

# NEW RULE: UNINTENDED CONSEQUENCES



## Barriers created to DBE certification

### 49 CFR 26.70 Debt Financed Investments

#### 49 CFR Part 26.70 (a)

The 15% threshold on principal equity paid by the SEDO will eliminate most startup small businesses from becoming certified. This number could take a SEDO years to meet, particularly without having the leg up that certification is intended to offer for contracting. We would argue that a SEDO that has 15% available isn't disadvantaged.

There is also no termination of this language if a loan is paid off that was given with the business named or a non-SEDO as a signer for the initial investment. Regardless of status it would still prevent certification under the rule as written. There is no curative measures for past investment structures.

Additionally, allowing for a gift to cover this investment is concerning. Gifts have often been the source of fronts for husband and wife or family-owned business workarounds.

#### 49 CFR Part 26.70 (b)

The firm is not party to the loan in any capacity. This is simply not how business financing works. SBA and commercial lenders will NOT lend money to a person without the firm being a named party on the loan. With other restrictions around how financing can occur, traditional financing is the only option left.

Business is generally the SEDO's only asset. The home is leveraged against the loan, retirement is pulled out or borrowed against, standardly the SEDO doesn't even pull a paycheck or take a distribution because all the assets are reinvested into the business to pay the debts.

Lending rules are in direct conflict with this policy. This is not how business is conducted. SEDOs are generally disadvantaged due to the lack of access to capital via loans, familial wealth or financial discrimination.



#### BARB LAU

AWC Executive Director  
awcmn@awcmn.org  
(651) 489-2221



#### KENDRA KRON

AWC Past President  
Insite Contracting, Inc.  
kkron@insitemn.com

### ABOUT US

*The Association of Women Contractors is a trade association in Minnesota representing women & minority owned businesses in the construction industry.*

*Since 1995, AWC has been providing education, networking, & advocacy to its membership. Our approach in advocacy is to look at all sides of an issue & identify solutions that work for the entire industry to create fundamental change for equity in construction contracting.*