

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6515

**MEMORANDUM**

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**To:** Members, Subcommittee on Contracting and Infrastructure  
**From:** Jared Golden, Chairman  
**Date:** May 16, 2019  
**Re:** Subcommittee Hearing: Oversight of the SBA's Women-Owned Small Business Federal Contract Program

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The Committee on Small Business, Subcommittee on Contracting and Infrastructure, will meet for a hearing titled: "Oversight of the SBA's Women-Owned Small Business Federal Contract Program." The hearing is scheduled to begin at **10:00 A.M. on Thursday, May 16, 2019 in Room 2360 of the Rayburn House Office Building.**

The Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (hereinafter 2015 NDAA) brought significant changes to the Women-Owned Small Business Program (WOSB Program).<sup>1</sup> In 2019, the Government Accountability Office (GAO) issued a report discussing the extent to which these changes had been implemented by the Small Business Administration (SBA) and reiterating oversight concerns that had been previously identified.<sup>2</sup> Thus, the hearing will focus on GAO's findings and SBA's actions to address them.

The witnesses will be:

- Mr. William B. Shear, Director, Financial Markets and Community Investment, U.S. Government Accountability Office, Washington D.C.
- Mr. Robb N. Wong, Associate Administrator, Office of Government Contracting and Business Development, U.S. Small Business Administration, Washington D.C.

**Background**

Today, women make up more than 50% of the population, have grown to be 47% of the workforce, and are increasing their footprint as business owners.<sup>3</sup> It is projected that, as of last year, woman own 12.3 million companies, employ more than 9.2 million people and generate \$1.7 trillion in revenue.<sup>4</sup> In 2018 alone, over 1,800 women owned businesses were launched each day.<sup>5</sup> Despite these great strides, women-owned businesses remain at a disadvantage in many ways, particularly

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<sup>1</sup> Pub. L. No. 113-291, §825, 128 Stat. 3292, 3437 (2014).

<sup>2</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-168, WOMEN-OWNED SMALL BUSINESS PROGRAM (2019).

<sup>3</sup> SBA Office of Advocacy, *Women's Business Ownership: Data from the 2012 Survey of Business Owners* (May 31, 2017) <https://s3.amazonaws.com/advocacy-prod.sba.fun/wp-content/uploads/2017/05/22154543/Womens-Business-Ownership-in-the-US.pdf>.

<sup>4</sup> American Express, *The 2018 State of Women Owned Business Report*, [https://about.americanexpress.com/files/doc\\_library/file/2018-state-of-women-owned-businesses-report.pdf](https://about.americanexpress.com/files/doc_library/file/2018-state-of-women-owned-businesses-report.pdf).

<sup>5</sup> *Id.*

within the federal procurement marketplace. In 1994, the Federal government established a five percent procurement goal for women-owned businesses. However, twenty-five years later that goal has been achieved just once. In FY 2017, women-owned small businesses received \$20.8 billion, or 4.71 percent of all contracting dollars, missing their goal—a lost opportunity of over \$1.28 billion for women owned small businesses.<sup>6</sup>

### **How the Woman Owned Small Business Program (WOSB) Works**

As the largest purchaser of goods and services in the world, spending nearly \$442 billion in FY 2017, one way the Federal government stays competitive is by utilizing the services and products of small businesses that participate in federal contracts.<sup>7</sup> Recognizing the importance of women-owned businesses and the difficulties they face accessing federal contracting opportunities, Congress created the WOSB program through the Small Business Reauthorization Act of 2000.<sup>8</sup> Despite the merits of the program, it began operating in 2011, more than a decade after its promulgation, once the Small Business Administration (SBA) issued its final rule on October 7, 2010.

The WOSB program levels the playing field by restricting competition for federal contracts to qualified women-owned small businesses in industries where women are substantially underrepresented. Additionally, there is a subset of contracts reserved solely for Economically Disadvantage Women-Owned Small Businesses (EDWOSBs). EDWOSBs can receive contracts in either WOSB or EDWOSB eligible industries.

To qualify for the WOSB program;

- a business must meet the small business size standards;
- be 51% owned and control by women who are also U.S. citizens; and
- and have women managing its day-to-day operations.

To qualify as an economically disadvantaged business within the women’s contracting program, the business must:

- meet all the requirements of the women’s contracting program (listed above);
- be owned and controlled by one or more women, each with a personal net worth less than \$750,000;
- be owned and controlled by one or more women, each with \$350,000 or less in adjusted gross income averaged over the previous three years; and
- be owned and controlled by one or more women, each \$6 million or less in personal assets<sup>9</sup>

To determine which industries are eligible for the program, the SBA must conduct a study of the NAICS codes (which represent all industries) every 5 years. As of February 2019, there were a

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<sup>6</sup> U.S. General Services Admin., Federal Procurement Data System—Next Generation, Small Business Goaling Report: Fiscal Year 2017, at [https://www.fpds.gov/downloads/top\\_requests/FPDSNG\\_SB\\_Goaling\\_FY\\_2017.pdf](https://www.fpds.gov/downloads/top_requests/FPDSNG_SB_Goaling_FY_2017.pdf).

<sup>7</sup> Small Business Admin., *FY 2020 Congressional Justification and FY 2018 Annual Performance Report*, (2019) at 57. [https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification\\_final%20508%20%204%2023%202019.pdf](https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification_final%20508%20%204%2023%202019.pdf)

<sup>8</sup> See Consolidated Appropriation Act, 2001, Pub. L. No. 106-554, §811, 114 Stat. 2763, 2763A-708 (2000).

<sup>9</sup> 13 CFR §127.200 -127.203 (2010).

total of 113 four-digit NAICS codes (representing NAICS industry groups) eligible under the WOSB program—92 eligible NAICS codes for WOSBs and 21 for EDWOSBs.<sup>10</sup>

In order to perform on a WOSB or EDWOSB contract, the business must provide documentation supporting their status as a WOSB or EDWOSB. Such documentation is required to be uploaded to certify.sba.gov and to the System for Award Management (SAM) wherein contracting officers must verify eligibility documentation. When the WOSB Program was first enacted, its statutory authority allowed WOSBs to self-certify eligibility to the program or obtain formal certification from a third party. As a result, SBA licensed four organizations to act as third-party certifiers. These are: 1) El Paso Hispanic Chamber of Commerce; 2) National Women Business Owners Corporation or NWBOC; 3) U.S. Women’s Chamber of Commerce; and 4) Women’s Business Enterprise National Council. While self-certification is free, some third-party certification options require businesses to pay a fee.

### **The 2015 NDAA Changes to the WOSB Program**

The 2015 NDAA amended multiple provisions of the Small Business Act related to the WOSB Program.<sup>11</sup> The first change the NDAA made to the WOSB was that it granted sole-source authority to provide parity with all other SBA contracting programs. Sole-source authority allows a contract officer to award a contract to a WOSB or EDWOSB without competition if the contracting officer’s market research cannot identify two or more WOSBs or EDWOSB that can execute the requirements of the contract at a fair and reasonable price.

Secondly, the legislation removed small businesses’ ability to self-certify eligibility for the WOSB program to address concerns of false self-certification.<sup>12</sup> Removing this provision gave contracting officers the ability to focus on awarding contracts and limits fraudulent businesses from entering the program. To provide transition assistance to SBA, third-party certifiers were allowed to remain a part of the process but only until SBA created its own certification process. In the committee report accompanying the legislative changes, it was clearly stated that approved third-party certifiers play an import role in determining eligibility for this program but the agency should not rely solely on such entities to make certification decisions as to a business’s eligibility.<sup>13</sup> Therefore, the intent of this legislation is to reiterate that the SBA must create its own certification process to ensure a properly functioning program.

Finally, it allowed SBA to create its own certification process to certify program participants as another alternative to third-party certifiers. This provision was meant to ensure that the entity charged with determining the size of a business, SBA, has full control of the certification process. This provision put the program on par with other small business contracting programs such as the 8(a) Business Development Program and the HUBZone program that rely on SBA certification. By having their own certification departments, the agency has been able to stop many ineligible businesses from entering their programs due to the vast amount of resources and manpower it has

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<sup>10</sup> GAO 2019, *supra* note 2.

<sup>11</sup> §825, 128 Stat. 3292, 3437; Pub. L. No. 113-291, §825, 128 Stat. 3292, 3437 (2014).

<sup>12</sup> Steven Koprince, *The Mysterious Case of the Missing SBA Women-Owned Small Business Certification Program*, SMALLGOVCON, (Nov. 26, 2018), <http://smallgovcon.com/women-owned-small-business-program/the-mysterious-case-of-the-missing-sba-women-owned-small-business-certification-program/>.

<sup>13</sup> H. Rept. 113-661.

compared to other certifying entities. With these tools, SBA has the ability to provide greater oversight and quality control over the certification process. Yet, to date, the SBA has only implemented one of the changes authorized by the 2015 NDAA.

### **Government Accountability Office Report**

On April 4, 2017, Congresswoman Velázquez and Congresswoman Adams petitioned GAO to review the WOSB program, including the delays in the implementation of the 2015 NDAA reforms. As a result, GAO issued a report in 2019 discussing the extent to which those changes have been implemented. The study also sheds light as to other previously identified oversight issues that have not been completely addressed by the SBA.

### **SBA Failure to Implement 2015 NDAA Changes**

Out of the three main changes made to the WOSB program, the SBA has only implemented one: the sole-source authority.<sup>14</sup> The final rule for the sole-source authority was published in September 2015, becoming effective in October 2015. When SBA published its final rule for the sole-source authority, it gave two reasons as to why it was implementing this change first. According to the SBA, the sole-source authority only required incorporating the language into regulations, while the other two changes related to the certification process would entail a prolonged rulemaking process. Also, SBA indicated that addressing all three changes at once would delay the implementation of the sole-source authority.<sup>15</sup>

However, this decision has been questioned not just by GAO but also by the SBA Office of Inspector General (OIG). More than four years after the 2015 NDAA was enacted, SBA has not eliminated the option for program participants to self-certify.<sup>16</sup> In its June 2018 audit report, the OIG warned that implementing the sole-source authority without getting rid of the self-certification process exposes the program to unnecessary risk of fraud and abuse. Thus, OIG recommended SBA to institute a new certification process, as authorized by the 2015 NDAA.<sup>17</sup>

In response to Congressional inquiries and investigations by GAO and OIG, SBA officials have expressed that a new certification process will be implemented by January 1, 2020 and that the self-certification option will be removed then.<sup>18</sup> However, a proposed rule for the new certification process has not yet been published.<sup>19</sup> Moreover, no documentation or time frames for the proposed rule or completing the rulemaking process have been disclosed.

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<sup>14</sup> GAO 2019, *supra* note 2.

<sup>15</sup> *Id.*

<sup>16</sup> Koprince, *supra*, note 12.

<sup>17</sup> SBA OIG, REPORT 18-18, WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACTING PROGRAM (JUNE 2018).

<sup>18</sup> GAO 2019, *supra* note 2.

<sup>19</sup> Before SBA's response to OIG, the information given by SBA as to when they would publish the proposed rule to establish the new certification process was, at best, unclear. Pursuant to GAO's 2019 study, in October 2017, SBA officials stated that it was about 1-2 months from publishing a proposed rule. In June 2018, SBA officials stated that a cost analysis would be necessary before publishing the proposed rule.

### Oversight Deficiencies

GAO issued a previous study on October 2014 identifying oversight deficiencies in the WOSB Program.<sup>20</sup> While the SBA has taken steps to address those issues, many remain open.

#### 1. Third-party Certifier Reviews

One of those deficiencies relates to the lack of formal policies for reviewing the performance of third-party certifiers. To address the recommendation, SBA conducted compliance reviews of the four third-party certifiers. SBA officials stated they did not discover significant deficiencies. However, according to GAO, one of the compliance reviews describes “grave concerns” regarding a third-party certifier that was arbitrarily creating additional eligibility requirements for the WOSB program, while the other reviews showed areas in which the other three entities could improve.

Since then, SBA has created Standard Operating Procedures (SOPs) and a Program Desk Guide for the WOSB program that provides guidance to conduct oversight procedures, including compliance reviews.<sup>21</sup> Nevertheless, those documents do not provide activities to oversee third-party certifiers on a regular basis. Moreover, at this point it is uncertain when the next compliance review will take place. In November 2017, SBA officials had expressed that they planned to conduct more compliance reviews but, in June of last year, they expressed that no more compliance reviews would be conducted until the new certification process is implemented.<sup>22</sup>

Another pending deficiency found by GAO was third-party certifier monthly reviews. In their October 2014 study, GAO found that SBA had not followed up on issues raised by third-party certifiers in their monthly reports and had not developed procedures for reviewing them. SBA does not intend to use the monthly reports on a regular basis. In the GAO interviews for the 2019 study, SBA officials stated that they do not use the reports to monitor deficiencies, that the reports do not contain useful information for overseeing the WOSB program and that any information about fraudulent firms is generally received by email. However, GAO found that one of the three third-party certifiers interviewed stated that they regularly use the monthly reports to submit information about businesses they believe submitted fraudulent applications. Additionally, two certifiers stated that cross referencing between the monthly reports would provide SBA with valuable information as to businesses that were rejected by one certifier but subsequently got certified by another.

#### 2. Eligibility Examinations of Program Participants

As part of the 2014 study, GAO made recommendations about eligibility examinations of WOSB program participants. It recommended: 1) the development of procedures to conduct annual eligibility examinations and implementing such procedures; 2) analyze the results of those examinations and determine appropriate measures; and 3) implement ongoing reviews of a sample of businesses that have represented to be eligible for the program.<sup>23</sup>

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<sup>20</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-54, WOMEN-OWNED SMALL BUSINESS PROGRAM: CERTIFIER OVERSIGHT AND ADDITIONAL ELIGIBILITY CONTROLS ARE NEEDED (2014).

<sup>21</sup> Since September 2018, SBA has stated that the SOPs will be updated to address additional deficiencies. Updated SOPs haven't been provided yet.

<sup>22</sup> GAO 2019, *supra* note 2.

<sup>23</sup> GAO 2014, *supra* note 20.

Through the SOPS and the Desk Guide, SBA has addressed the first recommendation. Both documents, in particular the Desk Guide, contain policies and procedures for the WOSB Program eligibility examinations.<sup>24</sup> Nevertheless, work remains to be done.

GAO concluded that SBA generally does not document the results of their annual eligibility examinations, meaning they do not collect information about how many businesses were found eligible or ineligible. Consequently, GAO has found conflicting data for multiple years. For example, based on information previously given by SBA, GAO reported that in fiscal year 2012, 113 examinations were conducted and 42 percent of businesses were found to be ineligible for the WOSB program. For the 2019 study, GAO received information from the SBA that only 78 eligibility examinations were conducted in 2012 and 37 percent of businesses were found ineligible.<sup>25</sup> Regardless of these discrepancies, the amount of ineligible businesses remains significant.

SBA also does not have a mechanism to evaluate examination results in the aggregate, missing the opportunity to obtain insights as to why so many businesses are found ineligible. In 2014, SBA officials said that most businesses were deemed ineligible because they did not understand the documentation requirements of the program. However, they were unable to explain how they knew that that was the underlying cause.<sup>26</sup> In 2018, SBA officials claimed that they did not study results in the aggregate because results were unique to WOSB participants, yet they also stated that they knew of common eligibility issues through annual examinations.<sup>27</sup> Therefore, examining these annual reports over multiple years could only benefit the knowledge the agency has about the WOSB Program.

Finally, SBA only performs annual eligibility examinations of WOSB firms that have won an award, which restricts SBA's ability to learn about businesses eligibility sooner and limits its power to prevent fraud and abuse. In this regard, SBA officials argue that there are other measures to prevent fraud such as status protests where competitors in a particular procurement claim that another business does not qualify for the WOSB program. However, according to third-party certifiers interviewed for the study, protests are not enough to protect the integrity of the program because it is difficult for a competitor to have enough information about another WOSB firm to raise the question in the first place.

### *3. WOSB Set-Aside Contracts Awarded Under Ineligible Industry Codes*

In an OIG 2015 study, and subsequently in their 2018 audit, OIG found that WOSB set asides were being awarded using incorrect North American Industry Classification Codes (NAICS) codes.<sup>28</sup> Thus, as part of the 2015 audit, OIG recommended additional updated training and outreach about the NAICS code requirement. As a result, SBA updated their training and outreach materials with information about the code requirement.<sup>29</sup>

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<sup>24</sup> GAO 2019, *supra* note 2.

<sup>25</sup> *Id.*

<sup>26</sup> GAO 2014, *supra* note 20.

<sup>27</sup> GAO 2019, *supra* note 2.

<sup>28</sup> SBA OIG, REPORT 15-10, IMPROVEMENTS NEEDED IN SBA'S MANAGEMENT OF THE WOMEN OWNED SMALL BUSINESS FEDERAL CONTRACTING PROGRAM (MAY 2015).

<sup>29</sup> GAO 2019, *supra* note 2.

OIG also recommended SBA to conduct quarterly reviews of Federal Procurement Data System-Next Generation (FPDS-NG) data to verify that agencies are awarding contracts using the correct NAICS codes and join efforts with General Services Administration (GSA) to put controls in FPDS-NG, thereby impeding contracting officers from using the wrong NAICS code. SBA disagreed with both recommendations.<sup>30</sup> Thus, WOSB contracts being awarded under incorrect NAICS codes remain as an ongoing issue.

GAO concluded much of the same in their most recent report. GAO's analysis of FPDS-NG data from the third quarter of 2011 to the third quarter of 2018 found that 3.5 percent (about \$76 million) of WOSB contracts were awarded under NAICS codes that were never eligible for the WOSB program. Similarly, 10.5 percent (or about \$232 million) of WOSB contracts were made to women-owned businesses that were never eligible to receive awards under EDWOSB NAICS codes.<sup>31</sup>

SBA officials attribute WOSB set asides being given under ineligible NAICS code to human error when contracting officers are inputting the information into the FPDS-NG system or to misclassification of a contract as a WOSB program set-side in the database, when in reality it is a small business contract. In their view, the issue is relatively small compared to the size of the FPDS-NG and instead of focusing their efforts on this database, they would rather focus on adding controls to Fedbizopps.com so that contracting officers can realize as they write the requirements for a particular procurement that they cannot set aside contracts under the WOSB program without having the proper NAICS code.<sup>32</sup> Nevertheless, according to SBA officials, the feasibility of this option is still being discussed since it will need to be in coordination with the General Services Administration (GSA), the administrator of the site, and that the effort is not a high priority.<sup>33</sup>

#### *GAO's Recommendations and SBA's Response*

GAO presented two recommendations. The SBA should “develop a process to review FPDS-NG data to determine the extent to which agencies are awarding WOSB program set asides under ineligible NAICS codes and take steps to address any issues identified [in the study], such as providing targeted outreach or training to agencies making awards under ineligible codes.”<sup>34</sup>

SBA agrees with the GAO recommendations and committed to addressing some but not all of the abovementioned deficiencies.<sup>35</sup> Specifically, the SBA plans to use the government-wide Small Business Procurement Advisory Council (SBPAC) to provide quarterly presentations that will include trainings and in which agencies will review and analyze certified data submitted to FPDS-NG. If any corrections are needed once each agency reviews its own information, SBPAC will work with Agency OSDBU to find solutions to the irregularities. Additionally, SBA expressed that it has initiated contact with GSA to request a change to Fedbizopps.gov to automatically verify the NAICS code entered against a preloaded WOSB/EDWOSB list and give a message error until

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<sup>30</sup> SBA OIG, *supra* note 17.

<sup>31</sup> GAO 2019, *supra* note 2.

<sup>32</sup> Fedbizopps.com is the site that the Federal Government uses to publish contracting opportunities.

<sup>33</sup> GAO 2019, *supra* note 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

either the NAICS Code is changed or the WOSB/EDWOSB designation for that specific procurement is removed. Finally, SBA indicated the proposed rule for the new certification program has been submitted to the Office of Management and Budget for interagency review.

### **Conclusion**

The WOSB program was created to provide women small business owners with greater access to federal contracting opportunities. However, as the GAO notes, weaknesses in SBA's management of the program continue to hinder its effectiveness resulting in the program not being able to realize its full potential. Through the 2015 NDAA, Congress enacted three clear and concise reforms to improve the program and, after 4 years, only one of these reforms - the sole-source authority- has been implemented. Moreover, by fragmentizing these reforms, the concerns for fraud and abuse, the very concerns that Congress was trying to tackle in the first place, have only increased. It is still unclear when the self-certification mechanism will be eliminated and when a new certification process will finally be implemented.

In terms of deficiencies, the program keeps confronting the same ones since 2014. While GAO acknowledges in its report that SBA has taken steps to address some of these deficiencies, there is still much to be done. This hearing will allow members of the Committee to better understand the woman-owned small business program, changes made by the 2015 NDAA to improve it, and how SBA can implement the changes promulgated by Congress to improve federal contracting opportunities for women owned small businesses to meet the 5 percent contracting goal.