

**New York City Department of Small Business Services**  
**Notice of Adoption**

Pursuant to the authority vested in the New York City Department of Small Business Services (“DSBS”) in accordance with sections 1301, 1304, and 1043 of the New York City Charter, DSBS is adopting a rule adding a new subdivision (g) to section 11-22 of title 66 of the Rules of the City of New York to establish criteria and procedures for determining the eligibility of a business for certification as an minority-owned business enterprise or women-owned business enterprise (“MBE” and “WBE,” respectively, and “M/WBEs,” collectively) when the full or partial ownership of the business is held by one or more trusts.

**Statement of Basis and Purpose**

The City’s M/WBE Goals Program, authorized by chapter 56 of the Charter and section 6-129 of the New York City Administrative Code, requires the Commissioner of DSBS to establish and operate, on behalf of the City, a centralized program for the certification of MBEs and WBEs for the purposes of establishing their eligibility for participation in City procurement as a City-certified M/WBE, and authorizes the Commissioner to promulgate rules governing the M/WBE certification process.

This rule amendment adds a new subdivision (g) to section 11-22 of title 66 of the Rules of the City of New York, allowing business enterprises to remain eligible for certification as M/WBEs in cases where the minority or woman owner or owners transfer their shares to a trust for estate planning purposes, and as a result, do not meet one or more of the criteria outlined in subdivisions (b), (b-1), or (c) of such section. (DSBS uses these provisions in determining whether an applicant for certification meets the criteria for ownership of, contribution to and control of a business.) In such cases, the Commissioner will be authorized to consider the factors outlined in paragraph (1) of the proposed subdivision to determine whether certification is in the interest of the program. An eligibility determination under this subdivision will also require the Commissioner to set forth how the inability of a business to satisfy one or more criteria set forth in subdivisions (b), (b-1), or (c) is attributable to a bone fide estate planning interest.

The purpose of this rule is to clarify the circumstances under which the City can certify M/WBE firms in which ownership is intermediated by trusts. DSBS recognizes that this ownership structure is common for estate planning purposes and that, for M/WBE firms where minority or women owners still effectively own and control the business, a transfer of shares to trusts would not frustrate the purpose of the program.

DSBS published a proposed version of this rule in the City Record on March 28, 2023. DSBS held a public hearing for the proposed rule on April 28, 2023. DSBS received no comments concerning the proposed rule. Pursuant to subparagraph (d) of paragraph 1 of subdivision f of section 1043 of the Charter, the DSBS Commissioner and the Mayor determined that this rule shall take effect immediately based on a substantial need for the earlier implementation of this rule. A copy of this determination is included following the text of this rule.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 11-22 of Title 66 of the Rules of the City of New York is amended by adding a new subdivision (g) to read as follows:

(g) Certification decision for firms held in trust. (1) Notwithstanding any other provision of this subchapter, the Division may determine a business enterprise that does not meet all of the eligibility criteria set forth in subdivisions (b), (b-1), and (c) of this section is nevertheless eligible for certification as an MBE or WBE if the business enterprise previously met all the eligibility criteria set forth in subdivisions (b), (b-1), and (c) of this subdivision, regardless of whether such business enterprise previously sought or obtained certification during the time period in which such business enterprise met all such criteria, and if the minority group or women owner or owners subsequently transferred some or all of such owner’s or owners’ shares into one or more trusts for estate planning purposes, provided that in determining whether to certify such business entity, the commissioner shall consider whether such certification would advance the purposes of this subchapter, based on the following factors:

(i) the degree to which transfers of shares to the trust or trusts resemble common estate planning practices;

(ii) the degree to which the former owner or owners have a bone-fide estate planning interest in selecting the trust beneficiaries and trustees;

(iii) the degree to which day-to-day management obligations, including control of negotiations, signature authority for payroll, leases, letters of credit, insurance bonds, banking services and contracts, and other business transactions, and the ability to hire and fire employees, are retained by women or members of a minority group.

(iv) the degree to which voting shares are retained by minority group members or women;

(v) the degree to which the business entity has provided to the Division adequate and transparent documentation memorializing the trust relationship;

(vi) the degree to which the trust or trusts are revocable; and

(vii) the degree to which the former owner or owners retain any liabilities or other legal exposure for the entity.

(2) Any determination of eligibility pursuant to this subdivision shall be made in writing and shall include:

(i) a written statement that the Division has considered each of the factors set forth in paragraph (1) of this subdivision; and

(ii) for each criterion set forth in subdivisions (b), (b-1), or (c) that a business enterprise does not satisfy, an explanation of why such business enterprise's failure to satisfy such criterion is exclusively attributable to the transfer of shares into one or more trusts in furtherance of a bone fide estate planning interest.

## FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

I hereby find and represent to the Mayor that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the New York City Department of Small Business Services (“SBS”) rule creating standards for determining the eligibility of businesses held in one or more trusts for certification as minority-owned business enterprises or women-owned business enterprises (“MBE” and “WBE,” respectively, and “M/WBEs,” collectively).

This rule amendment to subchapter B of chapter 11 of title 66 of the Rules of the City of New York will establish criteria and procedures for determining the eligibility of a business for certification as an M/WBE when the full or partial ownership of the business is held by one or more trusts. The rule would allow business enterprises to remain eligible for certification as M/WBEs in circumstances where the minority or woman owner or owners transfer their shares to one or more trusts for estate planning purposes. In such circumstances, the Commissioner would be authorized to consider the factors outlined in the rule amendment to determine whether certification is in the interest of the program. The purpose of this rule is to ensure that eligible M/WBE firms are not excluded from the program when they transfer shares to trusts for estate planning purposes. SBS recognizes that the trust ownership structure is common for estate planning purposes and that for M/WBE firms where minority or women owners still effectively own and control the business, a transfer of shares to trusts would not frustrate the purpose of the program.

There is a substantial need for the early implementation of these rules because of the financial harm that may be caused to firms that meet the eligibility criteria outlined in the proposed rule. These firms may lose out on important contracting opportunities with the City, and the City would be deprived the benefit of bona fide M/WBE firms participating in City contracting while awaiting implementation of the rule. Including such firms would increase the City’s ability to meet the contracting and other program goals established by law and by directives of the City’s Chief Business Diversity Officer. This rule is particularly suited to a determination of substantial need for earlier implementation because it does not impose obligations or requirements on any member of the public, but rather expands business opportunities for a class of businesses that the City has identified as underutilized in the market in which the City conducts its procurements.

Therefore, I find pursuant to Charter § 1043(f)(1)(d) that there is a substantial need for this rule’s earlier implementation.

\_\_\_\_\_/s/  
Kevin Kim, Commissioner  
New York City Department of Small Business Services

APPROVED: /s/  
Eric Adams  
Mayor