

SMALL BUSINESS ADMINISTRATION**13 CFR Part 121**

RIN 3245-AH26

Small Business Size Standards: Calculation of Number of Employees for All Programs and of Average Annual Receipts in the Business Loan, Disaster Loan, and Small Business Investment Company Programs**AGENCY:** U.S. Small Business Administration.**ACTION:** Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is adopting a 24-month average to calculate a business concern's number of employees for eligibility purposes in all of SBA's programs. SBA is also permitting business concerns in its Business Loan, Disaster Loan, Surety Bond, and Small Business Investment Company (SBIC) Programs to use a five-year averaging period, in addition to the existing three-year averaging period, for the purposes of calculating average annual receipts. These changes will allow larger small businesses to retain their small business size status for longer, and some mid-sized businesses to regain their small business status.

DATES: This rule is effective July 6, 2022.**FOR FURTHER INFORMATION CONTACT:** Khem R. Sharma, Ph.D., Chief, Office of Size Standards, (202) 205-6618 or sizestandards@sba.gov.**SUPPLEMENTARY INFORMATION:****I. Background Information**

This final rule implements two legislative enactments that affect how SBA calculates a business concern's size to determine whether the business qualifies as small for SBA's contracting, loan,¹ and other assistance programs. First, section 863 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 ("NDAA"), amended section 3(a)(2)(C)(ii)(I) of the Small Business Act, 15 U.S.C. 632(a)(2)(C)(ii)(I), to change the averaging period for SBA's employee-based size standards from 12 months to 24 months. Second, the Small Business Runway Extension Act of 2018, Public Law 115-324 ("SBREA")

¹ These changes do not apply to the Paycheck Protection Program (PPP) because the authority for that program expired on June 30, 2021. Similarly, due to their temporary nature, the changes also do not apply to the COVID-19 related Economic Injury Disaster Loan (EIDL) Program. Moreover, effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

amended section 3(a)(2)(C)(ii)(II) of the Small Business Act, 15 U.S.C. 632(a)(2)(C)(ii)(II), to modify the requirements for proposed size standard. First, the NDAA provides that those requirements apply to SBA when the agency acts pursuant to the authority in section 3(a)(2)(A) for SBA to specify small business definitions or size standards. Second, the NDAA amends section 3(a)(2)(C)(ii)(I) such that a proposed size standard for a manufacturing concern must provide for determining the size of the concern based on the employment during each of the concern's pay periods for the preceding 24 months. Previously, the statute specified the use of a 12-month period.

A. Changes to Calculation of Number of Employees

Section 863 of the NDAA amended two provisions of section 3(a)(2) of the Small Business Act, which sets forth requirements for an agency that would prescribe a proposed size standard. First, the NDAA provides that those requirements apply to SBA when the agency acts pursuant to the authority in section 3(a)(2)(A) for SBA to specify small business definitions or size standards. Second, the NDAA amends section 3(a)(2)(C)(ii)(I) such that a proposed size standard for a manufacturing concern must provide for determining the size of the concern based on the employment during each of the concern's pay periods for the preceding 24 months. Previously, the statute specified the use of a 12-month period.

To implement these provisions, on November 2, 2021, SBA issued for comments a proposed rule to amend 13 CFR 121.106 by changing the 12-month averaging period for determining the size of a business concern under an employee-based size standard to 24 months for eligibility purposes in all of SBA's programs (86 FR 60396). In this final rule, SBA is adopting the change from the November 2021 proposed rule without change. As a result, for certifications following the effective date, the size of a business concern under an employee-based size standard will be calculated by averaging the concern's number of employees for each pay period in the preceding completed 24 calendar months. In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. Part-time and temporary employees count as full-time employees, and the concern aggregates the employees of its domestic and foreign affiliates. If the concern has not been in business for 24 months, it would average its number of employees for each pay period during which it has been in business.

This change to § 121.106 applies to all industries subject to employee-based size standards. Those size standards predominantly apply to manufacturers but not exclusively. Firms in certain mining, utilities, transportation, publishing, telecommunications, insurance, research and development, and environmental remediation

industries are also subjected to SBA's employee-based size standards. Significant to government contracting, nonmanufacturers also qualify for small business status for government procurement of supplies using an employee-based size standard. Though nonmanufacturers and the nonmanufacturing industries are not covered by the NDAA's change to proposed size standards, SBA believes that it would be unworkable to use a 24-month average for manufacturing industries but retain a 12-month average for other industries with employee-based size standards. Firms may participate in multiple industries, and it is burdensome to use different averaging periods for different industries with employee-based size standards.

B. Changes to Calculation of Average Annual Receipts

In a final rule published December 5, 2019 (84 FR 66561), SBA implemented SBREA by making changes to its receipts-based size standards for all SBA's programs except the Business Loan and Disaster Loan Programs. The excepted programs include: (i) The 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Certified Development Company (CDC/504) Loan Program (collectively, the "Business Loan Programs"); and (ii) the Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans (collectively, the "Disaster Loan Programs"²).

In the November 2, 2021, proposed rule, SBA proposed to extend the changes to SBA's receipts-based size standards to the Business Loan and Disaster Loan Programs. Currently, applicants in those loan programs must calculate their average annual receipts using a three-year average; however, under the SBA's proposal, applicants may choose to use either a three-year or a five-year receipts average. Thus, an applicant would be eligible for assistance if its five-year receipts average is equal to or less than the size standard, even if it would otherwise be ineligible because its three-year average exceeds that size standard. SBA also proposed to adopt this change for its

² Some disaster loans, such as physical disaster and mitigation disaster loans, are available to firms regardless of size. Thus, the changes in this final rule are applicable only to the types of disaster loans that require applicants to meet size eligibility requirements, including Economic Injury Disaster Loans (EIDLs), Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans.

Small Business Investment Company (SBIC) program, allowing small business applicants for financing from an SBIC to choose to use either a three-year average or a five-year average for purposes of determining eligibility based on a receipt-based size standard. In this final rule, SBA is adopting the changes to the averaging period for calculating average annual receipts for the Business Loan, Disaster Loan, and SBIC Programs as proposed in the November 2021 proposed rule.³

The December 2019 final rule did not exempt the applicants in the SBA's Surety Bond Guarantee (SBG) Program from the change in the calculation of average annual receipts in accordance with Public Law 115-324. Consequently, to establish eligibility under a receipts-based size standard, the applicants to the SBG Program were using either a three-year or a five-year receipts average until January 6, 2022, and a five-year receipts average thereafter. In the November 2021 proposed rule, SBA did not propose to allow the applicants to the SBG Program to choose to use either a three-year or a five-year receipts average to establish eligibility under a receipts-based size standard. However, in response to a comment received from the public, this final rule provides that the change in the receipts calculation in the November 2021 proposed rule is also applicable to the SBG program.

Like the changes in the December 2019 final rule, these changes will expand the eligibility of larger small businesses and some mid-sized businesses for SBA's financial assistance. An advanced small business may be able to retain its small business status for a longer period, if it is close to exceeding the size standard. Similarly, a mid-sized business may be able to regain its small business status if it would otherwise have exceeded the size standard.

These changes differ in some respects from what SBA implemented in the December 2019 final rule. In particular, SBA will not issue a "transition period" that SBA provided in the December 2019 final rule. That rule applied size standards changes to all SBA's programs, outside of the SBA Business Loan and Disaster Loan Programs. Starting on January 6, 2020, those programs began permitting participants to elect whether to use a three-year average or a five-year average to

calculate average annual receipts. That election ended on January 6, 2022, however, marking the end of the transition period for those changes. As of January 6, 2022, all SBA programs, except SBA's Business Loan and Disaster Loan Programs, use a five-year average for purposes of calculating average annual receipts.

Conversely, the changes in this final rule allow for an election for the applicants to the SBA's Business Loan, Disaster Loan, SBG, and SBIC Programs to choose either the three-year or five-year receipts average, but do not have a transition period. SBA intends to make this election available indefinitely. This recognizes the differences between the SBA's financial assistance programs and the government contracting programs, where firms are competing against one another. Where there is competition, businesses should be competing on an equal basis; therefore, the December 2019 final rule provided that, after the end of the transition period, government contractors all would use a five-year averaging period. By contrast, in the financial assistance programs, applicants are evaluated on an applicant-by-applicant basis. It is, thus, not prejudicial to ensure that applicants use the same size criteria. As a result, SBA does not believe it is necessary to limit the election in the financial assistance programs to a two-year period.

In its June 24, 2019, proposed rule to implement the provision under SBREA (84 FR 29399), SBA received some comments from participants in the business loan programs. SBA also considered those comments in preparing this final rule. Prior commenters asked that SBA use the five-year receipts average only for calculating average annual receipts, not for other aspects of loan application purposes. Accordingly, in this final rule, SBA authorizes the three-year or five-year election only for the calculation of receipts for SBA's Business Loan, Disaster Loan, SBG, and SBIC programs, but not for any other purposes. Other calculations remain unchanged. Prior commenters also asked that SBA authorize the applicants to the Business Loan Programs to continue to use a three-year average. Accordingly, this final rule uses an election, not a mandate. For the most part, lenders and applicants will continue to be able to use a three-year average. Where an applicant qualifies as small under the 3-year analysis, the analysis is complete, and the firm would not need to submit (and SBA would not need to review) any information pertaining to fiscal years beyond the last three fiscal years.

The only exception will be where the applicant would not qualify as a small business using a three-year average. In that case, the applicant may use a five-year average to qualify as small. As noted previously, the applicants will also be allowed to qualify for a business loan using the alternative size standard in section 3(a)(5)(B) of the Small Business Act.

II. Discussion of Comments

In the November 2021 proposed rule, SBA sought comments on its proposal to change the 12-month averaging period for employee-based size standards to a 24-month averaging period and permit businesses in the Business Loan, Disaster Loan, and SBIC Programs to use either a three-year average or a five-year average for calculating average annual receipts for the purposes of qualifying as a small business. SBA received 17 timely comments to the proposed rule, of which 14 pertained to the SBA's proposed change in the averaging period for calculating employees. Of the 14 comments pertinent to the calculation of employees, eight supported the SBA's proposed change and five opposed it. One commenter raised concerns about how SBA defines employees generally.

SBA received nine comments pertaining to its proposal to allow applicants to the SBA's Business Loan, EIDL and SBIC Programs to choose either a three-year or five-year averaging period to calculate average annual receipts. Of the nine comments pertinent to this issue, six supported the SBA's proposed change and three opposed it. SBA also received one comment from OMB relating to a review of the information collection change related to from this rule.

SBA also received a late comment regarding the treatment of SBA's SBG program under the averaging rules. The comment raised valid concerns about how the SBG program was being treated inconsistently for receipts averaging, and, as such, SBA considers that comment below.

All public comments to the proposed rule are available at www.regulations.gov (RIN 3245-AH16) and are summarized and discussed below by topic, along with SBA's responses.

Comments Supporting the 24-Month Averaging Period for the Calculation of Employees

Eight commenters expressed support for SBA's proposal to change the averaging period for calculating employees for SBA's employee-based size standards from 12 months to 24 months. Commenters supporting SBA's

³Businesses seeking SBA 7(a) and 504 loans and those seeking financing from an SBIC could seek to qualify as small under a tangible net worth and net income-based alternative size standard, in addition to an industry-based employee or receipts-based size standard.

proposed change believed that the proposed 24-month averaging period would allow firms to better adjust to short-to-medium term spikes in hiring, provide certain growing small businesses the opportunity to retain their small business status and access to SBA programs for a longer period, and allow some firms that recently exceeded the size standard to regain their small business size status and become eligible for federal small business assistance again. One commenter expressed that SBA's proposal would give small businesses much needed flexibility during these challenging times due to the COVID-19 pandemic and will help U.S. small businesses obtain necessary support to sustain operations and recover from the pandemic.

SBA Response

SBA agrees with commenters that SBA's proposal to increase the averaging period for the calculation of employees from 12 months to 24 months will allow firms to better adjust to surges in employment in both the short and medium term. SBA also agrees with commenters that advanced small businesses will retain access to SBA's procurement and financial assistance programs for a longer period because of this change and some businesses that recently exceeded their size standard will regain their eligibility for SBA's programs. SBA believes that expanding the reach of its programs to include a greater number of small businesses supports all small businesses and the overall economy as the Nation continues to recover from the economic challenges caused by the COVID-19 pandemic and small businesses remain in need of SBA assistance.

As discussed in the regulatory impact analysis section of this rule, the change in averaging period for employees would result in four primary impacts, which can be categorized as either having a "expansive impact" or "contractive impact" on size status of both currently large and small businesses. Allowing some firms that currently do not qualify as small to gain small business status and some advanced small firms to remain small business status for a longer period represents the expansive impact of the final rule. Causing some currently small firms to lose or shorten their small business is the contractive impact.

While some small firms may experience contractive impacts from SBA's proposed change to the averaging period for employees, SBA estimates that the number of firms with expansive impacts will be greater. For example, as shown in Table 16 of this final rule,

based on the 2012 Economic Census data, the number of firms with expansive impacts (1,484) exceeds the number of firms with contractive impacts (1,050), with a net impact of about 435 firms either extending or regaining their small business status. SBA estimates that changing the period for calculating the average number of employees for size standards from 12 months to 24 months would result in a net gain of about \$158 million (or 0.3% increase from the baseline) in federal small business contract dollars.

Comment on Allowing a Transition Period for Calculation of Employees

Citing SBA's transition period for calculating average annual receipts, one commenter urged SBA to adopt a two-year transition period where firms could choose to use either a 12-month or 24-month averaging period to reduce any adverse impacts on small businesses caused by an abrupt change in the calculation of employees. The commenter also concurred with applying the change to both manufacturing industries and nonmanufacturers subject to employee-based size standards. The commenter maintained that in apparel manufacturing where IDIQ contracts are common, one or two large task orders may require a significant increase in the number of employees and could easily push a small business contractor over the size threshold, and it would take longer for the impacted small business to fall below the size threshold under the 24-month averaging method. Offering a transition period, the commenter added, would minimize the change's negative impact on small businesses.

SBA's Response

SBA believes that a two-year transition period for the calculation of employees at the current moment of the COVID-19 pandemic recovery will not provide enough benefit to deviate from the principles of fair competition. The data demonstrates a consistently increasing trend in employment in manufacturing and other industries subject to employee-based size standards since a drastic drop in employment in April 2020. For example, according to the Bureau of Labor Statistics (BLS) data, manufacturing employment has steadily increased from a low of about 11.4 million in April 2020 (compared to 12.7 million in March 2020) to about 12.6 million in December 2021. As discussed in the proposed rule, when the employment figures are in an increasing trend, the 24-month employee-average

will typically be lower than the 12-month average. With the economy continuing to recover from the COVID-19 pandemic with employment almost returning to the pre-pandemic level, SBA expects employment to continue its increasing trend in the coming months. Accordingly, going forward SBA expects the 24-month employee average to be lower than the 12-month average for most businesses, thereby rendering a transition period no longer necessary.

For this reason, SBA will not use a multi-year transition period for the calculation of employees. That means that after this final rule takes on effect, SBA will calculate the number of employees using the 24-month averaging period only, as proposed.

Comment on Ensuring Small Business Benefits Are Targeted to Intended Beneficiaries

SBA received a comment from a trade association representing Black-owned businesses applauding SBA's efforts to adjust small business size standards and to provide more flexibility in maintaining eligibility for growing small businesses to participate in the 8(a) Business Development (BD) Program and other SBA programs. The association supported the proposed change in the averaging period for employee-based size standards from 12 months to 24 months with caution. On the one hand, the commenter maintained that this change will enable certain growing small businesses to retain their small business status longer and to remain eligible for SBA's benefits without facing a benefits cliff. On the other hand, it raised concerns that the proposed 24-month average would place undue burden on small businesses facing contractions in employees due to economic downturns and ongoing financial hardship due to the COVID-19 pandemic by causing them to lose their small business status sooner. The association urged SBA to ensure that the proposed changes do not allow large businesses to crowd out federal opportunities for small firms, including Black-owned small firms, and recommended that SBA track the size of businesses utilizing its programs to ensure that benefits from such programs are targeted to the small and disadvantaged businesses they are intended to serve.

SBA's Response

SBA agrees with the comment urging SBA to track the size of businesses utilizing its programs to ensure that benefits are targeted to the small and disadvantaged businesses that they are

intended to serve. SBA has the necessary regulations, policies, procedures, and other oversight mechanisms in place to ensure that federal small business assistance is directed to its intended beneficiaries. The Federal Government is committed to ensure equity in procurement in accordance with the President's Executive Order No. 13985 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government and Office of Management and Budget (OMB) Memorandum No. M-22-03, Advancing Equity in Federal Procurement. Additionally, each year SBA releases a Small Business Procurement Scorecard on how the 24 Chief Financial Officer (CFO) Act agencies performed on their small business and socio-economic business contracting goals. The Scorecard is an assessment tool to measure how well the Federal Government performs in reaching its small business and socio-economic prime contracting and subcontracting goals, provide accurate and transparent contracting data, and report agency-specific progress. The prime and subcontracting component goals include goals for small businesses, woman-owned small businesses (WOSBs), small-disadvantaged businesses (SDBs), service-disabled veteran-owned small businesses (SDVOSBs), and small businesses located in Historically Underutilized Business Zones (HUBZone SBCs). Each year, SBA works with each CFO Act agency to set their prime contracting goals and ensures that the sum total of all agencies' goals meets the 23% small business prime contracting goal for the Federal Government, as well as the socio-economic goals established by statute and Executive Branch policy.

Moreover, in December 2021, SBA released for the first time small business contracting data disaggregated by race and ethnicity. This release serves as a baseline for evaluating government-wide performance within each of the socio-economic categories going forward. SBA continues to believe that the metrics provided by these releases are important tools in evaluating the effectiveness of SBA's programs and ensuring that small business benefits are flowing to the intended beneficiaries.

Comments Opposing a 24-Month Averaging Period for the Calculation of Employees

Five commenters opposed SBA's proposal to change the averaging period for SBA's employee-based size standards from 12 months to 24 months. Two commenters opposed SBA's

proposed change based on the belief that increasing the averaging period would cause some firms with temporary surges in employment to remain other than small for a longer period than would be the case under the current averaging period. Three commenters opposed SBA's proposed change to increase the averaging period for the calculation of employees on the grounds that it would allow larger small businesses to retain their small business status longer and some mid-size firms that have just exceeded the size standard to regain their small status, and thus would reduce the number of federal contracting opportunities and financial assistance available to existing small firms, especially the smaller small firms. One commenter maintained that businesses facing a decline in employment due to an economic downturn or other financial hardship may lose their small business status sooner under a longer 24-month averaging period and may have to wait longer to regain the small business status.

SBA's Response

The change in the averaging period for employees from 12 months to 24 months was statutorily required. In this final rule, SBA is implementing a statutory change requiring the use of a 24-month averaging period. While businesses may have to wait a little longer under the 24-month averaging period to regain small business status after exceeding the size standard due to a temporary surge in employees, SBA believes that, in the long-run, the 24-month average provides a better and more stable measure of business size, and it gives all small businesses an expanded runway to grow and become competitive for federal opportunities. Small businesses with increasing number of employee counts can maintain their small business status for a longer period under the longer 24-month averaging period. With the availability of an expanded pool of small businesses under the change, the Federal Government is likely to set aside more contracts for small businesses, thereby benefiting all small businesses in the federal market. Based on the analysis of SBA's business loan and economic injury disaster loan (EIDL) data for fiscal years 2018–2020, the change in the calculation of employees will have a very minimal impact on small businesses seeking SBA's loans, with a vast majority of such loans going to businesses that are substantially smaller than their industry size standards. Overall, the benefits from the change to the 24-month

averaging period outweigh any negative impacts of this change.

While some small firms may experience contractive impacts due to SBA's change to the averaging period, causing them to either lose or shorten their small business size status, SBA believes that the number of firms experiencing expansive impacts will be greater. As stated previously, SBA estimates that changing the averaging period for calculating the average number of employees for size standards from 12 months to 24 months will result in a net gain of about \$158 million (or 0.3% increase from the baseline) in federal small business contract dollars. As such, SBA determines that the net impacts of the rule support adopting the change.

Moreover, SBA believes that the Federal Government and existing small businesses will benefit from the increased number of firms eligible to participate in SBA's programs because of the change to the averaging period for the calculation of employees. With an expanded pool of small businesses, the Federal Government will have access to a greater number of qualified small businesses to source from, and as a result, will likely set aside more contracts for small businesses. Moreover, SBA analyzed its internal data on 7(a) and 504 loans for fiscal years 2018–2020 and determined that 97% of loans to firms in industries with employee-based size standards were to firms with fewer than 50 employees, indicating that the majority of firms receiving SBA's financial assistance are much smaller than the size standards. Thus, SBA does not anticipate that changes to the averaging period for the calculation of employees will significantly impact the distribution of loans by size of firm.

Comment on Including Nonmanufacturing Industries in the Proposed Change in the Calculation of Employees

One commenter opposed to SBA's proposal believed that SBA's proposed changes in the calculation of employees applied only to industries in the manufacturing sector, and not to other industries with employee-based size standards in other sectors. Thus, the commenter argued that SBA's changes were arbitrary and capricious. The same commenter also argued that it would be arbitrary and capricious if SBA were to expand the requirements of this rule to industries apart from manufacturing since Congress did not explicitly provide for nonmanufacturing industries to be covered by this change.

SBA's Response

SBA disagrees that applying the 24-month averaging period to all industries with an employee-based size standard is arbitrary. SBA believes that determining the size of a business concern consistently for all employee-based size standards avoids confusion and misapplication of the rules and is a reasonable application of the statutory provision. SBA proposed to change the averaging period for all employee-based size standards. Thus, in addition to the manufacturing industries, all nonmanufacturing industries and nonmanufacturers subject to employee-based size standards would be affected by the change. In the proposed rule, SBA stated that it would be confusing and unworkable to apply the 24-month averaging period to the manufacturing industries and 12-month averaging period to the nonmanufacturing industries and nonmanufacturers subject to employee-based size standards, as some businesses operate in both manufacturing and nonmanufacturing industries and some manufacturers also supply to Government as nonmanufacturers. Additionally, a nonmanufacturer may compete against manufacturers on the same procurement, and the principle of fair competition would have all competitors use the common averaging period. Thus, SBA is applying the change to all employee-based industries. Similarly, under the SBREA, Congress only changed the averaging period to calculate average annual receipts for services firms, but for consistency and to avoid confusion, SBA adopted the change for all industries subject to receipts-based size standards, including nonservices industries like construction and agriculture. Likewise, in this rule, for consistency and to avoid confusion, SBA is adopting the change in the averaging period for all industries subject to employee-based size standards.

Comment on Closing the Loophole in Calculating Employees

SBA also received one comment that neither expressed support nor opposition to the proposed change, but rather raised concerns about how SBA defines employees for size standards purposes. Specifically, the commenter urged SBA to close the loophole that allows advanced small businesses to remain perpetually small, or even large businesses in some cases to qualify as small, by outsourcing work to others or using independent contractors (1099 contractors).

SBA's Response

SBA disagrees with the premise underlying this comment. SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern (see 13 CFR 121.106). In SBA Size Policy Statement No. 1, 51 FR 6099, SBA further clarified that the "other basis" ground reaches situations where the firm artificially reduces its number of employees to meet the size standards and qualify for SBA's assistance. SBA will consider the totality of the circumstances to prevent circumvention of the SBA's size regulations, and that may include situations where the firm would change employees' statuses in order to reduce the firm's size for SBA purposes. See *Size Appeal of Maryland Assemblies, Inc.*, SBA No. SIZ-3134 (1989).

Comments That Proposed Changes Help Large Businesses

While a soon-to-be graduate from SBA's 8(a) BD program expressed general appreciation for the benefit of a smooth transition from an SBA's set-aside program to full and open competition under the 24-month averaging period, it expressed concerns with respect to the size standard for the Environmental Remediation Services (ERS) exception to NAICS 562910 (Remediation Services). Specifically, the commenter argued that the ERS exception already has an exceedingly high small business threshold of 750 employees and a firm at that size would have necessary resources to adequately plan for its growth to an other than small business. Allowing a firm to remain qualified as a small business longer under the change would be detrimental to other small businesses when competing for federal opportunities intended for them.

One commenter opposed expanding eligibility in the current environment to benefit large businesses and urged SBA to direct more resources to underserved small businesses, especially woman-owned and disadvantaged small businesses, before expanding eligibility to include current large businesses. Another commenter opposed both proposed changes, arguing that these and past changes are contrary to the SBA's mission to help small businesses. The commenter believed that both the size standards and averaging periods for calculating the business size keep increasing, thereby causing Government support intended for small businesses to go to large businesses. The commenter

maintained that the definition of what is small has become incredibly high, thereby forcing actual small businesses to compete with large businesses with up to 1,000 employees or more than \$30 million in revenue that do not need financial assistance nor contracting preferences.

SBA's Response

Size standards for specific industries or subindustries (or "exceptions"), such as the 750-employee size standard for the ERS exception to NAICS 562910, are outside the scope of this rulemaking. Interested parties will have an opportunity to comment on the ERS size standard when SBA issues a separate proposed rulemaking on the review of employee-based size standards as part of the second five-year review of size standards.

SBA disagrees with the comment suggesting that SBA should not implement this statutory change from the NDAA. As stated previously, SBA believes that the 24-month employee average provides a better and more stable measure of business size and it gives all small businesses, including disadvantaged small businesses, an expanded runway to grow and become competitive for federal opportunities. More importantly these changes are mandated by Congress.

Moreover, SBA believes that expanding access to SBA's financial assistance programs will help all small businesses to adapt to changes in business environment, recover from disasters more quickly, and grow successfully, while having no impact on the ability of smaller small firms to access financial services from SBA. Applicants to SBA's financial assistance programs are typically much smaller than the industry size standard, and thus, would remain eligible for assistance after this rule is adopted. Also, SBA does not believe that the changes adopted in this final rule will create increased competition for loans between smaller and larger small businesses as the impacts to the loan program in terms of additional loans to small firms are minimal relative to the baseline.

Comments Supporting the Option To Use Either a Three-Year or Five-Year Average for the Calculation of Average Annual Receipts for SBA's Business Loan, Disaster Loan, and SBIC Programs

Six commenters expressed support for the SBA's proposal to give applicants to the SBA's Business Loan, Disaster Loan, and SBIC Programs an option to use either a three-year or five-year averaging period for the calculation of average

annual receipts. The commenters maintained that the proposed change would allow more businesses to become eligible for SBA's assistance, provide flexibility in measuring size which will help small businesses obtain Government support to recover from the COVID-19 pandemic and help small businesses to get more SBIC funding. One commenter urged SBA to continue to allow applicants for SBA's business loan assistance to also qualify using the tangible net worth and net income based alternative size standard.

SBA's Response

SBA agrees with the commenters that its proposal to allow the applicants in the SBA's financial assistance programs to choose either the three-year or five-year receipts average will increase the number of small businesses that are eligible for such assistance. Like the SBA proposal to increase the averaging period for calculation of employees from 12 months to 24 months, the proposal to allow a firm to choose either a three-year or five-year averaging period for the calculation of average annual receipts will also enable more established business concerns to extend their small business status and some businesses that have just exceeded the size standard to regain small business status. This change will be particularly beneficial to those small businesses which cannot qualify under the alternative size standard.

Comments on Impacts of the Proposed Change on the SBIC Program Participants

SBA received two comments regarding the impacts of the SBA's proposal to allow applicants for the SBIC financing to choose the five-year averaging period to calculate average annual receipts, in addition to the existing three-year averaging period. One comment expressed support for the SBA's proposal, and the other opposed it. The commenter supporting the proposal argued that the proposed change will offer additional tools to help small businesses compete for capital they need. The commenter who opposed the proposed change argued that this will cause more SBIC funding to go to mid-size and larger small businesses at the expense of smaller small firms. The same commenter suggested improving data collection on the SBIC participants to be able to better assess the impact of the proposed change on the program.

SBA's Response

SBA agrees with the comment that some applicants that do not qualify as

small under the three-year receipts average could qualify under the five-year receipts average, thereby increasing the number of firms eligible to receive SBIC funding. For clarity, because the SBIC program was not specifically exempted from SBA's prior change to the receipts-based averaging period, the program was covered by the change. Thus, from January 2020 to January 2022, the regulation included a three-year or five-year option for the SBIC program. The final rule continues that option indefinitely, rather than suspending it after January 2022. In other words, as of its effective date, this final rule will reinstate the option of choosing the 3-year or 5-year receipts-average for the SBIC program indefinitely.

SBA disagrees that adopting the proposed changes to the calculation of employees and average annual receipts will cause SBIC funding to go to mid-size and larger small businesses at the expense of smaller small firms. SBA estimates that there will be minimal impact to existing small businesses receiving SBIC funding since the number of firms newly qualifying under the five-year average would also likely qualify under the alternative size standard which is already used for assessing eligibility to receive SBIC funding. Moreover, of the businesses above the three-year receipts average, a larger number would qualify under the alternative size standard than under the five-year receipts average. The commenter did not provide any data demonstrating that the proposed changes in averaging periods for calculating employees and average annual receipts would cause more SBIC funding to go to larger small and mid-size firms to the detriment of smaller small businesses.

Comment on Allowing the Option of Choosing Three-Year or Five-Year Receipts Average for Federal Contractors Indefinitely

One commenter commended SBA for providing flexibility for firms competing for federal contracts by allowing them to report either the three-year or five-year average receipts. The commenter added that this expands a pool of small contractors and expands opportunities to small businesses, including Black-owned small firms. The commenter also maintained that SBA's proposal would allow fast growing small businesses that cannot qualify as small under the three-year receipts average to elect to use the five-year receipts-average. Conversely, businesses experiencing declining revenues can use the three-year receipts average, rather than the five-year

average, to qualify as small and become eligible for much needed federal opportunities. The commenter urged SBA to maintain the flexibility of choosing between the three-year or five-year receipts average indefinitely to the benefit of growing small businesses that continue to struggle to win federal opportunities.

Another commenter recommended that SBA should allow three-year or five-year average receipts for small businesses without referencing to any specific program, such as the SBA's financial or contracting programs.

SBA's Response

In the December 5, 2019, final rule implementing the Small Business Runway Extension Act of 2018 ("SBREA"), which changed the averaging period for calculating average annual receipts from three years to five years (84 FR 66561), SBA provided a two-year transition period until January 6, 2022, in which businesses were able to use either the three-year or five-year averaging period to calculate average annual receipts for all SBA's programs other than the SBA's Business and Disaster Loan Programs. After January 6, 2022, SBA's calculation of average annual receipts is based only on the five-year averaging period for SBA's contracting and other programs, except for SBA's Business and Disaster Loan Programs. In the November 2, 2021, proposed rule, SBA proposed to permanently allow only the applicants in its Business Loan, Disaster Loan, and SBIC Programs to use either the three-year or five-year averaging period for calculating average annual receipts. The calculation of average annual receipts for SBA's contracting programs is not part of this rulemaking. The November 2, 2021, proposed rule did not discuss the possibility of further extending the option to choose a three-year or five-year averaging period for Federal small business procurement opportunities. Thus, in this final rule, SBA is not granting an option of choosing either the three-year or five-year averaging period indefinitely for federal procurement purposes.

Comments Opposing the Option To Use Either a Three-Year or Five-Year Average for the Calculation of Average Annual Receipts for SBA's Business Loan, EIDL, and SBIC Programs

Three commenters opposed SBA's proposal to give applicants to SBA's Business Loan, EIDL, and SBIC Programs the option to use either a three-year or five-year average for the calculation of average annual receipts. The commenters argued that the number

of small businesses eligible for SBA's assistance would be increased by allowing larger small businesses to extend their small business status and some mid-size businesses to regain their small business status. They maintained that this would not only make it more difficult for smaller small businesses to compete for capital that they need, but also would cause assistance intended for small businesses to go to large businesses. The commenters added that this is contrary to SBA's mission to assist truly small businesses.

SBA's Response

SBA estimates that, as a result of its decision to give applicants to SBA's Business Loan, EIDL, and SBIC Programs the option to use either a three-year or five-year averaging period for the calculation of average annual receipts, more firms will be eligible to participate in these programs. SBA believes that expanding the reach of its programs to include a greater number of small businesses supports all small businesses and the overall economy as the Nation continues to recover from the economic challenges caused by the COVID-19 pandemic. The three commenters opposing SBA's proposal did not submit any data or additional analysis to support their position that SBA's changes would make it difficult for smaller small businesses to compete for capital and cause assistance intended for small businesses to go to large businesses.

Although more firms will be eligible to participate in SBA's financial assistance programs as a result of the proposed changes to the averaging periods, SBA does not anticipate that these changes will significantly impact the distribution of loans by size of firm or impact the ability of any firm to obtain assistance from SBA. Based on its internal data on its financial assistance programs, SBA determined that applicants to these programs are generally much smaller than their industry size standards, or may qualify under SBA's alternative size standard, which is not affected by this rule. Thus, SBA believes that although a greater number of larger small businesses will become eligible to participate in SBA's financial assistance programs, the number of larger small firms that actually participate in such programs will be much lower. Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018-2020, SBA estimates that about five SBA 7(a) and 504 loans totaling \$2.1 million could be made to larger small businesses experiencing expansive impacts under this rule. Additionally, small businesses

could receive up to two additional EIDL loans totaling \$0.2 million due to the expansion of their size status. Together, these amounts represent a 0.01% increase to the loan amount relative to the baseline. Moreover, the increase in the number of firms eligible for financial assistance in no way reduces or eliminates the ability of smaller firms to remain eligible for such assistance. In other words, there is no competition for financial assistance. That is, when one firm gets financial assistance, that does not reduce or eliminate the possibility for another firm to get such assistance. All firms eligible under the current rules would continue to be eligible under the change and all eligible firms would get financial assistance.

Therefore, SBA disagrees with commenters that its proposal to give applicants to SBA's Business Loan, EIDL, and SBIC Programs the option to use either a three-year or five-year average for the calculation of average annual receipts will harm existing small businesses by making it harder for them to obtain financial assistance from SBA. Thus, SBA is adopting the change to the averaging period for calculating average annual receipts in SBA's Business Loan, Disaster Loan, and SBIC Programs, as proposed.

Comment Advocating for Treating the SBG Program Similarly to the Business Loan and Disaster Loan Programs

One comment observed that, under the prevailing structure in the proposed rule, the SBG program would be required to use five years of documentation to verify a small business's eligibility under SBA's size standards. The commenter believed that this requirement was burdensome on SBG program applicants in terms of both cost and time. The commenter asked that SBA treat the SBG program similarly to the Business Loan and Disaster Loan programs by exempting the SBG program from the five-year requirement. In support, the commenter pointed out that SBA's Office of Surety Bond Guarantees is part of SBA's Office of Capital Access.

SBA's Response

SBA recognizes that requiring all SBG applicants to use a five-year average would create additional time and cost burdens on many SBG applicants. Additionally, as the commenter observed, the SBG Program is housed in SBA's Office of Capital Access, which operates SBA's Business Loan program. SBA believes that treating the SBG program similarly to the Business Loan programs promotes consistency among SBA's programs and creates less

confusion about what rules apply to which programs. Therefore, in this final rule, SBA adds the SBG program to the list of programs in which applicants may elect to use a three-year receipts average or a five-year receipts average.

On the same reasoning, however, SBA disagrees with the commenter that the SBG program should be entirely exempt from using a five-year receipts average. All of SBA's programs are required by the Small Business Act to adopt a five-year receipts average in some respect. SBA therefore is allowing SBA surety bond applicants to use either a three-year or five-year average. As discussed in the impact analysis below, this change will have a small expansive effect on the program.

Conclusion

Based on the reasons discussed above, SBA is adopting the proposed changes without change. Specifically, pursuant to Public Law 116-283, SBA is adopting its proposal to increase the averaging period for computing the number of employees for size standards from 12 months to 24 months for all programs. Similarly, pursuant to Public Law 115-324, SBA is also adopting its proposal to permit the applicants to its Business Loan, Disaster Loan, and SBIC programs to elect to choose either the three-year or five-year averaging period for calculation of average annual receipts. While the proposed rule did not include the SBG program in the option of electing 3-year or 5-year averaging period in calculating average annual receipts, pursuant to a public comment and to maintain consistency across SBA's financial programs, SBA is also allowing the applicants to the SBG program to choose either the three-year or 5-year averaging period.

III. Section-by-Section Analysis

A. Section 121.104

In paragraph (c)(1), this final rule removes the sentence about certifications submitted prior to January 2022 because that date has now passed.

In paragraphs (c)(1), (c)(2), and (c)(3), SBA adds the SBG and SBIC Programs to the list of programs that are excepted from SBA's current rule on calculating average annual receipts.

In paragraph (c)(4), SBA amends the calculation of average annual receipts for the Business Loan, Disaster Loan, SBG, and SBIC Programs. A business in those programs may calculate its receipts using either a three-year average or a five-year average for the purposes of determining its size under a receipts-based size standard. This change does not affect the calculation of

any other figures in SBA's programs. In particular, alternative size standards are not affected by this change.

B. Section 121.106

In paragraphs (b)(1) and (b)(3), SBA amends the current 12-month averaging period to a 24-month averaging period. Businesses that have been in existence for more than 24 months would calculate their number of employees by averaging the number of employees for each pay period for the preceding completed 24 months. Businesses that have been in existence for fewer than 24 months would average their number of employees for each pay period during their existence.

C. Section 121.903

In paragraph (a)(1)(i), SBA amends the averaging period for size standards proposed by other agencies from a 12-month period to a 24-month period.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, below, SBA provides a benefit-cost analysis of this final rule, including: (1) a statement of the need for this action, and (2) an evaluation of the benefits and costs—both quantitative and qualitative—of this regulatory action.

Regulatory Impact Analysis

A. Benefit-Cost Analysis

1. What is the need for this regulatory action?

As stated elsewhere, the Small Business Act delegates to SBA's Administrator the responsibility for establishing small business size definitions (usually referred to as "size standards"). First, Public Law 116–283

(NDAA 2021) changed the averaging period for SBA's employee-based size standards from 12 months to 24 months. Second, in 2018, Public Law 115–324 (SBREA) modified the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards. Specifically, Public Law 115–324 changed the averaging period for receipts-based size standards for services industries from three years to five years.

The need of this final rule is to carry out the intent of Public Law 116–283 and Public Law 115–324, and to ensure consistency in the calculation of average number of employees and average annual receipts for size standards across the Federal Government. In addition to the averaging requirements, size standards prescribed under section 3(a)(2)(C)(ii) of the Small Business Act must meet two other requirements: (1) be proposed with an opportunity for public notice and comment, and (2) be approved by the Administrator. Neither Public Law 116–283 nor Public Law 115–324 repeals these two requirements, and this final rule satisfies these requirements.

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. This regulatory action promotes the Administration's goals and objectives and meets the SBA's statutory responsibility to implement a new law impacting size definitions for small businesses. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through access to capital, Federal Government contracts and purchases, and management, technical and disaster assistance.

2. What are the potential effects of this regulatory action?

i. Potential Effects of Changing the Calculation of Employees

Changing the period for calculating average number of employees from 12

months to 24 months may enable some mid-size businesses that have just exceeded size standards to regain small business status. Similarly, it could also allow some advanced and larger small businesses about to exceed size standards to retain their small status for a longer period. However, it could also result in some advanced small businesses having the 24-month employee average that happens to be higher than the 12-month employee average, thus ejecting them out of their small business status sooner. Detailed impacts of this change are discussed below.

It is difficult to determine the actual number of small and mid-size businesses that would be impacted by Public Law 116–283 and this regulatory action because there is no data on businesses' employment by month or by pay period. The employment data from the Economic Census special tabulation are only available once every five years. Similarly, the System for Award Management (SAM) only records the data on the concern's average number of employees for each pay period in the preceding completed 12 calendar months, but not their employee counts for each pay period or each month. For example, the 12-month average employee data for January 2020 is an average of number of employees for each pay period during preceding completed 12 calendar months (*i.e.*, January 2019 to December 2019). Similarly, the 24-month average employee value for January 2020 is an average of number of employees for each pay period during preceding completed 24 calendar months (*i.e.*, January 2018 to December 2019).

Given the lack of employment data for each pay period or each month, SBA approximates a firm's 24-month average number of employees as of January 2020 as follows:

$$AvgEmployee_{18-19} = \frac{1}{24} * \{(12 * AvgEmployee_{2018 (SAM)}) + (12 * AvgEmployee_{2019 (SAM)})\}$$

$$= \frac{1}{2} * \{(AvgEmployee_{2018 (SAM)}) + (AvgEmployee_{2019 (SAM)})\}$$

where:

$$AvgEmployee_{2018} = \frac{1}{t} \sum_{k=1}^t (Employee_{k,2018})$$

$$AvgEmployee_{2019} = \frac{1}{t} \sum_{k=1}^t (Employee_{k,2019})$$

where k = 1, 2, . . . t pay periods.

To estimate the 24-month employee average using the above formula, SBA analyzed the 2019 SAM extracts (as of September 1, 2019) and 2018 SAM extracts (as of September 1, 2018). The 24-month average employee formula would only work for businesses that were present in both 2018 and 2019 SAM extracts. One challenge was that some businesses found in 2019 SAM could not be found in 2018 SAM and vice versa. Excluding entities registered in SAM for purposes other than government contracting and entities ineligible for small business consideration (such as foreign entities and state-controlled institutions of higher learning), there were a total of

152,450 unique business concerns in 2019 SAM subject to at least one employee-based size standard. Of these concerns, 131,295 (or about 86.1%) were “small” in all North American Industry Classification System (NAICS) industries, 2,663 (or 1.7%) were “small” in some industries and “not small” in other industries, and 18,492 (or 12.1%) were “not small” in any industry subject to an employee-based size standard.

Excluding entities with “null” or “zero” employee values, 128,599 firms (or about 84.4%) appeared both in 2019 SAM and in 2018 SAM and were included in the 24-month average employee approximation and calculation of number of businesses

impacted. Of those 128,599 matched firms subject to an employee-based size standard, 108,541 (or about 84.4%) were “small” in all NAICS industries, 2,526 (or 2%) were “small” in some industries and other than small (“not small”) in other industries, and 17,532 (or about 13.6%) were “not small” in any industry. In other words, 133,958 (or 87.9%) of 152,450 total concerns in SAM 2019 and 111,067 (or 86.4%) of 128,599 total matched firms were small in at least one NAICS industry with an employee-based size standard. These results are summarized in Table 1, “Size Status of Businesses in Industries Subject to Employee-Based Size Standards.”

TABLE 1—SIZE STATUS OF BUSINESSES IN INDUSTRIES SUBJECT TO EMPLOYEE-BASED SIZE STANDARDS

| Size status | Total firms in 2019 SAM subject to least one employee-based size standard | | Firms in both 2018 SAM and 2019 SAM (matched) | | % Matched | Total to matched ratio * |
|--|---|-------|---|-------|-----------|--------------------------|
| | Number of firms | % | Number of firms | % | | |
| Small in at least one industry | 133,958 | 87.9 | 111,067 | 86.4 | 82.9 | 1.206 |
| Small in all industries | 131,295 | 86.1 | 108,541 | 84.4 | 82.7 | 1.210 |
| Small in some and not small in others | 2,663 | 1.7 | 2,526 | 2.0 | 94.9 | 1.054 |
| Large in all industries | 18,492 | 12.1 | 17,532 | 13.6 | 94.8 | 1.055 |
| Total | 152,450 | 100.0 | 128,599 | 100.0 | 84.4 | 1.185 |

* To be used to translate the results from the matched data to overall 2019 SAM data.

According to Table 2, “Distribution of Business Concerns Subject to Employee-Based Size Standards by Number of NAICS Codes,” the distribution of firms by the number of NAICS codes in the matched data is very similar to that for the overall 2019 SAM data. About 45% of firms were in only one NAICS code

that has an employee-based size standard, about 40% in 2–5 NAICS codes, about 9% in 6–10 NAICS codes, and about 5% in more than 10 NAICS codes. In other words, 55% of firms were in multiple NAICS codes with employee-based size standards. Thus, it is quite possible that the change may

impact a firm’s small business status in multiple industries. For purposes of this analysis, an impacted firm is defined as one that would be impacted by the change in terms of gaining, regaining, extending, or losing small business status in at least one industry with an employee-based size standard.

TABLE 2—DISTRIBUTION OF BUSINESS CONCERNS SUBJECT TO EMPLOYEE-BASED SIZE STANDARDS BY NUMBER OF NAICS CODES

| Number of NAICS codes | Total firms in 2019 SAM with at least one employee-based NAICS code | | Matched firms between 2019 and 2018 SAM | |
|-----------------------|---|------|---|------|
| | Count | % | Count | % |
| 1 NAICS code | 70,200 | 46.0 | 57,498 | 44.7 |

TABLE 2—DISTRIBUTION OF BUSINESS CONCERNS SUBJECT TO EMPLOYEE-BASED SIZE STANDARDS BY NUMBER OF NAICS CODES—Continued

| Number of NAICS codes | Total firms in 2019 SAM with at least one employee-based NAICS code | | Matched firms between 2019 and 2018 SAM | |
|---------------------------|---|-------|---|-------|
| | Count | % | Count | % |
| 2 to 5 NAICS codes | 61,266 | 40.2 | 52,599 | 40.9 |
| 6 to 10 NAICS codes | 13,540 | 8.9 | 11,798 | 9.2 |
| >10 NAICS codes | 7,444 | 4.9 | 6,704 | 5.2 |
| Total | 152,450 | 100.0 | 128,599 | 100.0 |

Note: A business concern is defined in terms of a unique local (vendor) DUNS number.

A central premise of Public Law 116–283 is that a 24-month employee average (as opposed to a 12-month employee average) would enable some mid-size businesses who have recently exceeded the size standard to regain small business status and some advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. However, this premise would only hold true when businesses' monthly employees are rising. When businesses' monthly employees are declining, due to economic downturns or other factors, the 24-month employee average could be higher than the 12-month employee average, thereby causing small businesses close to their size standards based on the 12-month average to lose their small business status sooner. In some cases where the 24-month employee average could be higher than the size standard, thereby forcing small businesses to lose their small status immediately when the longer 24-month averaging period becomes effective. Additionally, such businesses with declining employees

would have to wait longer to regain their small business status.

ii. Potential Effects of Changing the Calculation of Receipts

Changing the periods for calculating average annual receipts from three years to five years, pursuant to Public Law 115–324, may enable some mid-size businesses that have just exceeded size standards to regain small business status. Similarly, it could also allow some advanced and larger small businesses about to exceed size standards to retain their small business status for a longer period. However, it could also result in some advanced small businesses having a five-year receipts average that happens to be higher than the three-year receipts average, thus ejecting them out of their small business status sooner. To mitigate this negative impact, SBA is permitting to allow applicants to its Business Loan, Disaster Loan, SBG, and SBIC Programs to choose either a three-year average or a five-year average. Thus, an applicant might be eligible for assistance if its five-year average is equal to or less than the size standard, even if it would otherwise be ineligible

under the three-year average. Detailed impacts of this change are discussed below.

It is difficult to determine the actual number of small and mid-size businesses that would be impacted by Public Law 115–324 and this regulatory action because there is no annual data on receipts of businesses. The annual receipts data from the Economic Census special tabulation are only available once every five years. Similarly, the System for Award Management (SAM) only records the data on three-year average annual receipts of businesses over their three preceding fiscal years, but not their annual receipts for each fiscal year. For example, the receipts data for year 2019 is an average of annual receipts for 2018, 2017, and 2016. Similarly, the receipts data for 2018 is an average of annual receipts for 2017, 2016, and 2015, and so on. A five-year receipts average for 2019 would be an average of annual receipts for 2018, 2017, 2016, 2015, and 2014.

Given the lack of annual receipts for each year, SBA approximated a firm's five-year average annual revenue for 2019 as follows:

$$AvgRevenue_{2014-18}$$

$$= \frac{1}{5} * \{(2 * AvgRevenue_{2016 (SAM)}) + (3 * AvgRevenue_{2019 (SAM)})\}$$

where:

$$AvgRevenue_{2016 (SAM)} = AvgRevenue_{2013-15} = \frac{1}{3} * (Revenue_{2013} + Revenue_{2014} + Revenue_{2015})$$

and

$$AvgRevenue_{2019 (SAM)} = AvgRevenue_{2016-18} = \frac{1}{3} * (Revenue_{2016} + Revenue_{2017} + Revenue_{2018}).$$

This result may slightly underestimate the five-year revenue average when annual revenues are rising (*i.e.*, 2015 revenue > 2014 revenue > 2013 revenue) and overestimate it if annual revenues are declining (*i.e.*, 2015 revenue < 2014 revenue < 2013 revenue).

To estimate the five-year receipts average for 2019 using the above formula, SBA analyzed the 2019 SAM extracts (as of September 1, 2019) and 2016 SAM extracts (as of September 1, 2016). The above five-year average annual receipts formula would only work for businesses that were present in both 2016 and 2018 SAM extracts. One challenge was that some businesses found in 2019 SAM could not be found in 2016 SAM and vice versa. Excluding

entities registered in SAM for purposes other than government contracting and entities ineligible for small business consideration (such as foreign entities and state-controlled institutions of higher learning), there were a total of 334,990 unique business concerns in 2019 SAM subject to at least one receipts-based size standard. Of these concerns, 282,671 (or about 84.4%) were “small” in all NAICS industries, 9,783 (or 2.9%) were “small” in some industries and “not small” in other industries, and 42,536 (or 12.7%) were “not small” in any industry.

Excluding entities with “null” or “zero” receipts values, 192,295 firms (or about 57.4%) appeared both in 2019 SAM and in 2016 SAM and were included in the five-year average annual

receipts approximation and calculation of number of businesses impacted. Of those 192,295 matched firms subject to a receipts-based size standard, 152,040 (or about 79%) were “small” in all NAICS industries, 8,081 (or 4.2%) were “small” in some industries and other than small (“not small”) in other industries, and 32,174 (or about 16.7%) were “not small” in any industry. In other words, 292,454 (or 87.3%) of 334,990 total concerns in SAM 2019 and 160,121 (or 83.3%) of 192,295 total matched firms were small in at least one NAICS industry with a receipts-based size standard. These results are summarized in Table 3, “Size Status of Businesses in Industries Subject to Receipts-Based Size Standards.”

TABLE 3—SIZE STATUS OF BUSINESSES IN INDUSTRIES SUBJECT TO RECEIPTS-BASED SIZE STANDARDS

| Size status | Total firms in 2019 SAM subject to least one receipts-based standard | | Firms in both 2016 SAM and 2019 SAM (matched) | | % Matched | Total to matched ratio * |
|--|--|-------|---|-------|-----------|--------------------------|
| | Number of firms | % | Number of firms | % | | |
| Small in at least one industry | 292,454 | 87.3 | 160,121 | 83.3 | 54.8 | 1.826 |
| Small in all industries | 282,671 | 84.4 | 152,040 | 79.1 | 53.8 | 1.859 |
| Small in some and not small in others | 9,783 | 2.9 | 8,081 | 4.2 | 82.6 | 1.211 |
| Large in all industries | 42,536 | 12.7 | 32,174 | 16.7 | 75.6 | 1.322 |
| Total | 334,990 | 100.0 | 192,295 | 100.0 | 57.4 | 1.742 |

* To be used to translate the results from the matched data to overall 2019 SAM data.

According to Table 4, “Distribution of Business Concerns Subject to Receipts-Based Size Standards by Number of NAICS Codes,” the distribution of firms by the number of NAICS codes in the matched data is very similar to that for the overall 2019 SAM data. About 41–

43% of firms were in only one NAICS code that has a receipts-based size standard, about 35% in 2–5 NAICS codes, about 12% in 6–10 NAICS codes, and about 8–10% in more than 10 NAICS codes. In other words, 57–59% of firms were in multiple NAICS codes

with receipts-based size standards. Thus, it is quite possible that the change may impact a firm’s small business status in multiple industries. For purposes of this analysis, an impacted firm is defined as one that would be impacted by the change in terms of

gaining, regaining, extending, or losing small business status in at least one industry with a receipts-based size standard.

TABLE 4—DISTRIBUTION OF BUSINESS CONCERNS SUBJECT TO RECEIPTS-BASED SIZE STANDARDS BY NUMBER OF NAICS CODES

| Number of NAICS codes | Total firms in 2019 SAM with at least one receipts-based NAICS code | | Matched firms between 2019 and 2016 SAM | |
|---------------------------|---|-------|---|-------|
| | Count | % | Count | % |
| 1 NAICS code | 145,267 | 43.4 | 79,701 | 41.4 |
| 2 to 5 NAICS codes | 120,078 | 35.8 | 68,168 | 35.4 |
| 6 to 10 NAICS codes | 40,595 | 12.1 | 24,461 | 12.7 |
| >10 NAICS codes | 29,050 | 8.7 | 19,965 | 10.4 |
| Total | 334,990 | 100.0 | 192,295 | 100.0 |

Note: A business concern is defined in terms of a unique local (vendor) DUNS number.

A central premise of Public Law 115–324 is that a five-year annual receipts average (as opposed to a three-year annual receipts average) would enable some mid-size businesses who have recently exceeded the size standard to regain small business status and some advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. However, this premise would only hold true when businesses' annual revenues are rising. When businesses' annual revenues are declining, due to economic downturns or other factors, the five-year annual receipts average could be higher than the three-year annual receipts average, thereby causing small businesses close to their size standards to lose their small business status sooner. To mitigate such negative impacts on small businesses, SBA proposes, in consideration of public comments on the June 2019 proposed rule and the results from its own analysis, to permit businesses in the Business Loan, Disaster Loan, and SBIC Programs to use either a three-year average or a five-year average for calculating average annual receipts for the purposes of qualifying as a small business.

B. Impacts on Businesses From the Changes in Calculation of Employees and Receipts for Size Standards

1. Impacts on Businesses From Changing the Averaging Period for Employees From 12 Months to 24 Months

By comparing the approximated 24-month employee average with the current employee-based size standard for each of the 128,599 matched business concerns in each NAICS code subject to an employee-based size standard, in this final rule, SBA identifies the following four possible

impacts from changing the averaging period for employees from 12 months to 24 months:

i. The number of mid-size businesses that have exceeded the size standard and would regain small business status in at least one NAICS industry with an employee-based size standard (*i.e.*, 12-month average > size standard \geq 24-month average)—expansive impact.

ii. The number of advanced small businesses within 10% below the size standard that would have their small business status extended for a longer period in at least one NAICS industry with an employee-based standard (24-month average < 12-month average \leq size standard *and* 0.9* size standard < 12-month average \leq size standard)—expansive impact.

iii. The number of currently small businesses that would lose their small business status in at least one NAICS industry subjected to an employee-based size standard (*i.e.*, 12-month average \leq size standard < 24-month average)—contractive impact.

iv. The number of advanced small businesses within 10% below the size standard that would have their small status shortened in at least one NAICS industry subject to an employee-based standard (12-month average < 24-month average \leq size standard *and* 0.9* size standard < 12-month average \leq size standard)—contractive impact.

In this final rule, SBA is changing the period for calculation of average employees for all of its employee-based size standards from 12 months to 24 months. The purpose of Public Law 116–283 is to allow small businesses more time to grow and develop competitiveness and infrastructure so that they are better prepared to succeed under full and open competition once they outgrow the size threshold. However, as stated previously, a longer 24-month averaging period may not

always and necessarily provide relief to every small business concern. As discussed previously, when monthly employees are declining, the 24-month average would be higher than the 12-month average, thereby ejecting some advanced small businesses out of their small business status sooner or rendering some small businesses under the 12-month average not small immediately.

As discussed earlier, the change in the averaging period for employees from 12 months to 24 months results in four different types of impacts on small businesses: (i) Enabling current large or mid-size businesses to gain small business status (impact i); (ii) Enabling current advanced small businesses to lengthen their small business status (impact ii); (iii) Causing current small businesses to lose their small business status (impact iii); and (iv) Causing current small businesses to shorten their small business status (impact iv). Table 5, "Percentage Distribution of Impacted Firms with Employee-Based Size Standards by the Number of NAICS Codes," provides these results based on the 2019 SAM—2018 SAM matched firms.

It is highly notable that the distribution of impacted firms by the number of NAICS codes, as shown in Table 5, is very different as compared to a similar distribution based on the overall matched and total 2019 SAM data (*see* Table 2), especially with respect to firms with only one NAICS code and those with more than five NAICS codes. For example, about 45% of all firms in the overall data were associated with only one NAICS code, as compared only about 20% among impacted firms. Similarly, firms with more than five NAICS codes accounted for about 13–14% of all firms in the original data, as compared to 30–40% among impacted firms. It is also notable

that, among the industries with employee-based size standard, NAICS Sector 31–33 (Manufacturing) and

Sector 42 (Wholesale Trade) together accounted for about 90% of impacted firms (in terms of both contractive and

expansive impacts), with Sector 31–33 accounting for about 65% and Sector 42 about 25%.

TABLE 5—PERCENTAGE DISTRIBUTION OF IMPACTED FIRMS WITH EMPLOYEE-BASED SIZE STANDARDS BY THE NUMBER OF NAICS CODES

| Impact * | Number of impacted firms | % Distribution of impacted firms by number of NAICS codes | | | | Total |
|--|--------------------------|---|-----------------|------------------|-----------------|-------|
| | | 1 NAICS code | 2–5 NAICS codes | 6–10 NAICS codes | >10 NAICS codes | |
| Currently small in all NAICS codes | | | | | | |
| Impact (ii) | 195 | 33.3 | 47.2 | 10.3 | 9.2 | 100 |
| Impact (iii) | 178 | 33.1 | 44.4 | 15.7 | 6.7 | 100 |
| Impact (iv) | 66 | 19.7 | 47.0 | 13.6 | 19.7 | 100 |
| Currently large business in all NAICS codes | | | | | | |
| Impact (i) | 188 | 39.9 | 44.1 | 11.2 | 4.8 | 100 |
| Currently small in some NAICS and not small in others | | | | | | |
| Impact (i) | 182 | 0 | 34.1 | 31.9 | 34.1 | 100 |
| Impact (ii) | 130 | 0 | 36.2 | 32.3 | 31.5 | 100 |
| Impact (iii) | 42 | 0 | 40.5 | 40.5 | 19.0 | 100 |
| Impact (iv) | 20 | 0 | 50 | 15 | 35 | 100 |
| Total Impact by Impact Type | | | | | | |
| Impact (i) | 370 | 20.3 | 39.2 | 21.4 | 19.2 | 100 |
| Impact (ii) | 325 | 20.0 | 42.8 | 19.1 | 18.2 | 100 |
| Impact (iii) | 220 | 18.2 | 29.5 | 13.8 | 6.2 | 100 |
| Impact (iv) | 86 | 15.1 | 47.7 | 14.0 | 23.3 | 100 |
| Overall Impact | | | | | | |
| Expansive | 689 | 20.3 | 40.8 | 20.2 | 18.7 | 100 |
| Contractive | 306 | 23.5 | 44.8 | 18.6 | 13.1 | 100 |
| Total | 995 | 21.3 | 42.0 | 19.7 | 17.0 | 100 |

* Impact (i) = Current large businesses gaining small status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

Each of these impacts was then multiplied by an applicable factor or ratio, as shown in the last column of Table 1, to obtain the respective impacts corresponding to all firms in 2019 SAM subject to at least one employee-based size standard. These results are presented below in Table 6, “Impacts from Changing the Averaging Period for Employees from 12 Months to 24 Months.” The last column of the table shows the percentages of firms impacted relative to all business concerns in 2019 SAM. Because the SAM data only captures businesses that are primarily interested in federal procurement

opportunities, the SAM-based results do not fully capture the impacts the change may have on businesses participating in various non-procurement programs that apply to SBA’s employee-based size standards, such as SBA loan programs and exemptions from compliance with paperwork and other regulatory requirements.

The Economic Census, combined with the Census of Agriculture and County Business Patterns Reports, provides for each NAICS code information on the number of total small and large businesses subjected to an employee-based size standard. Based on the

matched SAM data, SBA computed percentages of businesses impacted under each impact category for each NAICS industry subject to an employee-based size standard. By applying such percentages to the 2012 Economic Census tabulation (the latest available when this rule was developed), SBA estimated the number of all businesses impacted under each impact type for each NAICS code subject to an employee-based size standard. These results are presented in Table 7, “Impacts from Changing the Averaging Period for Employees from 12 Months to 24 Months (2012 Economic Census).”

TABLE 6—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

| Impact ¹ | Firms impacted in matched dataset | Total to matched ratio | Total firms impacted in 2019 SAM | Total firms in 2019 SAM | % Impacted |
|--|-----------------------------------|------------------------|----------------------------------|-------------------------|------------|
| Entities only small under all NAICS code(s) | | | | | |
| Impact (ii) | 195 | 1.210 | 236 | 131,295 | 0.2 |
| Impact (iii) | 178 | 1.210 | 215 | 131,295 | 0.2 |

TABLE 6—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS—
Continued

| Impact ¹ | Firms impacted in matched dataset | Total to matched ratio | Total firms impacted in 2019 SAM | Total firms in 2019 SAM | % Impacted |
|--|-----------------------------------|------------------------|----------------------------------|-------------------------|------------|
| Impact (iv) | 66 | 1.210 | 80 | 131,295 | 0.1 |
| Entities other than small under all NAICS code(s) | | | | | |
| Impact (i) | 188 | 1.055 | 198 | 18,492 | 1.1 |
| Entities small in some NAICS code(s) and other than small in other(s) | | | | | |
| Impact (i) | 182 | 1.054 | 192 | 2,663 | 7.2 |
| Impact (ii) | 130 | 1.054 | 137 | 2,663 | 5.1 |
| Impact (iii) | 42 | 1.054 | 44 | 2,663 | 1.7 |
| Impact (iv) | 20 | 1.054 | 21 | 2,663 | 0.8 |
| Total impact by impact type | | | | | |
| Impact (i) | 370 | | 390 | 21,155 | 1.8 |
| Impact (ii) | 325 | | 373 | 133,958 | 0.3 |
| Impact (iii) | 220 | | 260 | 133,958 | 0.2 |
| Impact (iv) | 86 | | 101 | 133,958 | 0.1 |
| Overall total by expansive or contractive impact² | | | | | |
| Expansive [impact (i) or impact (ii)] | 689 | 1.098 | 757 | 152,450 | 0.5 |
| Contractive [impact (iii) or impact (iv)] | 306 | 1.178 | 361 | 152,450 | 0.2 |
| Total impact | 995 | | 1,117 | 152,450 | 0.7 |

¹ Impact (i) = Current large businesses gaining small business status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

² Number of firms under overall positive, negative and total impacts refer to the number of unique firms. Some firms could appear in multiple impact types and hence individual impacts may not add up to overall impact.

TABLE 7—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS
[2012 Economic Census]

| Impact ¹ | Total firms (in millions) | Estimate of impacted firms | % Impacted |
|---|---------------------------|----------------------------|------------|
| Impact (i) | 22,324 | 281 | 1.3 |
| Impact (ii) | 657,942 | 1,203 | 0.2 |
| Impact (iii) | 657,942 | 763 | 0.1 |
| Impact (iv) | 657,942 | 287 | 0.04 |
| Overall impact | | | |
| Expansive [impact (i) or impact (ii)] | 680,266 | 1,484 | 0.2 |
| Contractive [impact (iii) or impact (iv)] | 657,942 | 1,050 | 0.2 |
| Total impact | 680,266 | 2,534 | 0.4 |

¹ Impact (i) = Current large businesses gaining small status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

Currently large or mid-size businesses regaining small business status would become eligible for various benefits as small business concerns, including access to federal set-aside contracts, SBA's guaranteed loans and disaster assistance, reduced patent fees, and exemptions from various compliance and paperwork requirements. With their small business status extended, advanced small businesses would continue to receive such benefits for a longer period. However, the change may

also cause some small businesses to lose their small business status in at least one employee-based size standard and access to small business assistance, especially federal set-aside opportunities.

2. Impacts on Businesses From Changing the Averaging Period for Receipts From Three Years to Five Years

By comparing the approximated five-year annual receipts average with the current receipts-based size standard for

each of the 192,295 matched business concerns in each NAICS code subject to a receipts-based size standard, in this final rule, SBA identifies the following four possible impacts from changing the averaging period for annual receipts from three years to five years:

i. The number of mid-size businesses that have exceeded the size standard and would regain small business status in at least one NAICS industry with a receipts-based size standard (*i.e.*, 3-year

average > size standard ≥ 5-year average)—expansive impact.

ii. The number of advanced small businesses within 10% below the size standard that would have their small business status extended for a longer period in at least one NAICS industry with a receipts-based standard (5-year average < 3-year average ≤ size standard and 0.9* size standard < 3-year average ≤ size standard)—expansive impact.

iii. The number of currently small businesses that would lose their small business status in at least one NAICS industry subjected to a receipts-based size standard (i.e., 3-year average ≤ size standard < 5-year average)—contractive impact.

iv. The number of advanced small businesses within 10% below the size standard that would have their small business status shortened in at least one NAICS industry subject to a receipts-based standard (3-year average < 5-year average ≤ size standard and 0.9* size standard < 3-year average ≤ size standard)—contractive impact.

In this final rule, SBA is changing the period for calculation of average annual receipts for SBA receipts-based size standards for Business Loan, Disaster

Loan, SBG, and SBIC Programs from three years to five years. The purpose of Public Law 115–324 is to allow small businesses more time to grow and develop competitiveness and infrastructure so that they are better prepared to succeed under full and open competition once they outgrow the size threshold. However, a longer five-year averaging period may not always and necessarily provide relief to every small business concern. As discussed in the June 2019 proposed rule, when annual revenues are declining or when annual revenues for the latest three years are lower than those for the earliest two years of the five-year period, the five-year average would be higher than the three-year average, thereby ejecting some advanced small businesses out of their small business status sooner or rendering some small businesses under the three-year average not small immediately.

There are four different types of impacts on small businesses from changes to the averaging period for annual receipts from three years to five years as follows: (i) Enabling current large or mid-size businesses to gain

small business status (impact i); (ii) Enabling current advanced small businesses to lengthen their small business status (impact ii); (iii) Causing current small businesses to lose their small business status (impact iii); and (iv) Causing current small businesses to shorten their small business status (impact iv).

However, with the SBA’s decision to permit businesses in the Business Loan, Disaster Loan, SBG, and SBIC programs to use either a three-year average or a five-year average for calculating average annual receipts for the purposes of qualifying as a small business, the two contractive impacts (namely impact (iii) and impact (iv)) do not apply to this final rule. Accordingly, this final rule provides the analysis of the two expansive impacts of changing the averaging periods for annual receipts from three years to five years (namely impact (i) and impact (ii)) only.

Table 8, “Percentage Distribution of Impacted Firms with Receipts-Based Size Standards by the Number of NAICS Codes,” provides these results based on the 2019 SAM–2016 SAM matched firms.

TABLE 8—PERCENTAGE DISTRIBUTION OF IMPACTED FIRMS WITH RECEIPTS-BASED SIZE STANDARDS BY THE NUMBER OF NAICS CODES

| Impact * | Number of impacted firms | % Distribution of impacted firms by number of NAICS codes | | | | Total |
|--|--------------------------|---|-----------------|------------------|-----------------|-------|
| | | 1 NAICS code | 2–5 NAICS codes | 6–10 NAICS codes | >10 NAICS codes | |
| Currently large in all NAICS codes | | | | | | |
| Impact (i) | 899 | 36.3 | 33.9 | 12.6 | 17.2 | 100.0 |
| Currently small in all NAICS codes | | | | | | |
| Impact (ii) | 1,227 | 27.3 | 36.3 | 17.8 | 18.6 | 100.0 |
| Currently small in some NAICS and not small in others | | | | | | |
| Impact (i) | 1,761 | 0 | 27.4 | 22.7 | 50.0 | 100.0 |
| Impact (ii) | 1,072 | 0 | 27.8 | 24.3 | 47.9 | 100.0 |
| Total Impact by Impact Type | | | | | | |
| Impact (i) | 2,660 | 12.3 | 29.6 | 19.2 | 38.9 | 100.0 |
| Impact (ii) | 2,299 | 14.6 | 32.3 | 20.8 | 32.3 | 100.0 |
| Total expansive impact | 4,702 | 14.1 | 31.8 | 20.2 | 34.0 | 100.0 |

* Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

It is highly notable that the distribution of impacted firms by the number of NAICS codes, as shown in Table 8, is very different as compared to a similar distribution based on the overall matched and total 2019 SAM data (see Table 4), especially with respect to firms with only one NAICS code and those with more than five

NAICS codes. For example, as shown in Table 4, above, more than 40% of all firms in the overall data were associated with only one NAICS code, as compared to less than 15% among impacted firms in Table 8. Similarly, firms with more than five NAICS codes accounted for about 20% of all firms in the original data, as compared to more than 50%

among impacted firms. It is also notable that, among the industries with receipts-based size standards, NAICS Sectors 54, 56, and 23 together accounted for more than 70% of impacted firms, with Sector 54 (Professional, Scientific and Technical Services) accounting for about 30–35%, followed by Sector 23 (Construction) about 25–30%, and

Sector 56 (Administrative and Support, Waste Management and Remediation Services) about 10–13%.

Each of these impacts was then multiplied by an applicable factor or ratio, as shown in the last column of Table 3, to obtain the respective impacts corresponding to all firms in 2019 SAM subject to at least one receipts-based

size standard. These results are presented below in Table 9, “Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years.” The last column of the table shows the percentage of firms impacted relative to all business concerns in 2019 SAM.

Because the SAM data only captures businesses that are primarily interested

in federal procurement opportunities, the SAM-based results do not fully capture the impacts the change may have on businesses participating in various non-procurement programs that apply SBA’s receipts-based size standards, such as exemptions from compliance with paperwork and other regulatory requirements.

TABLE 9—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

| Impact ¹ | Firms impacted in matched dataset | Total to matched ratio (Table 1) | Total firms impacted in 2019 SAM | Total firms in 2019 SAM | % Impacted |
|--|-----------------------------------|----------------------------------|----------------------------------|-------------------------|------------|
| Entities other than small under all NAICS code(s) | | | | | |
| Impact (i) | 899 | 1.32 | 1,189 | 42,536 | 2.8 |
| Entities small under all NAICS code(s) | | | | | |
| Impact (ii) | 1,227 | 1.859 | 2,281 | 282,671 | 0.8 |
| Entities small in some NAICS code(s) and other than small in other(s) | | | | | |
| Impact (i) | 1,761 | 1.211 | 2,132 | 9,783 | 21.8 |
| Impact (ii) | 1,072 | 1.211 | 1,298 | 9,783 | 13.3 |
| Total expansive impact by impact type | | | | | |
| Impact (i) | 2,660 | | 3,320 | 52,319 | 6.3 |
| Impact (ii) | 2,299 | – | 3,579 | 292,454 | 1.2 |
| Overall total expansive impact ² | 4,702 | 1.391 | 6,542 | 334,990 | 2.0 |

¹ Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

² Number of firms under total positive impacts refer to the number of unique firms. Some firms could appear in both impact types and hence individual impacts may not add up to overall impact.

The Economic Census, combined with the Census of Agriculture and County Business Patterns Reports, provides for each NAICS code information on the number of total small and large businesses subjected to a receipts-based size standard. Based on the matched

SAM data, SBA computed percentages of businesses impacted under each impact category for each NAICS industry subject to a receipts-based size standard. By applying such percentages to the 2012 Economic Census tabulation, SBA estimated the number

of all businesses impacted under each impact type for each NAICS code subject to a receipts-based size standard. These results are presented in Table 10, “Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years (2012 Economic Census).”

TABLE 10—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS [2012 Economic Census]

| Impact ¹ | Total firms | Estimate of impacted firms | % Impacted |
|--------------------------------|-------------|----------------------------|------------|
| Impact (i) | 271,505 | 8,565 | 3.2 |
| Impact (ii) | 6,896,633 | 60,176 | 0.9 |
| Overall expansive impact | 7,168,138 | 68,742 | 1.0 |

¹ Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

Currently large or mid-size businesses regaining small business status would get various benefits as small business concerns, including access to SBA loan programs, and exemptions from various compliance and paperwork requirements. With their small business status extended, advanced small businesses would continue to receive

such benefits for a longer period. However, the change from three-year average receipts to five-year average may also harm some small businesses by causing them to lose or shorten their small business status in at least one receipts-based size standard, thereby depriving them of access to small business assistance, including SBA’s

lending. To mitigate such impacts, SBA is allowing businesses to elect either the three-year average annual receipts or the five-year average annual receipts for the Business Loan, Disaster Loan, and SBIC programs. SBA sought comment on

implementation of Public Law 115–324 for the Business Loan, Disaster Loan, and SBIC programs.

C. The Baseline

1. Baseline for Changing the Averaging Period for Employees From 12 Months to 24 Months

In this rulemaking, SBA establishes an appropriate baseline to evaluate benefits, costs, or transfer impacts of this action and alternative approaches considered, if any. A baseline should represent the agency’s best assessment of what the world would look like absent the regulatory action. For a new regulatory action modifying an existing regulation (such as changing the calculation of the average number of employees from 12 months to 24 months), a baseline assuming no change to the regulation (*i.e.*, maintaining the status quo) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Based on the 2012 Economic Census special tabulations (the latest available) and 2012 County Business Patterns Reports (for industries not covered by the Economic Census), of a total of about 680,266 firms in all industries with employee-based size standards, about 96.7% were considered small and 3.3% other than small under the 12-month employee average. Similarly, of

152,450 businesses that were subject to at least one employee-based size standard and eligible for federal contracting, 87.9% were small in at least one NAICS code and 12.1% other than small in all NAICS codes with an employee-based size standard.

Based on the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal year 2019, on average, about 39,714 unique firms in industries subject to employee-based size standards received at least one federal contract during 2019, of which 85.3% were small. Businesses subject to employee-based size standards received \$232.6 billion in annual average federal contract dollars in 2019, of which nearly \$47 billion or about 20.2% went to small businesses. Of total dollars awarded to small businesses subject to employee-based size standards, \$23.8 billion or 50.6% was awarded through various small business set-aside programs and 49.4% was awarded through non-set aside contracts.

Based on SBA’s internal data on its loan programs, small businesses subject to employee-based size standards received, on an annual basis, a total of 7,672 7(a) and 504 loans during fiscal years 2018–2020, totaling \$4.9 billion, of which 75% was issued through the 7(a) program and 25% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses

in those industries also received about 370 loans through the SBA’s EIDL loan program, totaling about \$0.02 billion on an annual basis. Table 11, “Baseline Analysis of Employee-Based Size Standards,” provides these baseline results.

Based on SBA’s internal data on its SBGProgram for fiscal years 2018–2020, small businesses subject to employee-based size standards received, on an annual basis, a total of 52 surety bonds guaranteed by SBA, which supported about \$41 million in contracts. Surety Bonds to firms with employee-based size standards account for only about 1% of overall program activity.

Based on SBA’s internal data on its SBIC program for fiscal years 2018–2020, on an annual basis, 375 small businesses subject to employee-based size standards received SBIC financing, resulting in \$1.8 billion in capital to those small firms. SBIC financing to firms with employee-based size standards account for about 34% of overall program activity.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through federal agencies that use SBA’s size standards. However, SBA has no data to estimate the number of small businesses receiving such benefits.

TABLE 11—BASELINE ANALYSIS OF EMPLOYEE-BASED SIZE STANDARDS

| Measure | Value |
|---|---------|
| Total industries subject to employee-based size standards | 500 |
| Total firms subject to at least one employee-based size standard (million)—2012 Economic Census | 680,266 |
| Total small firms subject to at least one employee-based size standard (million)—2012 Economic Census | 657,942 |
| Total small firms subject to at least one employee-based size standard as % of total firms—2012 Economic Census | 96.7 |
| Total business concerns in SAM ¹ (as of September 1, 2019) | 403,116 |
| Total business concerns subject to an employee-based size standard in at least one NAICS code ² (2019 SAM) | 152,450 |
| Total businesses that are small in at least one NAICS code subject to an employee-based size standard (2019 SAM) | 133,958 |
| Small business concerns as % of total business concerns subject to employee-based standards (2019 SAM) | 87.9 |
| Average total number of unique eligible vendors getting federal contracts ¹ —FPDS–NG (2019) | 106,230 |
| Average total number of unique firms with employee-based size standards getting federal contracts ² —FPDS–NG (2019) | 39,714 |
| Average total contract dollars awarded to business concerns, subject to employee-based standards (\$ billion)—FPDS–NG (2019) | \$233.6 |
| Average total small business contract dollars awarded to businesses subject to employee-based standards (\$ billion)—FPDS–NG (2019) | \$47.1 |
| Small business dollars as % of total dollars awarded to firms subject to employee-based standards (FPDS–NG (2019) | 20.2 |
| Annual average number of 7(a) and 504 loans to businesses subject to employee-based standards (FY 2018–2020) | 7,672 |
| Annual average amount of 7(a) and 504 loans (\$ billion) (FY 2018–2020) | \$4.9 |
| Number of EIDL loans to businesses subject to employee-based size standards (FY 2018–2020) ³ | 369 |
| Amount of EIDL loans (\$ billion) (FY 2018–2020) ³ | \$0.02 |
| Number of surety bonds to firms subject to employee-based size standards (FY 2018–2020) | 52 |
| Total value of contracts supported (\$ billion) (FY 2018–2020) | \$0.04 |
| Number of firms subject to employee-based size standards receiving SBIC financing (FY 2018–2020) | 375 |
| Total value of SBIC financing (\$ billion) (FY 2018–2020) | \$1.8 |

¹ Entities in SAM and FPDS–NG presented above only include business concerns that can be eligible to qualify as small for federal contracting. That is, entities that can never qualify as small (*e.g.*, foreign, not-for-profit and government entities) are excluded as they are not impacted by this rule.

² A business concern could appear in multiple NAICS industries involving both employee-based and size standards and those based on other measures (such as employees). Similarly, a business could be small in some industries and other than small in others.

³ Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

As mentioned previously, businesses that would regain or lose small business status can be identified by comparing their 24-month employee average with the employee-based size standard. That is, if the 24-month employee average of a firm currently above the size standard is lower than the applicable employee-based size standard, that firm will gain or regain small business status. Similarly, if the 24-month employee average of a currently small business is higher than the size standard, that business will lose its small business status. However, to estimate the number of small businesses that would benefit by having their small business status extended for a longer period or would be penalized by having their small size status shortened, SBA considered small businesses whose 12-month employee average was within 10% below their employee-based size thresholds. Small businesses that are not immediately impacted may be impacted either negatively or positively someday as they continue to grow and approach the size standard threshold.

2. Baseline for Changing the Averaging Period for Receipts From Three Years to Five Years

For this new regulatory action modifying an existing regulation (such as changing the average annual receipts calculation from three years to five years), a baseline assuming no change to

the regulation (*i.e.*, maintaining the status quo) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Based on the 2012 Economic Census special tabulations (the latest available), 2012 County Business Patterns Reports (for industries not covered by the Economic Census), and 2012 Agricultural Census tabulations (for agricultural industries), of a total of about 7.2 million firms in all industries with receipts-based size standards, about 96% are considered small and 4% other-than-small under the three-year annual receipts average. Similarly, of 334,990 businesses in SAM 2019 that were subject to at least one receipts-based size standard and eligible to qualify as small business concerns, 87.3% were small in at least one NAICS code and 12.7% other than small in all NAICS codes.

Based on SBA’s internal data on its loan programs, small businesses subject to receipts-based size standards received, on an annual basis, a total of about 50,150 7(a) and 504 loans for fiscal years 2018–2020, totaling nearly \$24 billion, of which 85% was issued through the 7(a) program and 15% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received about 3,534 loans through the

SBA’s EIDL program, totaling about \$0.1 billion on an annual basis.

Besides financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through federal agencies that use SBA’s size standards. However, SBA has no data to estimate the number of small businesses receiving such benefits. Similarly, due to the lack of data, SBA is not able to determine impacts the final rule are subject to their own size standards based on average annual receipts.

Based on SBA’s internal data on its SBG Program for fiscal years 2018–2020, small businesses subject to receipt-based size standards received, on an annual basis, a total of 10,433 surety bonds guaranteed by SBA which supported \$6.7 billion in contracts. Over 95% of surety bond activity, in terms of the value of contracts supported, occurs under Sector 23 (Construction).

Based on SBA’s internal data on SBIC program for fiscal years 2018–2020, on an annual basis, 724 small businesses subject to receipts-based size standards received SBIC financing, resulting in \$3.4 billion in capital to those small firms. Table 12, “Baseline Analysis of Receipts-Based Size Standards,” below, provides these baseline results.

TABLE 12—BASELINE ANALYSIS OF RECEIPTS-BASED SIZE STANDARDS

| Measure | Value |
|--|---------|
| Total industries subject to receipts-based standards | 518 |
| Total firms subject to at least one receipts-based standard (million)—2012 Economic Census | 7.17 |
| Total small firms subject to at least one receipts-based standard (million)—2012 Economic Census | 6.9 |
| Total small firms subject to at least one receipts-based standard as % of total firms—2012 Economic Census | 96.2 |
| Total business concerns in SAM ¹ (as of September 1, 2019) | 403,116 |
| Total business concerns subject to a receipts-based size standard in at least one NAICS code ² (2019 SAM) | 334,990 |
| Total businesses that are small in at least one NAICS code subject to a receipts-based size standard (2019 SAM) | 292,454 |
| Small business concerns as % of total business concerns subject to receipts-based standards (2019 SAM) | 87.3 |
| Annual average number of 7(a) and 504 loans to businesses subject to receipts-based standards (FY 2018–2020) | 50,153 |
| Annual average amount of 7(a) and 504 loans (\$ billion) (FY 2018–2020) | \$23.9 |
| Number of EIDL loans to businesses subject to receipts-based size standards (FY 2018–2020) ³ | 3,534 |
| Amount of EIDL loans (\$ billion) (FY 2018–2020) ³ | \$0.1 |
| Number of surety bonds to firms subject to receipts-based size standards (FY 2018–2020) | 10,433 |
| Total value of contracts supported (\$ billion) (FY 2018–2020) | \$6.7 |
| Number of firms subject to receipts-based size standards receiving SBIC financing (FY 2018–2020) | 724 |
| Total value of SBIC financing (\$ billion) (FY 2018–2020) | \$3.4 |

¹ Entities in SAM presented above only include business concerns that can be eligible to qualify as small for federal assistance. That is, entities that can never qualify as small (*e.g.*, foreign, not-for-profit and government entities) are excluded as they are not impacted by this rule.

² A business concern could appear in multiple NAICS industries involving both receipts-based size standards and those based on other measures (such as employees). Similarly, a business could be small in some industries and other-than-small in others.

³ Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Businesses that would regain or expand their small business status can be identified by comparing the estimate of their five-year receipts average with the size standard. That is, if the five-

year receipts average of a firm currently above the size standard is lower than the applicable size standard, that firm will gain or regain small business status. To estimate the number of small

businesses that would benefit by having their small business status extended for a longer period or would be penalized by having their small business status shortened, SBA considered small

businesses whose three-year average annual receipts was within ten percent below their receipts-based size thresholds. Depending upon whether their annual receipts are growing or declining, small businesses that are not immediately impacted may be impacted, either positively (*i.e.*, gaining small business status) or negatively (*i.e.*, losing small business status) someday as they continue to grow and approach the size standard threshold as in the current three-year averaging method. However, SBA is not able to quantify such impacts now.

D. Expansions in Small Business Size Status

1. Expansive Effects of Changing the Averaging Period for Employees From 12 Months to 24 Months

The most significant expansive effects to businesses from the change in the averaging period for calculation of the number of employees for size standards from 12 months to 24 months include: (i) Enabling some mid-size businesses currently categorized above their corresponding size standards to gain or regain small business size status and thereby qualify for participation in federal assistance intended for small businesses, and (ii) Allowing some advanced and larger small businesses

close to their size thresholds to lengthen their small business status for a longer period and thereby continue their participation in federal small business programs. These programs include SBA’s Business and Disaster Loan Programs, SBG and SBIC Programs, and Federal Procurement Programs intended for small businesses. Federal Procurement Programs provide targeted, set-aside opportunities for small businesses under SBA’s various business development and contracting programs, including 8(a) Business Development (BD), HUBZone, Women-Owned Small Business (WOSB), Economically Disadvantaged Women-Owned Small Business (EDWOSB), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs. Expansive effects accruing to businesses gaining and extending small status are presented below in Table 13, “Expansive Impacts of Changing the Averaging Period for Employees from 12 Months to 24 Months.” The results in Table 13 pertain to businesses and industries subject to employee-based size standards only.

As shown in Table 13, of 21,155 firms not currently considered small in any employee-based size standards, 390 (or 1.8%) would benefit from the change by gaining or regaining small status under

the 24-month employee average in at least one NAICS industry that is subject to an employee-based size standard. Additionally, 373 or 0.3% of small businesses within 10% below size standards would see their average number of employees decrease under the 24-month averaging period, consequently enabling them to keep their size status for a longer period.

Using the 2012 Economic Census, SBA estimated that about 280 or 1.3% of currently large businesses would gain or regain small status and about 1,200 or 0.2% of total small businesses would see their small business status extended for a longer period as the result of the change in the calculation of employees. These results are shown in Table 13, below.

With more businesses qualifying as small under the change in the calculation of employees, federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current employee-based size standards will be able to retain their small business status for a longer period under the 24-month employee average, thereby enabling them to continue to benefit from the small business programs.

TABLE 13—EXPANSIVE IMPACTS OF CHANGING AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

| Impact of the change | Large firms gaining small status | Small firms extending small status | Total expansive impact |
|--|----------------------------------|------------------------------------|------------------------|
| Number of impacted industries | 196 | 184 | 1 260 |
| Number of large firms becoming small or/and small firms extending small status—SAM (as of Sept 1, 2019) | 390 | 373 | ² 757 |
| Large firms becoming small or/and small firms with extended small status as % of total large or/and small firms in the baseline—SAM (as of Sept 1, 2019) | 1.8 | 0.3 | 0.5 |
| Number of large firms becoming small or/and small firms extending small status—2012 Economic Census | 281 | 1,203 | 1,484 |
| Large firms becoming small or/and small firms extending small status as % of total large or/and small firms in the baseline—2012 Economic Census | 1.3 | 0.2 | 0.2 |
| Number of large firms becoming small or/and small firms extending small status for small business contracts—FPDS—NG (2019) | 139 | 83 | 219 |
| Additional small business dollars available to newly qualified firms or/and current small firms with extended small status (\$ million)—FPDS—NG (2019) | 332.7 | 90.5 | 423.2 |
| Additional small business dollars as % total small business contract dollars in the baseline FPDS—NG (2019) | 0.7 | 0.2 | 0.9 |
| Number of additional 7(a) and 504 loans to newly qualified firms or/and current small firms extending small status (FY 2018–2020) | 1 | 1 | 2 |
| Additional 7(a) and 504 loan amount to newly qualified firms or/and current small firms extending small status (\$ million) (FY 2018–2020) | 0.01 | 0.02 | 0.03 |
| Additional 7(a) and 504 loan amount as % of total 7(a) and 504 loan amount in the baseline (FY 2018–2020) | 0.0 | 0.0 | 0.01 |
| Number of additional EIDL loans to newly qualified firms or/and small firms extending small status ³ (FY 2018–2020) | 0 | 0 | 0 |
| Additional EIDL loan amount to newly qualified firms or/and small firms with extended small status (\$ million) ³ (FY 2018–2020) | 0 | 0 | 0 |
| Additional EIDL loan amount as % of total loan amount in the baseline ³ (FY 2018–2020) | 0 | 0 | 0 |

¹ Total impact represents total unique industries impacted to avoid double counting as some industries have large firms gaining small status and small firms extending small status.

² Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

³Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Based on the FPDS-NG data for fiscal year 2019, as shown in Table 13, SBA estimates that those newly-qualified small businesses (*i.e.*, large businesses gaining small status) under the final rule could receive about \$333 million in small business contract dollars annually under SBA's small business, 8(a) BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. That represents a 0.7% increase to total small business contract dollars from the baseline in Table 11, above. Additionally, small businesses could receive approximately \$90 million in additional small business contract dollars because of extension of their small business status, which is about a 0.2% increase from the total small business contract dollars in the baseline. That is, businesses gaining or extending small business status could receive about \$423 million in additional small business contract dollars, which is a 0.9% increase to the total small business dollars in the baseline.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018-2020, SBA estimates up to about one SBA 7(a) or 504 loans totaling nearly \$0.01 million could be made to these newly-qualified small businesses under the change in this final rule. Additionally, small businesses could receive one SBA 7(a) or 504 loans totaling nearly \$0.02 million due to the extension of their size status. These amounts represent a 0.001% increase to the 7(a) and 504 loan amount in the baseline.

Newly-qualified small businesses and those with extended small business status under the 24-month averaging period may also benefit from the SBA's EIDL loan program. However, since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. Based on the historical trends of the SBA's EIDL loan data which shows that firms receiving loans under employee-based size standards are well below the industry size thresholds, SBA estimates that newly-defined small businesses and small businesses extending small business status for a longer period would not receive any additional EIDL loans under the change adopted in this final rule.

SBA also assessed the impacts of the changes in the SBG Program. SBA estimates that the changes to the averaging period for employees will have no impacts on the program as most surety bonds guaranteed by SBA go to

firms much smaller than their respective employee-based size standards or to firms operating under a receipts-based size standard. These firms would continue to be eligible for SBA surety bonds after adoption of the change to the averaging period for employee-based size standards in this final rule. Thus, SBA believes that changing the averaging period for employee-based size standards from 12 months to 24 months will have no impact on the SBG Program.

Additionally, SBA assessed the impacts of the changes in the SBIC Program. Similar to the distribution of firms under SBA's financial assistance programs discussed above, the majority of firms subject to employee-based size standards that receive capital through an SBIC are generally much smaller than their respective industry size standard. Based on internal data from fiscal years 2018-2020, SBA estimates that only about 10% of firms receiving SBIC financing are greater than 90% of their respective employee-based size standard. Moreover, only a small proportion (about 0.06%) of total small businesses subject to employee-based size standards that are eligible to participate in the SBIC program receive financing through an SBIC. Thus, based on these historical trends of the SBIC program, SBA believes that changing the averaging period for employee-based size standards from 12 months to 24 months will have no impact on the program as there are likely few firms with expansive impacts at the higher margin of their respective employee-based size standard that would participate in and receive funding through the SBIC program.

The added competition from more businesses qualifying as small may result in lower prices to the Federal Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to a larger pool of small businesses under the change adopted in this final rule, HUBZone firms might end up getting more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to federal agencies. SBA cannot estimate such costs savings, as it is impossible to determine the number and value of unrestricted

contracts to be otherwise awarded to HUBZone firms that will be awarded as set-asides. However, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Additionally, the newly-defined small businesses, as well as those with a longer small business status, would also benefit from reduced fees, less paperwork, and fewer compliance requirements but SBA has no data to quantify this impact.

The change in the averaging period for employees from 12 months to 24 months will also address some of the challenges and uncertainties small businesses face in the open market once they graduate from their small business status. Small and mid-size businesses experience a considerable disadvantage in competing for full and open contracts against large businesses, including the largest in the industry. These large businesses often have several competitive advantages over small and mid-size firms, including vast past performance qualifications and experience, strong brand-name recognition, a plethora of professional certifications, security clearances, and greater financial and marketing resources. Small and mid-size businesses cannot afford to maintain these resources, leaving them at a considerable disadvantage.

With contracts getting bigger, one large set-aside contract could throw a firm out of its small business size status, thereby subjecting it to certain requirements that apply to other-than-small firms, such as developing subcontracting plans. That firm may not have the infrastructure, existing business processes, and/or other resources in place in order to comply with such requirements. This may also result in constant shuffling between small and other-than-small status.

By allowing smaller mid-size companies that have just exceeded the size threshold to regain small business status and advanced small businesses close to size standards to prolong their small business status for a longer period, this final rule can expand the pool of qualified small firms for agencies to draw upon to meet their small business requirements.

2. Expansive Effects of Changing the Averaging Period for Receipts From Three Years to Five Years

The most significant benefits to businesses from the change in the period for calculation of average annual receipts from three years to five years include: (i) Enabling some mid-size businesses currently categorized above their corresponding size standards to gain or regain small business status and thereby qualify for participation in federal assistance intended for small businesses, including access to SBA’s financial assistance and (ii) Allowing some advanced and larger small businesses close to their size thresholds to lengthen their small business status

for a longer period and thereby continue their participation in SBA’s Business Loan, Disaster Loan, SBG, and SBIC Programs. Benefits accruing to businesses gaining and extending small business status are presented below in Table 14, “Expansive Impacts of Changing the Averaging Period for Receipts from 3 Years to 5 Years.” The results in Table 14 pertain to businesses and industries subject to SBA’s receipts-based size standards only.

As shown in Table 14, of 42,536 firms not currently considered small in any receipts-based size standards, 3,320 (or 6.4%) would benefit from the change by gaining or regaining small business status under the five-year receipts average in at least one NAICS industry

that is subject to a receipts-based size standard. Additionally, nearly 3,600 or 1.2% of small businesses within 10% below size standards would see their annual receipts decrease under the five-year averaging period, consequently enabling them to keep their small business status for a longer period.

Using the 2012 Economic Census, SBA estimated that more than 5,900 or 3.3% of currently large businesses would gain or regain small business status and more than 61,250 or 0.9% of total small businesses would see their small business status extended for a longer period as the result of this final rule. These results are shown in Table 14.

TABLE 14—EXPANSIVE IMPACTS OF CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

| Impact of change | Firms gaining small business status | Firms extending small business status | Total expansive impact |
|--|-------------------------------------|---------------------------------------|------------------------|
| Number of impacted industries | 377 | 382 | 1 447 |
| Number of large firms becoming small or/and small firms extending small business status—SAM (as of Sept 1, 2019) | 3,320 | 3,579 | 2 6,542 |
| Large firms becoming small or/and small firms with extended small business status as % of total large or/and small firms in the baseline—SAM (as of Sept 1, 2019) | 6.4 | 1.2 | 2.0 |
| Number of large firms becoming small or/and small firms extending small business status—2012 Economic Census | 5,938 | 61,263 | 67,201 |
| Large firms becoming small or/and small firms extending small business status as % of total large or/and small firms in the baseline—2012 Economic Census | 3.3 | 0.9 | 0.9 |
| Number of additional 7(a) and 504 loans to newly qualified firms or/and current small firms extending small status (FY 2018–2020) | 1 | 4 | 5 |
| Additional 7(a) and 504 loan amount to newly qualified firms or/and current small firms extending small status (\$ million) (FY 2018–2020) | \$0.2 | \$1.9 | \$2.1 |
| Additional 7(a) and 504 loan amount as % of total disaster loan amount in the baseline (FY 2018–2020) | 0.0 | 0.0 | 0.01 |
| Number of additional EIDL loans to newly qualified firms or/and small firms extending small status ³ (FY 2018–2020) | 1 | 1 | 2 |
| Additional EIDL loan amount to newly qualified firms or/and small firms with extended small status (\$ million) ³ (FY 2018–2020) | \$0.001 | \$0.003 | \$0.004 |
| Additional EIDL loan amount as % of total loan amount in the baseline ³ (FY 2018–2020) | 0.0 | 0.0 | 0.03 |

¹ Total impact represents total unique industries impacted to avoid double counting as some industries have large firms gaining small business status and small firms extending small business status.

² Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

³ Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the five-year receipts average, thereby enabling them to continue to benefit from the small business programs.

Under SBA’s 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates that one SBA 7(a) or 504 loans totaling \$0.2 million could be made to these newly qualified small businesses under the change adopted in this final rule. Additionally, small businesses could receive up to four SBA 7(a) or 504 loans

totaling \$1.9 million due to the expansion of their size status. Together, these amounts represent a 0.01% increase to the loan amount in the baseline.

Newly-qualified small businesses and those with extended small business status will also benefit from the SBA’s EIDL program. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the SBA EIDL loan data, SBA estimates that, on an annual basis, the newly-defined small

businesses under the change could receive about one EIDL loan, totaling about \$0.001 million. Similarly, extending small business status for a longer period could result in small businesses receiving one disaster loan, totaling about \$0.003 million. These results are presented in Table 14, above.

SBA also assessed the impacts of the changes in the SBG Program. Based on internal data for fiscal years 2018–2020, SBA estimates that, on an annual basis, about two additional bonds supporting \$0.6 million in contracts could be made to newly qualified small businesses subject to receipts-based size standards under the change. SBA believes that this

impact is *de minimis* as these figures represent an increase of less than 0.02% of the total number of bonds guaranteed by SBA and the total value of contracts supported on an annual basis as compared to the amounts in the baseline.

Additionally, SBA assessed the impacts of the changes in the SBIC Program. While the majority of firms subject to receipts-based size standards that receive capital through an SBIC are much smaller than their respective industry size standard, based on internal data from fiscal years 2018–2020, SBA estimates that about 42% of firms receiving SBIC financing are greater than 90% of their respective employee equivalent receipts-based size standard.⁴ However, similar to the proportion of firms receiving capital from SBICs under employee-based size standards, only a small proportion (about 0.01%) of total small businesses subject to receipts-based size standards that are eligible to participate in the SBIC program receive financing through

an SBIC. Based on these historical trends, SBA estimates that, under the change to the averaging period for receipts, on an annual basis, about three additional firms subject to receipts-based size standards could receive about \$14 million in SBIC financing. SBA believes that this impact is *de minimis* as these figures represent an increase of less than 0.4% of total financings as compared to the amounts in the baseline. Additionally, the newly-defined small businesses, as well as those with a longer small business status, would also benefit from reduced fees, less paperwork, and fewer compliance requirements, but SBA has no data to quantify this impact.

E. Contractions in Eligibility for Small Business Status

1. Contractive Effects of Changing the Averaging Period for Employees From 12 Months to 24 Months

As stated previously, the change enacted under Public Law 116–283 may

not always and necessarily benefit every small business concern. When businesses’ monthly employees are declining or when the number of employees for the latest 12 months are lower than those for the earliest 12 months of the 24-month averaging period, the 24-month employee average would be higher than the 12-month average, thereby ejecting small businesses out of their small status sooner or rendering some small businesses other than small immediately. Such small businesses would no longer be eligible for federal small business opportunities, such as SBA’s loans, federal small business contracts, and other federal assistance available to small businesses. These impacts are provided in Table 15, “Contractive Impacts from Changing the Averaging Period for Employees from 12 Months to 24 Months,” below.

TABLE 15—CONTRACTIVE IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

| Impact of the change | Small firms losing small status | Small firms shortening small status | Total contractive impact |
|--|---------------------------------|-------------------------------------|--------------------------|
| Number of industries impacted | 190 | 64 | 1 211 |
| Number of small firms losing or/and shortening small status—SAM (as of Sept 1, 2019) | 260 | 101 | 2 361 |
| Small firms losing or shortening small status as % of total small firms—SAM (as of Sept 1, 2019) | 0.2 | 0.08 | 0.3 |
| Number of small firms losing or extending small status—2012 Economic Census | 763 | 287 | 1,050 |
| Small firms losing or shortening small status as % of total small firms in the baseline—2012 Economic Census | 0.1 | 0.04 | 0.2 |
| Number of small firms losing or shortening small business eligibility for set-aside contracts—FPDS-NG (2019) | 178 | 20 | 197 |
| Small business dollars unavailable to small firms losing or shortening small status (\$ million)—FPDS-NG (2019) | \$197.1 | \$68.7 | \$265.8 |
| Small business dollars as % of total small business dollars in the baseline | 0.42 | 0.15 | 0.56 |
| Number of 7(a) and 504 loans unavailable to small firms losing or shortening small status (FY 2018–2020) | 1 | 1 | 2 |
| 7(a) and 504 loan amount unavailable to small firms losing or shortening (\$ million) (FY 2018–2020) | \$0.01 | \$0.01 | \$0.02 |
| Unavailable 7(a) and 504 loan amount as % of total loan amount in the baseline (baseline = \$24.5 billion) (FY 2018–2020) | 0.0 | 0.0 | 0.0 |
| Number of EIDL loans unavailable to small firms losing or shortening small status ³ (FY 2018–2020) | 0.0 | 0.0 | 0.0 |
| Unavailable EIDL loan amount to small firms losing or extending small status (\$ million) ³ (FY 2018–2020) | \$0.0 | \$0.0 | \$0.0 |
| Unavailable EIDL loan amount as % of total EIDL loan amount in the baseline (baseline = \$1.0 billion) ³ (FY 2018–2020) | 0.0 | 0.0 | 0.0 |

¹ Total impact represents total unique industries impacted to avoid double counting as some industries have small firms losing small status and small firms shortening small status.

² Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

³ Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

⁴ Due to data limitations, SBA was not able to obtain revenue information for recipients of SBIC

financing, however, data on total employees were available. Thus, SBA analyzed the distribution of

firms by size using employee equivalent size standards.

As shown in Table 15, SBA estimates that, of 133,958 firms in 2019 SAM that were small under at least one employee-based size standard based on the 12-month employee average, 260 firms (or 0.2%) would lose their small status and another 100 firms (or 0.08%) would see their size status shortened as a result of the change adopted in this final rule. Similarly, based on the 2012 Economic Census data and 2012 Census of Agriculture, 763 firms would lose their small business status and 287 firms would see their size status shortened, which represent, respectively, 0.1% and 0.04% of total small firms subject to an employee-based size standard.

Based on the contract awards data from FPDS-NG for fiscal year 2019, businesses losing or shortening small status would lose access to about \$266 million in federal small business contract collars, which is about a 0.6% decrease from the corresponding value in the baseline. Similarly, based on SBA's loan data for fiscal years 2018–2020 and the number of impacted firms from the Economic Census, SBA estimates that businesses losing or shortening small business status would also lose access to about \$0.02 million in SBA 7(a) and 504 loans. Based on the historical trends of the SBA's EIDL loan data which shows that firms receiving loans under employee-based size standards are well below the industry size thresholds, SBA estimates that businesses losing or shortening small business status would not lose access to any additional EIDL loans under the change adopted in this final rule. Similarly, based on the historical trends of the SBA's SBG and SBIC Programs, which shows that the majority of firms participating in these programs are much smaller than their respective employee-based size standards, or operate under a receipts-based size standard, SBA estimates that businesses losing or shortening small business status under the employee-based size standards would not lose access to any additional surety bond guarantees or SBIC financing under the change adopted in this final rule.

Businesses losing small status and those with size status shortened would also be deprived of other federal benefits available, including reduced fees and exemptions from certain paperwork and compliance requirements. However, there exists no data to quantify this impact.

Additionally, by enabling mid-size businesses to regain small business status and lengthening the small business status of advanced and successful larger small businesses, the final rule may disadvantage smaller

small businesses in more need of federal assistance than their larger counterparts in competing for federal opportunities. SBA frequently receives concerns from smaller small businesses that they lack resources, past performance qualifications and expertise to be able to compete against more resourceful, qualified and experienced large small businesses for federal opportunities for small businesses.

Besides having to register in SAM to be able to participate in federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status. All businesses willing to do business with the Federal Government have to register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in federal contracting are already registered in SAM. Furthermore, this final rule does not establish the new size standards for the first time; rather, it merely proposes to modify the calculation of annual average receipts that apply to the existing size standards in accordance with a statutory requirement.

The change adopted in this final rule may entail some additional administrative costs to the Federal Government because more businesses may qualify as small for federal small business programs. For example, there will be more firms seeking SBA's loans; more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov*; more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, WOSB, EDWOSB, and SDVOSB status; and more firms applying for SBA's 8(a)/BD and Mentor-Protégé programs. With an expanded pool of small businesses, it is likely that federal agencies will set aside more contracts for small businesses under the change adopted in this final rule. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on size protests actually show that the number of size protests actually decreased after an increase in the number of businesses qualifying as small as a result of size standards revisions as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests dropped from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013) to less than 500 during fiscal

years 2017–2019. However, with more months of the data to be reviewed, 24-month averaging may increase time needed by size specialists to process a size protest. Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with compliance and verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income based alternative size standard instead of using the industry-based size standard to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some federal contracts may possibly have higher costs. With a greater number of businesses defined as small under this final rule, federal agencies may choose to set aside more contracts for competition among small businesses only instead of using full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the change adopted in this final rule. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses under the 8(a) BD, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the change to the averaging period for employees from 12 months to 24 months, HUBZone firms might end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

2. Contractive Effects of Changing the Averaging Period for Receipts From Three Years to Five Years

As stated previously, the change enacted under Public Law 115–324 may not always and necessarily benefit every small business concern. When businesses' annual revenues are

declining or when annual revenues for the latest three years are lower than those for the earliest two years of the five-year period, the five-year average would be higher than the three-year average, thereby ejecting small businesses out of their small business status sooner or rendering some small businesses other than small immediately. Similarly, small businesses that lose their small business status would have to wait longer to qualify as small again. Such small businesses would no longer be eligible for federal small business opportunities, such as federal small business contracts, SBA loan programs and other Federal benefits (such as reduced fees and exemptions from certain paperwork and compliance requirements) available to small businesses. However, the SBA's proposal to allow businesses applying for its Business Loan, Disaster Loan, Surety Bond, and SBIC Programs to elect to use either the three-year receipts average or the five-year receipts average will mitigate such impacts. Moreover, the change in the averaging period for receipts in this final rule only applies to businesses in the SBA Business Loan, Disaster Loan, SBG, and SBIC Programs. In other words, the change in the calculation of average annual receipts in this final rule will have no impacts on businesses participating in federal procurement and all other non-

procurement programs except SBA Loan, SBG, and SBIC programs. By enabling mid-size businesses to regain small business status and lengthening the small business status of advanced and successful larger small businesses, the final rule may disadvantage smaller small businesses in more need of federal assistance than their larger counterparts in competing for federal opportunities. SBA frequently receives concerns from smaller small businesses that they lack resources, past performance qualifications and expertise to be able to compete against more resourceful, qualified, and experienced larger small businesses for federal opportunities for small businesses. SBA believes that overall benefits to small businesses from this final rule change outweigh the costs to small businesses.

F. Net Impact

1. Net Impact of Changing the Averaging Period for Employees From 12 Months to 24 Months

As discussed elsewhere, the change in averaging period for employees would result in four primary impacts, which can be categorized as either having an 'expansive impact' or a 'contractive impact' on size status of both currently large and small businesses. Allowing some currently large firms to gain or regain small business status and some

advanced small firms to remain small for a longer period represents the expansive impact of the final rule. Causing some currently small firms to lose or shorten their small business is the rule's contractive impact.

Although businesses in a majority of industries with employee-based size standards would be both positively and negatively impacted by this final rule, in totality the number of firms with expansive impacts was generally greater than the number of firms with contractive impacts. The final rule would result in a net gain of about \$158 million (or 0.3% increase from the baseline) in federal small business contract dollars. The net impact of the final rule on SBA's loans was also positive, but very small. Specifically, SBA estimates a net gain of \$0.01 million in 7(a) and 504 loans and no change in EIDL loans as a result of changing the period for calculating the average number of employees for size standards from 12 months to 24 months. Similarly, SBA estimates that changes to the averaging period for employee-based size standards will have no impact on the Surety Bond and SBIC programs. Net impacts of the final rule are summarized in Table 16, "Net Impact from Changing the Averaging Period for Employees from 12 Months to 24 Months."

TABLE 16—NET IMPACT FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

| Impact of the change | Total expansive impact | Total contractive impact | Net impact |
|--|------------------------|--------------------------|------------|
| Total Number of impacted firms—SAM (as of Sept 1, 2019) | 757 | 361 | 396 |
| Impacted firms as % of total firms in the baseline—SAM (as of Sept 1, 2019) | 0.5 | 0.2 | 0.3 |
| Number of impacted firms—2012 Economic Census | 1,484 | 1,050 | 435 |
| Impacted firms as % of total firms in the baseline—2012 Economic Census | 0.2 | 0.2 | 0.1 |
| Number of impacted firms eligible for set-aside contracts (FPDS–NG) | 219 | 197 | 22 |
| Small business dollars impacted (\$ million) | \$423.2 | \$265.8 | \$157.8 |
| Small business dollars impacted as % total set-aside dollars in the baseline | 0.9 | 0.6 | 0.3 |
| Number of 7(a) and 504 loans impacted | 2 | 2 | 0 |
| 7(a) and 504 loan amount impacted (\$ million) | \$0.03 | \$0.02 | \$0.01 |
| 7(a)and 504 loan amount impacted as % of total 7(a)and 504 loan amount in the baseline | 0.0 | 0.0 | 0.0 |
| Number of EIDL loans impacted ¹ | 0 | 0 | 0 |
| EIDL loan amount impacted (\$ million) ¹ | \$0.0 | \$0.0 | \$0.0 |
| EIDL loan amount impacted as % of total EIDL loan amount in the baseline ¹ | 0.0 | 0.0 | 0.0 |

¹ Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

2. Net Impact of Changing the Averaging Period for Receipts From Three Years to Five Years

Under SBA's decision allowing businesses to elect to choose either a three-year receipts average or a five-year receipts average to establish small business eligibility for its Business Loan, Disaster Loan, SBG, and SBIC Programs, none of the currently eligible

small businesses will experience a contractive impact from the change. In other words, the change will not cause any currently small businesses to lose or shorten their small business status. The change will enable some mid-size businesses above the size standard gain or regain small business status and some advanced small businesses close to the size standard to lengthen their small

status. In the absence of contractive impacts, the expansive impacts shown in Table 14 (above) will also represent as net impacts of the change.

G. Transfer Impacts

1. Transfer Impacts of Changing the Averaging Period for Employees From 12 Months to 24 Months

The change may result in some redistribution of federal contracts between businesses gaining or extending small status and large businesses, and between businesses gaining or extending small status and other existing small businesses. However, it would have no impact on the overall economic activity since the total federal contract dollars available for businesses to compete for will not change. While SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution of contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the change, some unrestricted federal contracts may be set aside for small businesses. As a result, large businesses may lose access to some federal contracts. Similarly, some currently small businesses may obtain fewer set-aside contracts due to the increased competition from some large businesses qualifying as small and advanced small businesses remaining small for a longer period. This impact may be offset by a greater number of procurements being set aside for all small businesses. With large businesses qualifying as small and advanced larger small businesses remaining small for a longer period under the final rule, smaller small businesses could face some disadvantages in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

2. Transfer Impacts of Changing the Averaging Period for Receipts From Three Years to Five Years

The change from a three-year averaging period to a five-year averaging period may result in some redistribution of federal contracts between businesses gaining or extending small business status and large businesses, and between businesses gaining or extending small business status and other existing small businesses. However, since the change in calculation of receipts in this final rule does not apply to federal contracting, these distributional impacts are not relevant for changing the averaging period for receipts from three years to five years.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Benefit-Cost Analysis under Executive Order 12866. Additionally, Executive Order 13563, Section 6, calls for retrospective analyses of existing rules.

Following the enactment of Public Law 115–324, SBA issued a public notice advising business and contracting communities that SBA must go through a rulemaking process to implement the new law and that businesses still must report their receipts-based on a three-year average until SBA changes its regulations. SBA updated the Small Business Procurement Advisory Council (SBPAC) at its March 26, 2019, April 23, 2019, and August 26, 2019, meetings about SBA's rulemaking process to implement Public Law 115–324. On April 18, 2019, SBA also presented an update on the implementation of Public Law 115–324 at the 2019 Annual Government Procurement Conference. Through phone calls and emails, SBA also advised business and contracting communities and other interested parties about SBA's process to implement the new law.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined that this rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Regulatory Flexibility Act (Final Regulatory Flexibility Analysis)

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant economic impact on a substantial number of small businesses in industries subject to both employee-based and receipts-based size standards. As described above, this rule may affect small businesses in those industries seeking assistance under federal small business programs. Specifically, the change in the averaging period for calculating the number employees for size standards from 12 months to 24 months may have a significant impact on a substantial number of businesses in industries subject to employee-based size standards in terms of qualifying for federal small business programs, including Federal contracts set aside for small businesses and SBA's loan programs. Similarly, the change in the averaging period for receipts from three years to five years will also impact a substantial number of businesses in the SBA Business Loan, Disaster Loan, SBC, and SBIC programs.

Accordingly, immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule to address the following questions: (1) What is the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record-keeping, and other compliance requirements of the rule? (4) What are the relevant federal rules that may duplicate, overlap, or conflict with the rule? (5) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

First, section 863 of the NDAA 2021, Public Law 116–283, changed the averaging period for SBA's employee-based size standards from 12 months to 24 months. The intent of this final rule is to implement Public Law 116–283 by amending 13 CFR 121.106 such that a concern would average its employees

over all pay periods in the preceding completed 24 months. Second, in 2018, Public Law 115–324 amended section 3(a)(2)(C)(ii)(II) of the Small Business Act by modifying the period for calculating average annual receipts for prescribing size standards for business concerns in services industries by an agency without separate statutory authority to issue size standards from three years to five years. In a final rule published December 5, 2019 (84 FR 66561), SBA implemented Public Law 115–324 by making changes to its receipts-based size standards for all SBA programs except the Business Loan and Disaster Loan Programs. This final rule would extend the changes to SBA's receipts-based size standards for the Business Loan, Disaster Loan, SBG, and SBIC Programs.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

This final rule applies to all small businesses that are subject to either an employee-based or a receipts-based size standard. Based on the 2012 Economic Census special tabulations, 2012 County Business Patterns Reports, and 2012 Agricultural Census tabulations, of a total of 680,266 firms in all industries with employee-based size standards to which this final rule will apply, 657,942 or about 96.7% are considered small under the 12-month employee average. Of 152,450 total concerns in SAM 2019 to which an employee-based size standard will apply, about 133,958 or 87.9% were small in at least one NAICS industry with an employee-based size standard. Similarly, based on the data from FPDS–NG for fiscal year 2019, about 39,700 unique firms in industries subject to employee-based size standards received at least one federal contract in 2019, of which 85.3%, or 33,867 were small.

Based on the same data sources listed above, of a total of nearly 7.2 million firms in all industries with receipts-based size standards to which this final rule will apply, 6.9 million or about 96% were considered small under the three-years receipts average. Of 334,990 total concerns in SAM 2019 to which a receipts-based size standard will apply, 292,454 or 87.3% were small in at least one NAICS industry with a receipts-based size standard.

3. What are the projected reporting, record-keeping and other compliance requirements of the rule?

The final rule changes existing reporting or record-keeping requirements for small businesses. To qualify for federal procurement and a

few other programs, businesses are required to register in SAM and to self-certify that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary, to ensure that they reflect the Contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. The change in the calculation of employees from a 12-month averaging period to a 24-month averaging period may result in some redistribution of federal contracts between businesses gaining or extending small status and large businesses, and between businesses gaining or extending small status and other existing small businesses. However, it would have no impact on the overall economic activity since the total federal contract dollars available for businesses to compete for will not change. Since the change in the calculation of annual average receipts in this final rule only applies to SBA financial assistance programs, this will have no impact on federal contracting and associated record-keeping requirements.

4. What are the relevant federal rules which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(C), federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act, 5 U.S.C. 601(3), authorizes an Agency to establish an alternative small business definition, after consultation with the

Office of Advocacy of the U.S. Small Business Administration.

5. What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for federal small business assistance programs. Other than varying size standards by industry and changing the size measures or changing a measurement period, no practical alternative exists to the systems of numerical size standards. As stated elsewhere, the objective of this final rule is to change SBA's regulations on the calculation of business size in terms of average number of employees to implement Public Law 116–283 for all SBA programs and of average annual receipts to implement Public Law 115–324 for the SBA's Business Loan, Disaster Loan, SBG, and SBIC programs.

This rule is expected to affect a substantial number of small entities, but the effects are not expected to be significant. However, to mitigate any unintended negative impacts of a five-year averaging period on small businesses and to allow small businesses to continue to use the three-year receipts average, in this final rule SBA is allowing applicants in Business Loan, Disaster Loan, SBG, and SBIC programs to elect to calculate average annual receipts using either a three-year averaging period or a five-year averaging period.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA determined that this rule will require technical amendments to existing information collections as described below. SBA did not receive any comments related to the information collection revisions discussed in the proposed rule. Thus, SBA will proceed to amend the information collections to reflect the changes made by this final rule.

With respect to SBA Form 355, Information for Small Business Size Determination, OMB Control Number 3245–0101, SBA will revise Instruction No. 5 to specify that respondents will use a 24-month average to calculate number of employees. In Part II, question 10, respondents will then provide an average number of employees over 24 months.

SBA has determined that the changes to the Form 355 will not impact the paperwork burden, and it will remain at 4 hours.

SBA will revise the SBA Form 480, *Size Status Declaration*, for SBIC applicants to reflect the change to the 24-month average for applicants using an employee-based size standard, and the change to an election between a three-year average and a five-year average for applicants using a receipts-based size standard. The tangible net worth and net income measures for the alternative size standard for SBIC applicants will not change. SBA has determined that the changes to the Form 480 will not impact the paperwork burden.

Finally, SBA will revise Part M (Size Analysis) of SBA Form 1920 (7(a) Lender Application), OMB Control No.: 3245-0348, and Exhibit 4 of SBA Form 1244 (504 Loan Application), OMB Control No.: 3245-0071. The revisions will reflect the change to an election between a three-year average or a five-year average for applicants using a receipts-based size standard. The tangible net worth and net income values for the alternative size standard for 7(a) and 504 applicants will not change.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Public Law 116-136, Section 1114.

■ 2. In § 121.104, revise paragraph (c) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

* * * * *

(c) *Period of measurement.* (1) Except for the Business Loan, Disaster Loan, Surety Bond Guarantee, and Small Business Investment Company (SBIC) Programs, annual receipts of a concern that has been in business for 5 or more completed fiscal years means the total receipts of the concern over its most recently completed 5 fiscal years divided by 5.

(2) Except for the Business Loan, Disaster Loan Programs, Surety Bond Guarantee, and SBIC Programs, annual

receipts of a concern which has been in business for less than 5 complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Except for the Business Loan, Disaster Loan, Surety Bond Guarantee, and SBIC Programs, where a concern has been in business 5 or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the 4 full fiscal years divided by the total number of weeks in the short year and the 4 full fiscal years, multiplied by 52.

(4) For the Business Loan, Disaster Loan, Surety Bond Guarantee, and SBIC Programs, a concern that has been in business for three or more completed fiscal years may elect to calculate annual receipts using either the total receipts of the concern over its most recently completed 5 fiscal years divided by 5, or the total receipts of the concern over its most recently completed 3 fiscal years divided by 3. Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52. Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52. For the purposes of this subsection, the Business Loan Programs consist of the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (“504 Loan Program”). The Disaster Loan Programs consist of Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans.

* * * * *

■ 3. In § 121.106, revise paragraphs (b)(1) and (3) to read as follows:

§ 121.106 How does SBA calculate number of employees?

* * * * *

(b) * * *

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods

for the preceding completed 24 calendar months.

* * * * *

(3) If a concern has not been in business for 24 months, the average number of employees is used for each of the pay periods during which it has been in business.

* * * * *

■ 4. In § 121.903, revise paragraph (a)(1)(i) to read as follows:

§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?

(a) * * *

(1) * * *

(i) The size of a manufacturing concern by its average number of employees based on the preceding 24 calendar months, determined according to § 121.106;

* * * * *

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2022-12131 Filed 6-3-22; 8:45 am]

BILLING CODE 8026-03-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0877; Project Identifier AD-2020-01316-T; Amendment 39-22049; AD 2022-10-11]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747SP, 747-400, 747-400D, and 747-400F series airplanes. This AD was prompted by a determination that a certain fastener type that penetrates the fuel tank walls has insufficient bond to the structure, and energy from a lightning strike or high-powered short circuit could cause arcing to occur at the ends of fasteners in the fuel tanks. This AD requires, for certain airplanes, reconfiguring the clamps of certain wire bundles, applying sealant to certain fasteners that penetrate the fuel tank walls, installing cushion clamps and polytetrafluoroethylene (TFE) sleeves, inspecting to determine if sealant was applied to certain fasteners, and