....	20
XI.	CERTIFYING EXCEPTIONAL WOMEN’S BUSINESS ENTERPRISES	23
XII.	CERTIFYING FRANCHISES.....	25
XIII.	CHALLENGE PROCEDURES.....	26
XIV.	DE-CERTIFICATION PROCESS	27
XV.	APPEAL PROCESS	28
XVI.	PROGRAM REVIEW PROCEDURES.....	32
XVII.	NON-ELIGIBLE BUSINESSES.....	34

I. Purpose

The Women's Business Enterprise National Council ("WBENC") is removing barriers in the marketplace that impede the progress and growth of businesses owned and managed by women. Key among its programs is nationwide access to a national certification standard, maintenance of a national Women Business Enterprise database, WBENCLink; and the enhancement of procurement opportunities through the dissemination of "best practices" information and the provision of training.

It is the policy of the members of WBENC that Women Business Enterprises (WBE) and Small Women Business Enterprises (SWBE) have the maximum practicable opportunity to participate in contracting and purchasing activities. The procedures outlined in this document describe the WBENC certification standards and process for all businesses desiring to be certified. To the extent possible, a thorough certification process will ensure that the programs of these entities benefit only those for whom the programs are intended.

In addition, WBENC is responsible, among other things, for training Regional Partner Organizations (RPOs), oversight of implementation of the certification standards and process, review of its RPO certification programs, and serves as the final appellate body.

It should be noted that failure to be certified as a Women Business Enterprise or Small Women Business Enterprise by WBENC DOES NOT PRECLUDE a business from participating directly in any of the member entities' purchasing and contracting opportunities.

The standards established herein are adapted from 49 Code of Federal Regulations (CFR) Part 23 and Part 26.

Please refer to Section VII. Definitions for the meanings of capitalized terms used in this document.

II. Applicability

These standards and procedures apply to any business seeking status as a WBE. Certification determination will be made on the basis of the gender of the majority owner(s) and is inclusive of all races and ethnicities.

Potential applicants interested in being certified as a WBE should apply without waiting for a conditional contract commitment from a customer.

III. Marital Status

Certification as a WBE is made without regard to marital status and community property laws. However, applicants seeking designation as a SWBE will be required to submit appropriate documentation where community property laws apply.

IV. Disclosure and Confidentiality

All information submitted with the certification affidavit becomes the property of WBENC. Information that the applicant marks as proprietary or confidential or that reasonably may be regarded as such will be treated accordingly. The RPO will obtain the applicant's prior approval to release information submitted that may be conducive to increased opportunities for WBEs and SWBEs. The certification affidavit that is part of the application for certification includes a liability release form.

V. Responsibilities

The WBENC Board of Directors is ultimately responsible for ensuring that certification policies are implemented and enforced. The RPO's Executive Director or President has the requisite authority for overall implementation, monitoring and reporting of the RPO's certification process, and is accountable to the Board of Directors of the RPO. In the event of an appeal to WBENC of a denial of certification, WBENC Board of Directors holds ultimate responsibility for the final determination. RPO support staff has responsibilities for the day-to-day implementation of WBENC's certification process.

VI. National Certification

Certification as a WBE is recognized throughout the WBENC network. All WBEs will be listed in WBENC's proprietary, internet accessible database, WBENCLink.

VII. Definitions

Affidavit or Certification Affidavit	An application for certification submitted with a sworn and notarized Statement of Eligibility.
Affiliate	A person effectively controlled by another person or under common control with a third person. A branch, division, or subsidiary. Under the Investment Company Act (15 USCA Section 8a-2), a company in which there is ownership (direct or indirect) of five percent (5%) or more of the voting stock.
Agent	<p>A person authorized to act on behalf of the principal in transactions involving a third party.</p> <p>Agents have three basic characteristics:</p> <ul style="list-style-type: none">● Act on behalf of and are subject to the control of the principal;● They do not have title to the principal's property; and● They own the duty of obedience to the principal's orders. <p>Agents by their nature are not certifiable.</p>
Broker	<p>The person who acts as an intermediary between a buyer or seller, usually charging a commission for value added.</p> <p>A business that adds no material value or does not perform a commercially useful function to the products or services being supplied to a procuring activity or takes no ownership, financial responsibility, legal liability, possession of or handle the item being procured with its own equipment or facilities will not be certifiable, unless it's the standard in the industry.</p>
Appeal	A written request by an applicant to reconsider a determination of denial of certification.
Applicant	A business that requests certification as a Women Business Enterprise through submission of a certification affidavit.
Certification	The process by which an applicant's eligibility as a WBE is determined.
Certification Committee – Local	A committee comprised of volunteers (corporate, government and business owner representatives) who renders recommendations for certification or denial to the RPO Executive Director or President.
Certification Committee – National	A committee of the WBENC Board of Directors responsible for the development and maintenance of the standards and procedures that govern the certification process implemented by the RPOs across the nation.

Certified Supplier List	A listing containing the names of currently certified WBEs maintained by each RPO. Information found in all local RPO certified supplier lists can also be found on WBENCLink.
Challenge	A formal filing by a third party questioning the eligibility of a certified WBE.
Contract Compliance	The enforcement of appropriate use of certification in purchasing and contracting activities. This function is to be applied by the user entity that requires or accepts certification.
Consultant	One that gives expert or professional advice for fee or commission.
Control	The power to direct the operation and management of a business.
Corporation	A specific type of legal entity that is in compliance with the applicable requirements of the law of its state of incorporation.
Dealership	Authorization to sell specified items in a certain area with or without exclusivity.
De-certification	The process by which a RPO determines that a WBE no longer meets the eligibility requirements and rescinds the certification status.
Denial	The action of denying WBE certification to a business that does not meet the certification eligibility criteria as outlined in these Standards and Procedures.
Disadvantaged Business Enterprise	<p>An independent small business enterprise:</p> <ul style="list-style-type: none"> • Which is at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and • Whose management and daily business operations are controlled (as defined herein), by one or more of the socially and economically disadvantaged individuals who own it; and • That meets the size standards of 13 CFR Part 121.2 and relevant regulations promulgated thereto.
Distributor	One that markets or sells merchandise, i.e. a wholesaler.

Document Review	The RPO's review of the affidavit and accompanying documentation submitted by an applicant.
Eligibility Review	The entire review process conducted on an applicant, consisting of documentation review and on-site review.
Exceptional Women's Business Enterprise (EWBE)	Applicants for WBENC certification with revenues in excess of \$500M or requiring specialty certification and/or standard in the industry determination and standardization.
Expiration	The specified end of the certification period.
Financial Institution	A bank, trust company or other financial institution authorized by law to carry on a trust business.
Financial Review	The review of financial records of an applicant.
Franchise	A contractual arrangement characterized by the authorization granted to someone to sell or distribute a company's goods or services in a certain area; a business or group of businesses established or operated under such authorization.
Industry Standard or Standard in the Industry	The usual and customary practices in the delivery of products or services within a particular business sector, i.e. mortgage brokers, insurance broker, securities brokers.
Limited Liability Company	A specific type of legal entity that is in compliance with the applicable requirements of the law of its state of formation.
Manufacturer Representative	A person that represents another for or to others, i.e. manufacturer's group. Typically Manufacturer Representatives are not certifiable.
Members	Any corporate or governmental entity that is an active participant of WBENC.
National Certification Review Committee	An ad hoc committee of the National Certification Committee, which reviews files for applicants meeting the definition of EWBE.
On-Site Review	A visit to the applicant's physical place(s) of business for the verification of information submitted in the affidavit and accompanying documentation.
Ownership	A determination based on title to and beneficial ownership of stock, membership interests, or other equity in a business.

Person	Any individual, partnership, joint venture, firm, corporation, limited liability company, trust or other enterprise.
Principal Place of Business	The business location where individuals who manage the business's day-to-day operations spend most working hours and where top management business records are kept.
Partnership	An association of two or more persons to carry on, as co-owners, a business for profit.
Program Review	A scheduled annual review by WBENC of a RPO's certification determinations and procedures.
Re-certification	The process by which a WBE renews certification status prior to expiration.
Regional Partner Organization (RPO)	A local 501(c)(3) organization recognized by the WBENC as a Partner Organization.
Regular Dealer	A business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies are bought, kept in stock, and regularly sold to the public in the usual course of business.
Reseller	The act of selling a second time or distributing goods in commerce. The act of selling used or new products for profit. A business entity that resells.
Retailer	The seller of goods or commodities directly to the consumers at a retail price.
Small Women Business Enterprise (SWBE)	An entity that is certified as a WBE and is in complete compliance with its size standard requirement as established by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.
Sole Proprietorship	An individually owned business whose assets are wholly owned by a single individual.
Strategic Alliance	An association, not a legal entity, of two or more separate businesses that come together to pursue business opportunities.
Subsidiary	An entity in which another entity (i.e. the parent) owns at least a majority of the shares, and thus has control. For example, a corporation more than fifty percent (50%) of whose voting stock is owned by another.
Value Added	Something that is added to a product or service by a marketer or distributor that warrant a markup in the retail price.

WBENC	Women's Business Enterprise National Council.
Withdrawal of Affidavit	Any business entity may withdraw affidavit without cause, prior to certification determination, on written request.
Wholesaler	Intermediary or distributor who sells mainly to retailers, other merchants and industrial commercial and institutional users as distinguished from consumers.
Women Business Enterprise (WBE)	<p>An independent business concern:</p> <ul style="list-style-type: none"> • That is at least fifty-one percent (51%) owned and controlled by one or more women who are U.S. citizens or lawful permanent residents, or in the case of any publicly-owned business, at least fifty-one percent (51%) of the equity of which is owned and controlled by one or more women who are U.S. citizens or lawful permanent residents; and • Whose management and daily operation is controlled by one or more of the women owners. <p>As used in these Standards and Procedures, WBE includes SWBE's and EWBE's, as the context requires.</p>

VIII. WBE AND SWBE Eligibility Standards

RPOs will use these standards and procedures in determining whether an applicant firm is owned and controlled by women who are US Citizens or lawful permanent residents, and therefore eligible to be certified as a WBE. Legal entities must be formed in and have their principal place of business in the United States or one of its territories.

In determining eligibility, RPOs must consider all the facts in the record, viewed as a whole, as they appear at the time of the application. An eligible applicant will not be refused certification based solely on historical information indicating a lack of ownership or control of the applicant by a woman/women at some time in the past, if the applicant currently meets the ownership and control standards.

An eligible applicant will not be refused certification solely on the basis that it is a newly formed business.

A. Ownership

1. The ownership by women must be real, substantial and continuing going beyond the pro-forma ownership of the business as reflected in its ownership documents.

2. The applicant must share in all risk and profits commensurate with her ownership interest as demonstrated by a detailed examination of the substance of her business arrangements with others.
3. All securities that constitute ownership of a business shall be held directly by the woman or women, or held in a trust that is one of the types of trusts described in Section VII.A.5.e. "Trusts."
4. Contribution of Capital Or Expertise:
 - a. Contribution of capital and/or expertise by women owners to acquire their ownership interest shall be real and substantial and be in proportion to the interest(s) acquired.
 - b. Insufficient contributions shall include, but shall not be limited to promises to contribute capital or expertise in the future, a note payable to the business or its owners who are not women, or the mere participation as an employee.
5. Business Structures and ownership vehicles. Legal entities must be formed in and have their principal place of business in the United States or one of its territories.
 - a. Sole Proprietor
 - i. In a sole proprietorship, the woman must own one hundred percent (100%) of the company assets.
 - b. Corporation
 - i. In a corporate form of organization, women principal(s) must own at least fifty-one percent (51%) of each class of voting stock outstanding and fifty-one percent (51%) of the aggregate of all stock outstanding.
 - ii. Any voting agreements among the shareholders must not dilute the beneficial ownership, the rights, or the influence of the women owners of the stock or classes of stock of the corporation.
 - iii. Women owners shall possess the right to all customary incidents of ownership (e.g., ability to transfer stock, title possession, enter binding agreements, etc.).

- iv. Nonprofit corporations do not meet this requirement and are therefore not eligible for certification.

c. Partnerships

- i. General Partnership. In a general partnership, women owners must own at least fifty-one percent (51%) of the partnership interests.

- ii. Limited Partnership

- 1. In a limited partnership, the women general partners must own at least fifty-one percent (51%) of the general partnership interest and exert at least fifty-one percent (51%) of the control among general partners. The women general partners must receive at least fifty-one percent (51%) of the profits and benefits, including tax credits, deductions and postponements distributed or allocable to the general partner.
- 2. In addition, the women limited partners must own at least fifty-one percent (51%) of the limited partnership interests and receive at least fifty-one percent (51%) of the profits and benefits, including tax credits, deductions and postponements distributed or allocable to the limited partners.

d. Limited Liability Companies

- i. In a Limited Liability Company, Women principal(s) must own at least fifty-one percent (51%) of membership interests, and at least fifty-one percent (51%) of the management and control among the members.
- ii. The women principals must also participate in all risks and profits of the organization at a rate commensurate with their membership interests.

e. Trusts

- i. In order to be counted as owned by women, securities held in a trust must meet the following requirements, as applicable:
 - 1. *Irrevocable trusts.* The beneficial owner of securities held in an irrevocable trust is a woman who is not a minor, and all the trustees are women, provided that, a

Financial Institution (as defined in the Section VII. Definitions) may act as trustee.

2. *Revocable trusts.* The beneficial owner of securities held in a revocable trust is a woman who is not a minor, all the grantors are women, and all the trustees are women, provided that, a Financial Institution (as defined in Section VII. Definitions) may act as trustee.
3. *ESOPs.* Securities owned by women who are participants in an employee stock ownership plan qualified under Section 401 of the Internal Revenue Code, 1986, as amended, and held in a trust where all of the trustees are women, provided that, a Financial Institution (as defined in Section VII. Definitions) may act as trustee.
4. *Other requirements.* Businesses whose securities are owned in whole or part in a trust are not thereby exempt from the other requirements of this Section VIII.

B. Control

The applicant must show evidence that the woman/women owner(s) have control of the business. “Control” means the primary power to direct the management of a business enterprise as evidenced through the governance documents and actual day-to-day operation. The following factors will be examined in determining who controls an applicant.

1. Governance

- a. The organizational and governing documents of an applicant (e.g. Limited Liability Company Operating Agreements, Partnership Agreements, or Articles of Incorporation and By-laws) must not contain any provision, which restricts the ability of the woman/women business owner(s) from exercising Managerial Control and Operational Authority of the business.
- b. In reviewing governance documents and issues, special attention shall be given to:
 - i. The composition of the business’s governing body (e.g., board of directors or management committee);
 - ii. The functioning of the governing body;
 - iii. The content of shareholder’s agreements, bylaws, or state incorporation statutes, and the extent to which such

agreements, bylaw(s), or statutes affect the ability of the woman/women owner(s) to direct the management and policy of the business;

- iv. A woman business owner must hold the highest officer position in the company (i.e. President or Chief Executive Officer by whatever title).

2. Operation and management

- a. The woman/women owner(s) must possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy and operations. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the woman/women owner(s).
- b. A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the female employee-owner has management responsibilities and capabilities.
- c. In the event that the actual management of the business is contracted or carried out by individuals other than the woman/women owner(s), those persons who have the ultimate power and expertise to hire and fire the managers can, for this purpose, be considered as controlling the business.
- d. The woman owner or another such women must hold the highest officer position in the company (i.e. Chief Executive Officer or President by whatever title).
- e. The applicants must show evidence that the woman/women owner(s) have operational authority and managerial control of the applicant. In evaluating this evidence, the following factors will be considered:
 - i. Operational Authority. “Operational Authority” means the extent to which the woman/women owner(s) actually operate the day-to-day business. Assessments of operational control will rest upon the peculiarities of the industry of which the business is a part. In order to ascertain the level of operational control of the woman/women owner(s), the following will be considered:
 - 1. Experience: The woman/women owner(s) shall have education, demonstrable working knowledge and/or experience in the area of specialty or industry claimed in the certification application.

2. Responsibility for Decision-Making: The woman/women owner(s) shall be able to demonstrate her role in making basic decisions pertaining to the daily operation of the business.
 3. Technical Competence: The woman/women owner(s) shall have technical competence in the industry or specialty of the applicant business and/or a working knowledge of the technical requirements of the business sufficient enough to critically evaluate the work of subordinates.
- ii. Managerial Control. “Managerial Control” is the demonstrated ability to make independent and unilateral business decisions necessary to guide the future and destiny of the business. Managerial control may be demonstrated in a number of ways. For a woman/women owner(s) to demonstrate the extent of her managerial control, the RPO will consider the following (not intended to be all inclusive) areas of routine business activity:
1. The woman/women owner(s) must produce documents that clearly indicate her **control of basic business functions**, e.g., authority to sign payroll checks and letters of credit, signature responsibility for insurance and/or bonds, authority to negotiate contracts and financial services.
 2. Agreements for support services that do not impair the woman/women owner(s)’s control of the company are permitted as long as the owner’s power to manage the company is not restricted or impaired as determined by the RPO in its sole administrative discretion.
3. Independence
- a. Performance
 - i. The woman/women owner(s)’s expertise must be indispensable to the business’s potential success.
 - ii. The woman/women owner(s) shall have the ability to perform in its area of specialty/expertise without substantial reliance upon finances and resources (e.g., equipment, automobiles, facilities, etc.) of males or non-woman business enterprises.
 - b. Test of Independence. Recognition of the applicant as a separate and distinct entity by governmental taxing authorities shall not be a sole

determinant of any applicant's assertions of independence. Test criteria include, but are not be limited to the following:

- i. Applicant's relationship with a non-female company that involves any long-term contract or lease agreements.
- ii. Applicant's status as a party to any contract or lease agreement on terms at variance with industry standards or prudent business practices.
- iii. Interlocking ownership of the applicant and non-woman business enterprise in the same industry.
- iv. Common directors/officers/members between the applicant and non-woman business enterprises.
- v. Applicant's use of employees, equipment, expertise, facilities, etc., "shared" with or obtained from a non-woman owned company.
- vi. The receipt by the non-women of financial benefits (i.e. profits, wages, etc.) shall be commensurate with the duties performed.
- vii. An applicant's business that cannot operate without licenses, permits and/or insurance held by another business is not independent. The business must possess all legal requirements necessary to legally conduct business.
- viii. A Broker, Dealer, or Manufacturers Representative, unless it is the standard for the industry, generally does not qualify for certification.

C. Size Standards

Determination of business size will be made in accordance with 13 CFR Part 121.2 guidelines.

If an applicant has met the WBE eligibility criteria and meets the Small Business Administration size standards in CFR 13 Part 121.2, the business will be certified as a Small Women Business Enterprise (SWBE). When considering size standard eligibility for SWBEs, all affiliates must be included. For the procedure to be followed in considering affiliates, see Section X. Certification Procedures. For a definition of affiliates, see Section VII. Definitions.

D. Definitions.

All terms defined in Section VII. Definitions are used in this Section VIII. with the meanings defined in Section VII. Definitions.

IX. Certification Committees

A. National Certification Committee

The National Certification Committee is comprised of volunteers responsible for the establishment and consistent implementation of a national uniform standard and procedure for WBE Certification.

1. Composition

- a. The committee shall consist of an odd number, but no less than five (5) members.
- b. The committee will reflect the WBENC Board with 2/3 Corporate members, 1/6 WBE members and 1/6 RPO executives.
- c. It is desirable that the committee includes an attorney and a Certified Public Accountant.
- d. Closed Committee – Only Members may attend the meetings.

2. Appointment

- a. The WBENC Board of Directors will appoint the Corporate committee members annually and as needed.
- b. The Women's Forum will appoint the WBE's committee members annually and as needed.
- c. The Leadership Council will appoint the RPO committee members annually and as needed.

3. Length of Term. Committee members will serve a term of no less than two (2) years from the date of appointment, and will be renewed annually thereafter.

4. Eligibility and Training

- a. National certification committee members must have served on a local certification committee prior to appointment.

- b. New members will receive the most current training within the first six (6) months of identification and will be retrained, at a minimum, every third year thereafter.
 - c. May not miss more than two (2) meetings during a calendar year without prior approval or will be automatically removed from the committee.
 - d. Each member will sign a confidentiality agreement. A copy of which must be maintained in the WBENC office in accordance with WBENC Retention and Destruction Guidelines.
5. Meetings
- a. The National Certification Committee will meet at a minimum, quarterly, with additional face-to-face and conference call meetings as deemed necessary.
 - b. Quorum for each meeting is a simple majority of those serving on the committee.
6. Responsibilities
- a. Scope of Work
 - i. To provide an ongoing review of current Standards and Procedures for clarity and consistency.
 - ii. To make ongoing recommendations for updates to the Standards and Procedures based on evolving business practices and legal and financial models.
 - iii. To provide a recommendation of final remedy for appeals of denied applications.
 - iv. To provide a specialized certification review process for applicants companies with revenues in excess of \$500,000,000 or other special issues.
 - b. Function
 - i. Staff: information collection and dissemination only.
 - ii. Certification Committee: discussion and recommendation.
7. Anonymity of Committee Members. The identity of the committee members is private or undisclosed to the public. The committee acts in an

advisory capacity to WBENC. The responsibility for the decision to approve or disapprove eligibility rests in the WBENC Board of Directors and President. This policy is intended to minimize attempts by potential buyers or potential vendors in the application process to “lobby” or influence the outcome of the decision of the committee. Therefore, the identity of committee members remains secret to anyone outside of the decision-making process of WBENC and other committee members.

8. Conflicts of Interest

- a. Any corporate or public entity committee member with a vested interest in the outcome of an eligibility review will disclose that interest and voluntarily abstain from all discussion and vote.
- b. Any WBE committee member with a competitive and/or business interest will disclose that interest and voluntarily abstain from all discussion and vote.
- c. WBENC staff is ineligible to vote.

B. Local Certification Committee

The Local Certification Committee is comprised of volunteers responsible for rendering a recommendation of certification or denial to the Executive Director or President of the RPO.

1. Composition

- a. The committee shall consist of an odd number, but no less than five (5) members. The majority of the committee will, to the extent possible, be comprised of representatives from corporations/public entities, and the remainder will be WBE representatives (or representatives of community-based organizations with a related purpose). It is desirable that the committee includes an attorney and a Certified Public Accountant.
- b. All RPOs should use a confidentiality agreement in a form substantially similar to the WBENC confidentiality agreement or as approved by their local counsel. All committee members and staff must sign this confidentiality agreement before reviewing files, a copy of which must be maintained in the local RPO office in accordance with WBENC Retention and Destruction Guidelines.

2. Appointment. The RPO will appoint committee members annually or as needed.

3. Length of Term. Committee members will serve a term of no less than two (2) years from the date of appointment, and will be renewed annually thereafter.
4. Training
 - a. Local certification committee members will be initially trained within the first six (6) months of identification and will be retrained, at a minimum, every third year thereafter.
5. Meetings
 - a. The Certification Committee will meet at a frequency as deemed necessary by the Executive Director or President of the RPO, and, at a minimum, quarterly.
 - b. A Quorum for each meeting is five (5) members.
6. Responsibilities
 - a. Scope of Work
 - i. Documentation Review.
 - ii. On-Site Review.
 - iii. Recommendation to the Executive Director or President of the RPO.
 - b. Function
 - i. Staff: information collection and dissemination only.
 - ii. Certification Committee: discussion and recommendation.
7. Anonymity of Committee Members. The identity of the committee members is private or undisclosed to the public. The committee acts in an advisory capacity to the RPO. The responsibility for the decision to approve or disapprove eligibility rests in the Executive Director or President of the RPO. This policy is intended to minimize attempts by potential buyers or potential vendors in the application process to “lobby” or influence the outcome of the decision of the committee. Therefore, the identity of committee members remains secret to anyone outside of the decision making process of the RPO and other committee members.

8. Anonymity of Business Affiliation. The business affiliation of WBE committee members shall not be disclosed or otherwise discussed during site visits.
9. Conflicts of Interest
 - a. Any corporate or public entity committee member with a vested interest in the outcome of an eligibility review will disclose such interest and voluntarily abstain from all discussion and vote.
 - b. Any WBE committee member with a competitive and/or business interest will disclose such interest and voluntarily abstain from all discussion and vote.
 - c. WBENC and local RPO staffs are ineligible to vote.

X. Certification Procedures

The following details the certification process for all applicants seeking WBE certification by the RPO. Information will be reviewed and analyzed as it exists on the date the affidavit is signed and notarized. Organizational changes subsequent to the notarization date will not be considered during the eligibility review process. The RPO will request any and all documentation deemed necessary to establish a business' ownership and control by women. The decision to certify or deny an application will be based on the WBENC guidelines in effect at the time the application is evaluated.

- A. If an applicant fails to complete the documentation within the review and analysis period, the applicant will be notified that its affidavit will not be reviewed further and application will be filed as non-responsive. A new affidavit will not normally be accepted for a period of six (6) months or at the RPO's discretion.
- B. Once an applicant submits a completed affidavit and appropriate supporting documentation, the following procedures will apply:
 1. The submitted affidavit will be logged in and dated by the RPO staff for processing.
 2. RPO staff will evaluate the documentation for completeness and accuracy. The applicant's business references will be checked and other information certified by a third party as appropriate.
 3. All supporting documents must be submitted in their entirety prior to certification committee review and will be maintained as part of the permanent file.
 4. Files must remain in the custody and control of the RPO at all times.

5. As provided in Section VIII. WBE and SWBE Eligibility Standards, the RPO certification committee will conduct a documentation review and an on-site review.
 - a. Documentation Review
 - i. Local Certification Committee members bear the responsibility of an initial recommendation for certification or denial based on an evaluation of all submitted documentation and document to file all findings in support of the recommendation.
 - ii. At any time during the review process, committee members may request additional documents in existence at the time of application, but not requested or provided at the time of application, necessary to substantiate eligibility.
 - b. On-Site Review
 - i. Once the documentation review is completed and an initial recommendation has been made, an on-site visit at the principal place of business with the woman/women Principals/Executive Management will be conducted on one hundred percent (100%) of applicants to ensure that the findings of the Documentation Review are substantiated in the actual operation of the business.
 - ii. If the On-Site Review corroborates the Documentation Review, a final recommendation is made. If there is any conflicting information or observation uncovered during the course of the On-Site Review, the information will be thoroughly documented and resubmitted for a second review at the immediately following Local Certification Committee meeting.
- C. The RPO may request that an applicant submit to a financial review of its accounting records and books. The applicant will be advised of the RPO's request for the financial review. An applicant's failure to permit a financial review will result in denial.
- D. If certification is awarded, the WBE is notified in writing. A certificate showing the type of certification issued (according to Section E. below) and Standard Industrial Classification (SIC) Code(s) and the North American Industrial Classification System (NAICS) Code(s) indicating the functional mission of the business will be sent to the WBE. The WBE is then listed on WBENCLink for the duration of the certification period.
- E. Once an applicant has been deemed to have met the eligibility criteria, it will be certified as either:

1. A Women Business Enterprise (WBE); or
 2. Small Women Business Enterprise (SWBE) if it meets the size standard according to 13 CFR Part 121.2. When evaluating the size standard for SWBEs, all affiliates must be considered. For example, if an affidavit for an engineering business is being evaluated and the principal(s) also own a printing business, the gross revenues of both businesses must be considered in the size standard for the engineering business.
- F. If certification is denied, the applicant will be notified in writing using a standard form letter approved by the National Certification Committee, in the form of Exhibit X attached hereto. Any business that disagrees with the denial may file an appeal directly with the RPO as outlined in Section XV. Appeal Process.
- G. The WBE certification is valid for a period of one (1) year. Prior to the initial certification expiration date, WBEs are required to complete a Re-certification Affidavit.
1. The WBENCLink will transmit WBE recertification notifications to the WBE approximately three (3) months prior to the certification expiration date. However, it is the WBE's responsibility to maintain current certification. The completed Re-certification Applications will be reviewed in order of receipt.
 2. If there has been any change in ownership and/or control, documentation of the same will be required for renewal of certification. The WBE is responsible for notifying the RPO of such changes and submitting all applicable documentation.
 3. Site visits will be required every three (3) years and may be conducted at any time.
 4. A WBE that fails to submit all appropriate information/documentation for renewal within a reasonable period will have their status adjusted from "Certified" to "Expired" and its name will be removed from the RPO's Certified Supplier List. The WBE will be notified in writing of its expired status. If a WBE cannot meet the deadline due to special circumstances, an extension of time may be granted at the RPO's discretion.
 5. If by reason of a change to WBENC standards and procedures a currently certified company is no longer certifiable, a RPO may grant the company a sixty (60) day grace period from the date of the committee's review to come into compliance with the changed standard and procedure.
- H. Applicants are required to notify their certifying RPO within thirty (30) days of any substantive change in ownership or control of their business under the penalties provided by applicable law.

- I. Upon written request, an applicant may withdraw an affidavit and supporting documentation without cause or prejudice prior to a determination of eligibility.

XI. Certifying Exceptional Women's Business Enterprises

- A. Exceptional Women's Business Enterprise (EWBE) is a designation and not a new category of women business enterprises. This designation applies when:
 1. An applicant has revenues in excess of \$500,000,000.
 2. An applicant requires specialty certification and/or standard in the industry determination and standardization.

All applicants meeting these criteria will be remanded to the National Certification Review Committee.

- B. National Certification Review Committee. The National Certification Review Committee (NCRC) is an ad hoc committee of the National Certification Committee (NCC). The NCRC reviews files and makes certification recommendations for applicants meeting the definition of EWBE.

1. Composition
 - a. Five (5) members constitute a quorum.
 - b. Members of the NCRC are appointed by the National Certification Committee.
 - c. Voting Committee Members include:
 - i. Four (4) - Corporate Member Representative
 - ii. Three (3) - Government Representatives *or* WBE(s)
2. Non Voting Members of the Committee include:
 - a. Attorney
 - b. CPA
 - c. Other experts as needed
 - d. WBENC Staff

3. Process

a. Initial Review

- i. The local RPO will send the applicants' completed file to WBENC Headquarters with a request for NCRC review.
- ii. The WBENC authorized representative makes a determination of whether to submit the file to the NCRC. If the file does not meet the requirements for NCRC review, the file will be returned to the assigned RPO for local Certification Committee review.
- iii. The designated reviewer will notify the NCRC of the file.
- iv. The NCRC will convene at WBENC Headquarters to review the file.
- v. An NCRC member or a trained local certification committee member and a staff member will perform the site visit.
- vi. The NCRC will make a certify/deny recommendation to the RPO Executive Director or President.
- vii. The RPO Executive Director or President will make the final certification determination and notify the applicant of the decision within seven (7) days.

b. Recertification Review

- i. Recertification notification to be sent from certifying RPO.
- ii. Certifying RPO to receive recertification documentation and forward to NCRC.
- iii. Certifying RPO will issue recertification based on recommendation of the NCRC review and recommendation.

4. Appeal Procedure

a. If the EWBE applicant is denied WBENC certification:

- i. The applicant may request an appeal in writing to WBENC National within thirty (30) days of the date of denial. The request should be addressed to:

President
Women's Business Enterprise National Council
1120 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

- ii. Appeals will be handled in accordance with the National Appeals Process as described in Section XV.B.2. of this document.
- C. Where there are inconsistencies between the Standards and Procedures in this Section and other Sections of the Standards & Procedures, as it relates to EWBEs the standards and procedures in this Section will prevail.

XII. Certifying Franchises

- A. A business operating under a franchise or license agreement may be certified if it meets the standards in Section VIII. WBE and SWBE Eligibility Standards and:
- 1. The franchise agreement between the franchisor and the franchisee seeking WBE certification must not contain any provision which unreasonably restricts the ability of the woman business owner(s) from exercising Managerial Control and Operational Authority of the business.
- B. In reviewing the franchise agreement, special attention shall be given to circumstances which, for certification purposes, shall be considered as restricting control and authority of the woman business owner(s). These include, but are not limited to,
- 1. Termination of the franchise agreement by the franchisor without cause;
 - 2. Lack of ownership of receivables by the franchisee;
 - 3. Exclusive ownership of account receivables and/or contracts by the franchisor;
 - 4. Restrictions on the sale of the business below market value;
 - 5. Terms and conditions not related to the brand or systems can be altered without franchisee's notification and/or approval;
 - 6. Contracts are prepared and approved by the franchisor;
 - 7. Management decisions cannot be made independently by the franchisee;
 - 8. No financial risk is borne by the franchisee;

9. Hiring and firing decisions cannot be made independently by the franchisee;
 10. Equity interest in the franchise is owned by the franchisor.
- C. Where there are inconsistencies between the standards and procedures in this Section and other Sections of the Standards & Procedures, as it relates to franchises the procedures in this Section will prevail.

XIII. Challenge Procedures

Any third party may challenge the WBE status of any WBE. Confidentiality of challenging party's identity is to be protected. The challenge must be made in writing to the Executive Director or President of the RPO that processed the certification. Within its letter, the challenging party must include evidence challenging the eligibility of a WBE.

Within ten (10) business days, the Executive Director or President of the RPO will determine, on the basis of the information provided by the challenging party, whether there is reason to evaluate the challenge.

- A. If the Executive Director or President determines that the challenge is not credible, the challenging party will be so informed in writing and the investigation of the WBE will be closed. If the challenging party believes the determination is in error, it may appeal the decision to the WBENC Board of Directors.
- B. If the Executive Director or President determines that there is reason to believe that the WBE is not a *bona fide* WBE, the following steps will be taken:
 1. The WBE will be notified in writing that its WBE certification has been challenged. This notice will identify and summarize the grounds for the challenge. This notice will require the WBE to provide the Executive Director or President with information/documentation to refute the challenge within a time frame specified by the Executive Director or President.
 2. Once the requested information is received, the Executive Director or President will evaluate the information/documentation available and make a preliminary determination. The Executive Director or President will notify the WBE and the challenging party of the preliminary determination in writing, setting forth the reasons for the decision. The Executive Director or President may also provide an opportunity to the parties for a hearing to respond to the determination in person.
 3. Within ten (10) business days of the receipt of the requested information or hearing, whichever is later, the Executive Director or President will make a final determination and inform the parties in writing of the reason for the determination.

- a. If the determination is to decertify the WBE, the Executive Director's or President's determination may be appealed by the WBE to the WBENC in accordance with the procedures described in Section XV. Appeal Process.
- b. While a challenge is pending, the WBE certification will *remain in effect*.

XIV. De-certification Process

- A. WBEs may be de-certified by the RPO and suspended from eligibility in any of the participating entities' WBE programs for any of the following reasons:
 1. If the business entity's ownership and/or control by women has changed to the extent that the business is no longer a *bona fide* WBE in the RPOs reasonable judgment; or
 2. If due to a challenge or some other reason, including WBENC Program Reviews, a business entity's current certification eligibility is re-examined and the business is found not to be a *bona fide* WBE; or
 3. If a business is found to be engaging in business practices on any of the member's projects that circumvent the intent of the WBE programs.
 4. Any official from the RPO or any of its members or any other interested party that discovers irregularities relative to the WBE status of any of the RPOs' certified suppliers may provide a written statement to the RPO citing noted irregularities. Person(s) specifically challenging a business's WBE status will be advised of the RPOs WBE Challenge Procedure (See Section XIII. Challenge Procedures).
 5. WBEs that are no longer active business entities, as well as suppliers that do not respond to requests for updated or new certification information/documentation will be removed from the RPOs' Certified Supplier List. Reinstatement will require complete re-application for WBE certification.
- B. Within ten (10) business days of the de-certification determination, the Executive Director or President will notify the WBE of the decision and summarize the reasons for the decision.
- C. Any business that believes that it has been wrongly decertified as a WBE may appeal as prescribed in Section XV. Appeal Process.

XV. Appeal Process

An applicant denied certification may appeal that decision to the local RPO Board of Directors following the procedures found at Section XV.A.

A further appeal may be made to the WBENC Board of Directors following the procedures found at Section XV.B. The decision of the WBENC Board of Directors is final and the applicant and the RPO agree to abide thereby.

An applicant denied certification as a small business (separate and apart for WBE certification) must appeal to the Small Business Administration.

A. Local Appeals

1. Local Appeals Committee

- a. The local appeals committee will be comprised of a minimum of three (3) certification trained members appointed by the Certification Committee Chair. The Committee will always consist of an odd number of members.
- b. Committee members will serve a term of no less than two (2) years from the date of appointment.
- c. A quorum will be three (3) and a quorum must be present to render a recommendation.
- d. The committee will use only WBENC Standards and Procedures in support of their decisions.
- e. All committee members must sign a non-disclosure statement before reviewing files, a signed copy of which must be maintained in the local RPO office in accordance with WBENC Retention and Destruction Guidelines.

2. Local Appeals Process

- a. Business denied certification by the RPO might request a meeting with the RPO's Executive Director or President to discuss the specific reasons for such denial. Said meetings are solely for informational purposes and are not intended, nor are they to be construed, as a hearing or appeal of the RPO's certification determination.
- b. An applicant may appeal the Executive Director's or President's decision by making a request in writing to the RPO Board of Directors no later than thirty (30) days from the date of the denial letter.

- c. The RPO Board of Directors will contact the applicant to schedule an appeal date. During the appeal, the RPO Appeals Committee will consider all information as presented during the initial certification application process as well as any relevant and/or requested additional information. *Changes in the business' ownership and control subsequent to the applicant's request for certification shall not be considered as evidence during the appeal process.*
- d. Within thirty (30) days of the request for appeal, the Local Appeals Committee will convene, review the file and make a recommendation to the RPO Board of Directors.

Note: The RPOs original certification determination remains in effect pending any appeal.

- i. If the local appeal committee recommendation is to uphold the denial, BUT for reasons other than the original denial, applicant will be notified of new reason(s) and given 14 days from date of notification to respond to new reason(s) for denial.
10. Within thirty (30) days of the Appeal Committee's recommendation, the RPO Board of Directors will evaluate the recommendation and make one of the following determinations:

- The RPO Board of Directors will overturn the decision of the Executive Director or President, affecting the acceptance of the business' certification; or,
- The RPO Board of Directors will uphold the decision of the Executive Director or President to deny.

The applicant will be informed of the decision in writing within seven (7) days. The decision by the RPO Board of Directors' shall be final unless overturned by the WBENC Board of Directors.

11. If the decision of the RPO Board of Directors results in a denial, then the applicant may re-apply for certification one (1) year from the date of receipt of completed application.
12. If a business believes that its denial of certification by the RPO and its Board of Directors is in error, it may file an appeal in writing with the WBENC Board of Directors. The appeal must be filed no later than one hundred and eighty (180) days after the original date of denial. The appeal must be addressed to:

President
Women's Business Enterprise National Council
1120 Connecticut Avenue NW
Suite 1000
Washington, DC 20036

B. National Appeals

1. National Appeals Sub-Committee

- a. The Appeals Sub-Committee will be made up of a minimum of five (5) WBENC certification trained members appointed by the Certification Committee Chair. The sub-committee must always consist of an odd number.
- b. A quorum will be a simple majority and a quorum is required to review an appeal.
- c. The sub-committee will use only WBENC Standards and Procedures in support of their decision.
- d. All sub-committee members must sign a non-disclosure statement before reviewing files, a signed copy of which must be maintained in the WBENC office in accordance with the WBENC Retention and Destruction Guidelines.

2. National Appeals Process

- a. Within (10) business days, the President of WBENC will determine, on the basis of the information provided by the appellant business and the RPO, whether there is reason to evaluate the appeal. Changes in the business' ownership and control subsequent to the applicant's request for certification by the RPO shall not be considered as evidence during the appeal process.
- b.
 - i. If the President determines that there is not evidence to consider for appeal, the appellant business will be so informed in writing and the denial upheld.
 - ii. If the President determines that there is evidence for appeal, the documentation will be forwarded to the National Appeals Committee for review at the next convened meeting.

- c. The WBENC staff will obtain a copy of the original file from the RPO within fourteen (14) days and distribute copies to the Appeals Sub-Committee.
- d. All copies of files used by the Appeals Sub-Committee must be returned to WBENC for destruction by means that do not allow for easy reconstruction. WBENC will retain all supporting rationale documentation, in accordance with the WBENC Retention and Destruction Guidelines.
- e. The National Appeals Sub-Committee will convene within one-hundred eighty (180) days to discuss the file and supporting documentation and to formulate a recommendation.
 - i. If the national appeal committee recommendation is to uphold the denial, BUT for reasons other than the original denial, applicant will be notified of new reason(s) and given 14 days from date of notification to respond to new reason(s) for denial.
- f. The National Appeals Sub-Committee will render a recommendation to the WBENC Board of Directors via the WBENC President to either:
 - i. Overturn the decision of the RPO and approve the applicant's business, thus certifying the applicant, or;
 - ii. Uphold the decision of the RPO, sustaining the denial.
- g. The Chairperson of the Certification Committee will communicate the committee's recommendation to the Board of Directors at scheduled Board Meetings.
- h. The President of WBENC will communicate the final decision and its supporting rationale to the RPO Executive Director or President.
- i. The President of WBENC will officially notify the woman business owner of the Board's final decision.
- j. The National Appeals Sub-Committee will prepare a summary document of the appeal decision, if the denial is overturned, for distribution to the Chairperson of the National Certification Committee and the Chairperson of the local RPO Certification Committee.
- k. If the decision of the WBENC Board of Directors results in upholding the denial, the applicant may re-apply for certification one (1) year from the date of receipt of a complete application.

XVI. Program Review Procedures

The WBENC maintains the right and responsibility to perform periodic program reviews of the RPOs to ensure adherence to the certification standards and compliance with the procedures outlined herein. The review will be conducted by the Director of Compliance or other trained staff so designated by the Vice President of Alliance Relationships. It is recommended that all RPOs be reviewed on an annual basis.

A RPO whose latest review is found to be in compliance with the Standards and Procedures; has no significant negative findings and/or corrective actions; and has not had a change in the Executive Director or President and/or Program Manager during the year from the last review will have a Program Review done every other year, unless otherwise specifically requested by the Executive Director or President.

Overall Program Review Guidelines – The purpose of the guidelines is to ensure that each RPO is in compliance with the WBENC Standards and Procedures for WBENC certification.

- A. Documentation review
 - 1. No fewer than five (5) files randomly selected for review
 - 2. When practical, include a mix of no less than one (1):
 - a. Sole Proprietor
 - b. Corporation
 - c. Partnership
 - d. Limited Liability Corporation
 - e. Denial
 - 3. All files where the final decision of the Executive Director or President differs from the recommendation of the Certification Committee must be included in the review.
- B. Procedural review to be conducted during actual RPO committee review of files for procedural compliance verification. No fewer than two (2) files will be followed through committee review. The designated reviewer will:
 - 1. Verify Certification Affidavit, documentation review forms and associated documentation and forms are complete and filed.
 - 2. Document review results.
- C. Program Review Results and Recommendations

1. The designated reviewer will:
 - a. Review results with RPO Executive Director or President and document explanations for inclusion in report.
 - b. Provide remedial action recommendations to Executive Director or President.
 - c. Forward program review results, Executive Director or President explanations and recommendations to WBENC President for action and to WBENC Certification Committee Chair for review.
 - d. Request Executive Director or President formulate remedial action plan within thirty (30) days and forward to WBENC President.
 - e. In the event Alliance Relationships recommends a file be decertified and the RPO disputes said recommendation, the challenge process in Section XIII. Challenge Procedures will be followed. Any Appeals resulting from a Program Review Challenge will follow the process beginning in Section X. B. – National Appeals.
 - f. In the event Alliance Relationships recommends a file to be certified that was previously denied, and the RPO disputes said recommendation the Appeals process in Section IX.B will be followed.
2. WBENC President will:
 - a. Review report, Executive Director or President explanations, recommendations and remedial action plan with RPO Executive Director or President.
 - b. Approve remedial action plan and completion date, which will not exceed six (6) months from initial report review between Executive Director or President and designated reviewer.

D. Logistics

1. Designated reviewer completes report and reviews results with Executive Director or President.
2. Executive Director or President provides comments for inclusion in report.
3. Designated reviewer recommends remedial action plan to Executive Director or President.
4. Designated reviewer forwards report, Executive Director or President comments and action plan recommendations to WBENC President with a

copy to Certification Committee.

5. WBENC President reviews report, Executive Director or President comments and proposed action plan with Executive Director or President.
6. WBENC President and Executive Director or President will agree on action plan and its completion date, which will not exceed six (6) months from the initial report review date between the Executive Director or President and the designated reviewer.
7. WBENC President will recommend disaffiliation to the WBENC Board of Directors if agreement cannot be reached on the final action plan or the completion date

XVII. Non-Eligible Businesses

Agents, brokers, non-profit organizations, manufacturer's representatives, strategic alliances, as defined in Section VII. Definitions, are not certifiable unless standard in the industry.