

261—52.3(15) Eligibility. The authority will consider the following to determine whether a business is a targeted small business pursuant to Iowa Code section 15.102(12) and eligible for certification. Documentation may be required to prove each eligibility requirement. The authority may conduct on-site audits to evaluate eligibility.

52.3(1) Ownership. The authority will evaluate the following factors that indicate independent ownership by a targeted group person.

a. The business shall not be a subsidiary of any other business. If another business that is not a TSB has an interest in a TSB applying for certification, the authority will scrutinize the relationship between the businesses to determine the independence of the TSB. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient to demonstrate independence.

b. The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and share in the risks commensurate with the owner's ownership interest. The authority will consider the substance rather than the form of the arrangements. Business arrangements that deviate from common industry practice may indicate an owner other than the targeted group person owns, operates, and actively manages a business.

c. At least 51 percent of the members of the business's board of directors must be targeted group persons.

d. At least 51 percent of the shares or other units of ownership of the business must be owned by one or more targeted group persons.

e. The business should be compensated for facilities, inventory, equipment, labor, or other items it owns and shares with any other business. Compensation shall not vary from common industry practice. If an applicant business is operated from the owner's residence, the residence and any adjacent outbuildings used by the applicant business may be owned jointly with other family members.

52.3(2) Decision-making authority. The targeted group person owner(s) shall have authority to incur liability and to decide financial and policy questions without any restrictions, either formal or informal.

a. The authority may review documents, including but not limited to minutes of board or owners meetings, bylaw provisions, operating agreements, certificates of organization, partnership agreements, charter requirements for cumulative voting rights, or employment agreements to determine the targeted group person's authority.

b. The targeted group person owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business. Authority to hire and to fire all personnel shall be vested in the targeted group person owner(s).

c. The authority will consider particular positions to determine who has major responsibility in a company. These people include but are not limited to those who:

- (1) Hold any applicable license;
- (2) Devote substantial time to the business;
- (3) Supervise or direct the supervision of management and field operations;
- (4) Manage financial affairs;
- (5) Prepare or approve bids or estimates;
- (6) Participate in price and bidding negotiations;
- (7) Make final decisions about staff and personnel;
- (8) Sign contracts and checks or authorize action on behalf of the business.

52.3(3) Expertise. The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type or nature of business in which the business is engaged and in the business's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business.

52.3(4) Capital contributions. Capital contributions by the targeted group person owner(s) to acquire interest in the business shall be real and substantial and reflected in documents such as stock certificates, articles of incorporation, minutes of board or owners meetings, partnership agreements, or income tax returns.

52.3(5) Capital contribution, expertise, and experience in an inherited business are not required. All other requirements apply.

52.3(6) Businesses that are owned and operated by one or more members of the same family will be closely scrutinized to determine whether the targeted group person identified as the owner of 51 percent or more of the business sets policy and makes day-to-day and long-term decisions for the operation and management of the business.

52.3(7) A previous or continuing employer-employee relationship between present owners will be closely scrutinized to ensure that the employee-owner has substantial management and decision-making responsibilities.

52.3(8) A disabled targeted group person must provide certification of the disability from a licensed medical physician, physician assistant, or nurse practitioner with relevant expertise or must have been found eligible for vocational rehabilitation services by the department of workforce development, division of vocational rehabilitation services, or by the department for the blind.

52.3(9) The authority will calculate an applicant's gross income as follows: the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

[ARC 8259C, IAB 10/16/24, effective 11/20/24]