

WAC 326-20-050 Proof of ownership of business. (1) General rule: A socially and economically disadvantaged owner must own at least 51 percent of each class of ownership of the firm. Each socially and economically disadvantaged owner whose ownership is necessary to the firm's eligibility must demonstrate that their ownership satisfies the requirements of this section. If not, the firm is ineligible.

(2) Overall requirements. A socially and economically disadvantaged owner's acquisition and maintenance of an ownership interest meets the requirements of this section only if the owner demonstrates the following:

(a) Acquisition. The socially and economically disadvantaged owner acquires ownership at fair value and by one or more "investments" as defined in subsection (3) of this section.

(b) Proportion. No owner derives benefits or bears burdens that are clearly disproportionate to their ownership shares.

(c) Maintenance. This section's requirements continue to apply after the socially and economically disadvantaged owner's acquisition and the firm's certification. The socially and economically disadvantaged owner must maintain their investment and its proportion relative to those of other owners such that eligible individuals retain at least 51 percent ownership.

(i) The socially and economically disadvantaged owner may not withdraw or revoke their investment.

(ii) When an existing co-owner contributes significant, additional, post-acquisition cash or property to the firm, the socially and economically disadvantaged owner must increase their own investment to a level not clearly disproportionate to the nondisadvantaged owner's investment.

(iii) An organic increase in the value of the business does not affect maintenance because the value of the owners' investments remains proportional.

(3) Investments. A socially and economically disadvantaged owner may acquire ownership by purchase, capital contribution, or gift. Subject to the other requirements of this section, each is considered an "investment" in the firm, as are additional purchases, contributions, and qualifying gifts.

(a) Investments are unconditional and at full risk of loss.

(b) Investments include a significant outlay of the socially and economically disadvantaged owner's own money.

(c) For purposes of this part, title determines ownership of assets used for investments and of ownership interests themselves. This rule applies regardless of contrary community property, equitable distribution, banking, contract, or similar laws, rules, or principles.

(i) The person who has title to the asset owns it in proportion to their share of title.

(ii) However, the title rule is deemed not to apply when it produces a certification result that is manifestly unjust.

(d) If the socially and economically disadvantaged owner jointly (50/50) owns an investment of cash or property, the socially and economically disadvantaged owner may claim at least a 51 percent ownership interest, only if the other joint owner formally transfers to the socially and economically disadvantaged owner enough of his ownership in the invested asset(s) to bring the socially and economically disadvantaged owner's investment to at least 51 percent of all investments in the firm. Such transfers may be gifts described in subsection (5) of this section.

(4) Purchases and capital contributions.

(a) The following situations qualify as purchase and/or capital contributions:

(i) A purchase of an ownership interest is an investment when the consideration is entirely monetary and not a trade of property or services.

(ii) Capital that the socially and economically disadvantaged owner contributes directly to the company is an investment when the contribution is all cash or a combination of cash and tangible property and/or realty.

(iii) Debt-financed purchases or capital contributions are investments when they comply with the requirements of this section.

(b) The following situations do not qualify as purchase and/or capital contribution:

(i) Contributions of time, labor, services, and the like are not investments or components of investments.

(ii) Loans are not investments. The proceeds of loans may be investments to the extent that they finance the socially and economically disadvantaged owner's qualifying purchase or capital contribution.

(iii) Guarantees are not investments.

(iv) The firm's purchases or sales of property, including ownership in itself or other companies, are not the socially and economically disadvantaged owner's investments.

(v) Other persons' or entities' purchases or capital contributions are not the socially and economically disadvantaged owner's investments.

(5) Gifts. A gift to the socially and economically disadvantaged owner is an investment when it meets the requirements of this section. The gift rules apply to partial gifts, bequests, inheritances, trust distributions, and transfers for inadequate consideration. They apply to gifts of ownership interests and to gifts of cash or property that the socially and economically disadvantaged owner invests. The following requirements apply to gifts on which the socially and economically disadvantaged owner relies for their investment:

(a) The transferor/donor is or immediately becomes uninvolved with the firm in any capacity and in any other business that contracts with the firm other than as a lessor or provider of standard support services;

(b) The transferor does not derive undue benefit; and

(c) A writing documents the gift. When the socially and economically disadvantaged owner cannot reasonably produce better evidence, a receipt, canceled check, or transfer confirmation suffices, if the writing identifies transferor, transferee, amount or value, and date.

(d) Curative measures. The rules of this section do not prohibit transactions that further the objectives of, and compliance with, the provisions of this part. A socially and economically disadvantaged owner or firm may enter into legitimate transactions, alter the terms of ownership, make additional investments, or bolster underlying documentation in a good faith effort to remove, surmount, or correct defects in eligibility, as long as the actions are consistent with this part.

(i) The certifier may notify the firm of eligibility concerns and give the firm time, if the firm wishes, to attempt to remedy impediments to certification.

(ii) The firm may, of its own volition, take curative action up to the time of the certifier's decision. However, it must present evidence of curation before the certifier's decision.

(iii) The certifier may provide general assistance and guidance but not professional (legal, accounting, valuation, etc.) advice or opinions.

(iv) While the certifier may not affirmatively impede attempts to cure, it may maintain its decision timeline and make its decision based on available evidence.

(v) The certifier must deny or remove certification when the firm's efforts or submissions violate the rules in (e) of this subsection.

(e) Anti-abuse rules.

(i) The substance and not the form of transactions drives the eligibility determination.

(ii) The certifier must deny applications based on sham transactions or false representations, and it must decertify firms that engage in or make them. Transactions or representations designed to evade or materially mislead subject the firm to the same consequences.

(iii) Fraud renders the firm ineligible and subjects it to possible sanctions, suspension, debarment, criminal prosecution, civil litigation, and any other consequence or recourse not proscribed in this part.

(6) Debt-financed investments.

(a) Subject to the other provisions of this subpart, a socially and economically disadvantaged owner may borrow money to finance an investment to acquire ownership if the following requirements are met:

(i) Money that the socially and economically disadvantaged owner receives as a gift is their own money.

(ii) The firm does not finance any part of the investment, directly or indirectly. The socially and economically disadvantaged owner does not rely on the company's credit or other resources to repay any part of the debt or otherwise to finance any part of their investment.

(iii) The loan is real, enforceable, not in default, not offset by another agreement, and on standard commercial, arm's length terms. The loan agreement requires level, regularly recurring payments of principal and interest, according to a standard amortization schedule. The loan agreement must permit prepayments, including by refinancing.

(b) If the creditor forgives or cancels all or part of the debt, or the socially and economically disadvantaged owner defaults, the entire debt-financed portion of the socially and economically disadvantaged owner's purchase or capital contribution is no longer an investment. This does not prohibit refinancing with debt that meets the requirements of this section or preclude prompt cures of ownership issues.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-050, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-050, filed 6/7/19, effective 7/8/19; WSR 04-08-093, § 326-20-050, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-050, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 87-18-030 (Order 87-6), § 326-20-050, filed 8/27/87; WSR 84-09-002 (Order 84-5), § 326-20-050, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-050, filed 10/28/83.]