

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Parts 115 and 121

RIN 3245-AG16

#### Small Business Size Standards: Adjustment of Alternative Size Standard for SBA's 7(a) and CDC/504 Loan Programs for Inflation; and Surety Bond Limits: Adjustments for Inflation

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) proposes to amend its Small Business Size Regulations to increase the alternative size standard for its 7(a) Business and Certified Development Company (CDC/504) Loan Programs (collectively "Business Loan Programs") by 34.46% to account for inflation that has occurred since the size standard's establishment in 2010. The inflation adjustment would increase the size standard's level for tangible net worth to \$20 million and for net income to \$6.5 million. SBA also is adjusting for inflation the applicable statutory limits for contract size under the Surety Bond Guarantee (SBG) Program. The adjustment would increase the contract limit to \$9 million and to \$14 million for Federal contracts if a Federal contracting officer certifies that such a guarantee is necessary.

**DATES:** SBA must receive comments to this proposed rule on or before September 26, 2023.

**ADDRESSES:** Identify your comments by RIN 3245-AG16 and submit them by one of the following methods: (1) Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

SBA will post all comments to this proposed rule on [www.regulations.gov](http://www.regulations.gov).

If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or send an email to [sizestandards@sba.gov](mailto:sizestandards@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

**FOR FURTHER INFORMATION CONTACT:** Khem Sharma, Ph.D., Chief, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background for Small Business Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as "size standards") for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: average annual receipts over the last five years (either three years or five years for SBA financial assistance programs) and average number of employees over the last 24 months. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards (*i.e.*, average annual receipts or average number of employees), or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

On September 27, 2010, the Small Business Jobs Act of 2010 ("Jobs Act") was enacted (Pub. L. 111-240). Section 1116 of the Jobs Act added a new Section 3(a)(5) to the Small Business Act that directed SBA to establish an alternative size standard using maximum tangible net worth and average net income for applicants of the SBA's 7(a) Business and CDC/504 Loan Programs (collectively "Business Loan Programs"). The Jobs Act also established for applicants for the SBA's Business Loan Programs an interim alternative size standard of not more than \$15 million in tangible net worth

and of not more than \$5 million in the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application (referred to as "Interim Rule"). Under the Jobs Act, this interim statutory alternative size standard would remain in effect until such time as SBA has established a new alternative size standard for the Business Loan Programs through rulemaking. 15 U.S.C. 632(a)(5). Prior to that, SBA employed a lower regulatory alternative size standard that applied to the CDC/504 Loan Program, and applied temporarily to the 7(a) Loan Program for the period beginning on May 5, 2009, and ending on September 30, 2010. 13 CFR 120.301(b)(2).

On September 29, 2010, SBA issued Information Notice 5000-1175 (available at [https://www.sba.gov/sites/default/files/files/bank\\_5000-1175\\_0.pdf](https://www.sba.gov/sites/default/files/files/bank_5000-1175_0.pdf)) providing that, effective September 27, 2010, the new statutory alternative size standard applied to its Business Loan Programs, thereby replacing and superseding the lower existing alternative size standard of \$8.5 million in tangible net worth and \$3 million in average net income, as set forth in 13 CFR 121.301(b)(2). The Information Notice further stated that the new statutory alternative size standard would remain in effect until such time as SBA has established a permanent alternative size standard for the Business Loan Programs through rulemaking. The Information Notice also stated that the SBA's disaster loan program, surety bond guarantee program, SBIC program, and small business development and contracting programs, as well as other Federal programs utilizing SBA's industry-based size standards were not affected by the interim statutory alternative size standard, and the current standards for those programs in 13 CFR part 121 remained in effect.

SBA has not established an alternative size standard for its 7(a) and CDC/504 Loan Programs in its regulations. Thus, the Agency continues to use the interim statutory alternative size standard to determine eligibility for a small business concern under SBA's Business Loan Programs, in addition to using the industry-based size standards. A loan applicant is eligible either under its industry-based size standard or if it

meets the statutory alternative size standard of \$15 million in tangible net worth and \$5 million in average net income. However, due to the lack of rulemaking to codify these levels, SBA's current regulations at 13 CFR 120.301(b)(2) continue to show the tangible net worth of \$8.5 million and net income of \$3 million that existed prior to the enactment of the interim statutory alternative size standard.

A review of SBA's internal data on its Business Loan Programs for fiscal years 2021–2022 shows that the interim statutory alternative size standard may have enabled some small businesses that were not otherwise eligible under their industry-based size standards to receive 7(a) or CDC/504 Loans ("Business Loans"). However, SBA's internal data systems for its Business Loan Programs lack the necessary detailed electronic data that would allow for an assessment of the exact impact of the interim statutory size standard on small business loan applicants. Since the Agency's electronic systems only include data regarding the number of employees, the NAICS industry, and approved loan amount for each SBA loan recipient, but not the data regarding average annual receipts, tangible net worth, average net income, or whether the loan was approved under the industry or alternative size standard, SBA cannot easily calculate the exact number of businesses that qualified under the interim statutory alternative size standard that otherwise could not have qualified under their industry-based size standards. Similarly, due to the lack of data, SBA cannot easily identify industries or industry sectors in which the statutory alternative size standard helped small businesses the most or the least in accessing SBA Business Loans.

In accordance with its regulations, SBA is required to assess the impact of inflation on its monetary-based size standards *at least* once every five years (67 FR 3041; January 23, 2002) and 13 CFR 121.102(c)). Accordingly, except for the statutory alternative size standard for the SBA Business Loan Programs, SBA adjusted its monetary-based size standards for inflation three times since the Congress enacted the Interim Rule in 2010.<sup>1</sup> In its rulemaking for each

<sup>1</sup> Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards (Interim Final Rule) (79 FR 33647; June 12, 2014), finalized on January 25, 2016 (81 FR 3949); Small Business Size Standards: Adjustment of Monetary-Based Size Standards for Inflation (Interim Final Rule) (84 FR 34261; July 18, 2019), finalized on November 17, 2022 (87 FR 69118); Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a)

adjustment, SBA provided that the statutorily set alternative size standard will remain in effect until SBA establishes a permanent alternative size standard for the SBA Business Loan Programs. Based on the GDP price index, inflation has increased more than 34% since the enactment of the statutory alternative size standard. This has eroded the value of the alternative size standard in real terms. SBA has an important policy objective of maintaining the value of monetary-based size standards in real (*i.e.*, inflation-adjusted) terms, and by adjusting the statutory alternative size standard for inflation. This rulemaking fulfills that objective. Additionally, one of the comments SBA received to its joint interim and final rule on inflation adjustment of monetary-based size standards, published on November 17, 2022 (87 FR 69118), urged SBA to immediately adjust for inflation the statutory alternative size standard for SBA's 7(a) and CDC/504 Loan Programs and to include it in future inflation adjustments of monetary size standards.

As stated earlier, due to the lack of relevant data, SBA is also not in a position to easily determine whether levels of tangible net worth and net income of the statutory alternative size standard are appropriate under the current economic environment. For the same reason, SBA is unable to develop an analysis to support the creation of a different permanent alternative size standard based on tangible net worth and average net income. The Economic and Agricultural Census data that SBA examines to establish the industry-based size standards does not contain information on tangible net worth or average net income by industry. Furthermore, while SBA collects and maintains limited relevant electronic data on each of the applicants for its Business Loan Programs (such as NAICS industry code, the number of employees, and approved loan amount), SBA's electronic data systems for Business Loan Programs do not maintain the data on average annual receipts, tangible net worth, average net income, and on whether an applicant for its Business Loan Programs was determined to be eligible under its industry based size standard or under the statutory alternative size standard. Similarly, the electronic data does not include information on the numbers or amounts of loan approvals that were issued under the industry-based size standard or under the interim statutory alternative size standard.

Eligibility Thresholds for Inflation (Joint Final and Interim Rule) (87 FR 69118; November 17, 2022).

## II. Background for Surety Bond Contract Limits

SBA is amending the contract limits applicable to its Surety Bond Guarantee (SBG) Program. The SBG Program is designed to increase small business' access to Federal, state, and local government contracting, as well as private-sector contracting, by guaranteeing bid, payment, and performance bonds on contracts for small and emerging contractors who cannot obtain surety bonds through regular commercial channels.<sup>2</sup> Surety bonds are important to small businesses interested in competing for Federal contracts because the Federal Government requires prime contractors, prior to the award of a Federal contract exceeding \$150,000 for the construction, alteration, or repair of any building or public work of the United States, to furnish a performance bond issued by a surety satisfactory to the officer awarding the contract, and in an amount the contracting officer considers adequate, to protect the government.

The Housing and Urban Development Act of 1970 (Pub. L. 91–609) authorized the SBA's SBG Program. The act amended Title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694a *et seq.*, as amended) to provide SBA authority to guarantee any surety against loss as the result of a breach of the terms of a bid bond, payment bond, or performance bond by a small business. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities. Based on the data for fiscal years 2021–2022, the SBG Program assists about 1,700 small businesses annually.<sup>3</sup> The program guarantees individual contracts of up to \$6.5 million, and up to \$10 million for Federal contracts if a Federal contracting officer certifies that such a guarantee is necessary. The \$6.5 million limit should be periodically adjusted for

<sup>2</sup> A surety bond is a three-party instrument between a surety, a contractor, and a project owner. The agreement binds the contractor to comply with the contract's terms and conditions. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. The surety bonds reduce the risk of contracting. Surety bonds are viewed as a means to encourage project owners to contract with small businesses that may not have the credit history or prior experience of larger businesses and are considered to be at greater risk of failing to comply with the contract's terms and conditions.

<sup>3</sup> U.S. Small Business Administration (SBA), *FY 2024 Congressional Budget Justification and FY 2022 Annual Performance Report*, p. 44, [https://www.sba.gov/sites/sbagov/files/2023-03/FY%202024%20SBA%20Congressional%20Budget%20Justification-2023-0313\\_0.pdf](https://www.sba.gov/sites/sbagov/files/2023-03/FY%202024%20SBA%20Congressional%20Budget%20Justification-2023-0313_0.pdf).

inflation in accordance with 41 U.S.C. 1908. SBA’s guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the Surety’s loss should a contractor default on the underlying contract. The SBA’s guarantee currently ranges from 80% to 90% of the Surety’s loss if a default occurs. For more information about SBA’s Surety Bond Guarantee Program, see <https://www.sba.gov/funding-programs/surety-bonds>.<sup>4</sup>

During fiscal years 2021–2022, SBA guaranteed 17,966 bid and final (i.e., a payment bond, performance bond, or both a payment and performance bond) surety bonds with a total contract value of about \$13.1 billion and total bond

value of about \$8.3 billion. According to Table 1, Distribution of Number of Surety Bonds and Contract Value by Contract Size (FY 2021–2022), during fiscal years 2021–2022, contracts below \$6.5 million accounted for 99.9% of total number of surety bonds and 99% of total contract value. That means that contracts between \$6.5 million and \$10 million contributed to the limited bonding activity, accounting for just 0.1% of total surety bonds and 1% of total contract value.

As stated earlier, the SBG Program is intended to increase small business’ access to Federal, state, and local government contracting, as well as private-sector contracting by

guaranteeing bid and final surety bonds. Table 2, Distribution of Surety Bonds, Contract Value, and Bond Value by Contract Type (FY 2021–2022), shows that State and Local Government contracting dominates the SBG program, accounting for 72% of the number of surety bonds, 66.5% of total contract value, and 51.7% of total bond value during fiscal years 2021–2022. The Federal Government contracting accounts for 11% of surety bonds, 15% of total contract value, and 18.1% of total bond value. For its part, private-sector contracting accounts for 8.7% of surety bonds, 11.8% of contract value, and 25.5% of bond value.

TABLE 1—DISTRIBUTION OF NUMBER OF SURETY BONDS AND CONTRACT VALUE BY CONTRACT SIZE [FY 2021–2022]

Contract size (\$ million)	Number of surety bonds			Contract value		
	Count	%	Cum. %	Value (\$ million)	%	Cum. %
<0.1 .....	2,092	11.6	11.6	\$122	0.9	0.9
0.1 to 0.25 .....	3,870	21.5	33.2	645	4.9	5.9
0.25 to 0.5 .....	4,439	24.7	57.9	1,522	11.6	17.5
0.5 to 1.0 .....	3,449	19.2	77.1	2,386	18.2	35.7
1.0 to 2.0 .....	2,505	13.9	91.0	3,395	25.9	61.6
2.0 to 3.0 .....	872	4.9	95.9	2,030	15.5	77.1
3.0 to 4.0 .....	396	2.2	98.1	1,308	10.0	87.1
4.0 to 5.0 .....	191	1.1	99.2	818	6.2	93.4
5.0 to 6.5 .....	135	0.8	99.9	740	5.7	99.0
6.5 to 10.0 .....	17	0.1	100.0	128	1.0	100.0
Total .....	17,966	100.0	.....	13,093	100.0	.....

TABLE 2—DISTRIBUTION OF SURETY BONDS, CONTRACT VALUE, AND BOND VALUE BY CONTRACT TYPE [FY 2021–2022]

Contract type	Surety bonds		Contract value		Bond value	
	Count	%	Amount (\$ million)	%	Amount (\$ million)	%
Federal Government .....	2,039	11.3	\$1,983	15.1	\$1,509	18.1
Local Government .....	9,694	54.0	6,469	49.4	3,245	38.9
Private .....	1,558	8.7	1,541	11.8	2,127	25.5
Special Districts .....	1,377	7.7	784	6.0	316	3.8
State Government .....	3,236	18.0	2,243	17.1	1,072	12.8
Other .....	62	0.3	72	0.6	78	0.9
Total .....	17,966	100.0	13,093	100.0	8,346	100.0

SBA’s guaranteed surety bonds fall in two categories: (1) bid bonds, and (2) final bonds, which consist of a payment bond, performance bond, or both a payment and performance bond. According to the SBG program data for fiscal years 2021–2022, bid bonds

account for 67.6% of total surety bonds and 70.7% of total contract value, but just 22.3% of total bond value. Final bonds account for 32.4% of total bonds, 29.3% of total contract value, and 77.7% of total bond value. Average bond value for bid bonds is about

\$153,000, as compared to more than \$1 million for final bonds. These results are provided in Table 3, Distribution of Surety Bonds, Contract Value, and Bond Value by Bond Type (FY 2021–2022).

<sup>4</sup> Also see a July 8, 2022, Congressional Research Service Report on “SBA Surety Bond Guarantee

Program,” available at <https://crsreports.congress.gov/product/pdf/R/R42037>.

TABLE 3—DISTRIBUTION OF SURETY BONDS, CONTRACT VALUE, AND BOND VALUE BY BOND TYPE  
[FY 2021–2022]

Bond type	Number of bonds		Contract value		Bond value	
	Count	%	Amount (\$ billion)	%	Amount (\$ billion)	%
Bid bonds .....	12,141	67.6	9.26	70.7	1.86	22.3
Final bonds .....	5,825	32.4	3.83	29.3	6.49	77.7
Total .....	17,966	100.0	13.09	100.0	8.35	100.0

The statutory surety bond contract limits have not been adjusted since enacted in 2013. Rising inflation costs have eroded the buying power of contractors. The average size of Federal contracts for construction increased 134% from about \$400,000 in 2013 to

more than \$1 million in 2022. Based on the SBG data for fiscal years 2021–2022, the construction sector accounted for more than 95% of total number of surety bonds, total contract value, and total bond amount. See Table 4, Distribution of Surety Bonds, Contract Value, and

Bond Value by Business’ NAICS Sector (FY 2021–2022), below. In this rule, SBA is amending the contract limits in its regulations to keep pace with inflation, which also will have the effect of keeping up with Federal contracting trends.

TABLE 4—DISTRIBUTION OF SURETY BONDS, CONTRACT VALUE AND BOND VALUE BY BUSINESS’ NAICS SECTOR  
[FY 2021–2022]

NAICS sector	Sector title	Number of bonds		Contract value		Bond value	
		Count	%	Amount (\$ million)	%	Amount (\$ million)	%
11 .....	Agriculture, Forestry, Fishing and Hunting.	9	0.1	4.5	0.0	4.1	0.0
21 .....	Mining, Quarrying, and Oil and Gas Extraction.	5	0.0	2.6	0.0	2.4	0.0
22 .....	Utilities .....	24	0.1	9.1	0.1	3.6	0.0
23 .....	Construction .....	17,094	95.1	12,459.6	95.2	7,941.4	95.1
31–33 .....	Manufacturing .....	213	1.2	155.4	1.2	93.9	1.1
42 .....	Wholesale Trade ..	12	0.1	7.0	0.1	6.4	0.1
44–45 .....	Retail Trade .....	8	0.0	4.8	0.0	4.4	0.1
48–49 .....	Transportation and Warehousing.	7	0.0	9.4	0.1	13.7	0.2
51 .....	Information .....	2	0.0	1.9	0.0	1.0	0.0
53 .....	Real Estate and Rental and Leasing.	1	0.0	2.5	0.0	2.5	0.0
54 .....	Professional, Scientific, and Technical Services.	126	0.7	87.1	0.7	50.1	0.6
56 .....	Administrative and Support and Waste Management and Remediation Services.	452	2.5	341.8	2.6	220.5	2.6
71 .....	Arts, Entertainment, and Recreation.	3	0.0	0.7	0.0	0.1	0.0
72 .....	Accommodation and Food Services.	3	0.0	0.8	0.0	0.4	0.0
81 .....	Other services .....	6	0.0	5.4	0.0	1.9	0.0
NA .....	NA .....	1	0.0	0.2	0.0	0.0	0.0
Total .....		17,966	100.0	13,092.8	100.0	8,346.4	100.0

III. Analysis of Business Loan Data

The only electronic data on the size of small business applicants approved for loans through the SBA Business

Loan Programs available for review is the number of employees and the NAICS industry. In an effort to estimate the percentage of loans that were approved under the statutory alternative

size standard, SBA examined its electronic internal data on its Business Loan Programs for fiscal years 2021–2022. During fiscal years 2021–2022, a total of 118,424 loans were issued

through SBA Business Loan programs, of which 84% were issued through 7(a) Business Loan Program and 16% were dispersed through CDC/504 Loan Program. The loan amount through those programs totaled \$79.64 billion, of which 82.6% was dispersed through 7(a) Program and 17.4% was dispersed through CDC/504 Program.

As stated earlier, SBA's electronic systems for its business loan data do not keep the data on receipts, tangible net worth, and net income of applicants to

its Business Loan Programs. Thus, to estimate receipts, tangible net worth, and net income for each loan recipient, SBA first converted the employment level of each SBA business loan recipient to receipts using the receipts-to-employees ratios from the special tabulations of the 2017 Economic Census (<https://www.census.gov/econ/census/>), 2017 Agricultural Census ([www.agcensus.usda.gov/](http://www.agcensus.usda.gov/)), and 2017 County Business Patterns ([www.census.gov/econ/cbp/](http://www.census.gov/econ/cbp/)). The

receipts of each loan applicant thus estimated were then combined with the various financial ratios from the Risk Management Association (RMA) (<https://rmau.org>) to derive the estimates of tangible net worth and net income for each loan applicant using the following steps:<sup>5</sup>

*Step 1:* Estimate receipts equivalent of employment level for the  $i$ -th loan recipient in the  $j$ -th industry.

$$Receipts_{i,j} = Employees_{i,j} \times \left( \frac{Receipts}{Employee} \right)_j$$

where  $Receipts_{i,j}$  is an estimate of receipts of the  $i$ -th loan recipient in the

$j$ -th industry and  $\left( \frac{Receipts}{Employee} \right)_j$  is the receipts-to-employees ratio for the  $j$ -

th industry from Economic Census tabulations.

*Step 2:* Estimate net fixed assets (NFA) for the  $i$ -th loan recipient in the  $j$ -th industry.

$$NFA_{i,j} = Receipts_{i,j} (from Step 1) / \left( \frac{Net\ sales}{NFA} \right)_j$$

where  $NFA_{i,j}$  is an estimate of net fixed assets of the  $i$ -th loan recipient in

the  $j$ -th industry and  $\left( \frac{Net\ sales}{NFA} \right)_j$  is the net sales to net fixed assets ratio in

the  $j$ -th industry from RMA. Net sales is considered a proxy for receipts.

*Step 3:* Estimate tangible net worth (TNW) for the  $i$ -th loan recipient in the  $j$ -th industry.

$$TNW_{i,j} = NFA_{i,j} (from Step 2) / \left( \frac{NFA}{TNW} \right)_j$$

where  $TNW_{i,j}$  is an estimate of tangible net worth of the  $i$ -th loan recipient in the  $j$ -th industry and  $(NFA/TNW)_j$  is

the net fixed assets to tangible net worth ratio in the  $j$ -th industry from RMA.

*Step 4:* Estimate net income (NI) for the  $i$ -th loan recipient in the  $j$ -th industry.

<sup>5</sup> For this analysis, SBA utilized four financial ratios from RMA for years 2019–2021: (1) Net Sales/Total Assets; (2) Net Fixed Assets/Tangible Net Worth; (3) Net Sales/Net Fixed Assets; and (4) Profit

Before Taxes/Tangible Net Worth. Here “net sales” is considered a proxy for receipts and “profit before taxes a proxy” for net income, subject to adjustment for taxes. Combining these ratios with receipts

allowed the estimation of tangible net worth and net income for recipients to the SBA Business Loan Programs.

$$NI_{i,j} = 0.79 * TNW_{i,j} \text{ (from Step 3)}$$

$$x \left( \frac{\text{Average profit before taxes}}{TNW} \right)_j$$

where  $NI_{i,j}$  is an estimate of net income after taxes for the  $i$ -th loan recipient in the  $j$ -th industry and  $\left( \frac{\text{Average profit before taxes}}{TNW} \right)_j$  is the ratio between average of profit before taxes to tangible net worth for the  $j$ -th industry.

*Step 5:* Determine if a loan recipient meets an alternative size standard using the estimates of tangible net worth ( and average net income ( $NFA/TNW_{i,j}$ ) and the average net income ( $NI_{i,j}$ ), whether the  $i$ -th applicant meets an alternative size standard:

{Meets if  $TNW_{i,j} \leq \$15$  million and  $NI_{i,j} \leq \$5$  million Does not meet if  $TNW_{i,j} > \$15$  million or  $NI_{i,j} > \$5$  million or both

Excluding invalid observations (*i.e.*, those with missing receipts to-job-ratios or missing one or more RMA ratios used to estimate values of tangible net worth and net income), 99.9% of SBA business loan recipients during fiscal years 2021–2022 were found to be at or below the statutory alternative size standard. However, the results do not allow for the estimation of the number of loans in which the lender applied the statutory alternative size standard to approve the loan application.<sup>6</sup>

To assess the percentage of loan recipients that met the industry-based size standard, SBA first converted all industry size standards to receipts equivalent size standards as follows: (i) If an industry has a receipt-based size standard, the receipts equivalent size standard is the receipts-based size standard itself; and (ii) If an industry

has an employee-based size standard, the receipts equivalent size standard is obtained by multiplying the employee-based size standard (number of employees) by the ratio of small business receipts to small business number of employees for that industry. For each of the loan recipients, the receipts equivalent size standard for their industry was compared with their estimated receipts in Step 1 above. If an applicant's estimated receipts in Step 1 above was less than or equal to the receipts equivalent size standard for its industry, the applicant is deemed to have met the industry-based size standard. Conversely, if the applicant's estimated receipts was higher than its industry receipts equivalent size standard, the applicant is deemed to have exceeded the industry-based size standard.

Mathematically, whether the  $i$ -th applicant meets the industry-based size standard:  
 {Meets if  $Receipts_{i,j} \leq Receipts \text{ equivalent industry-based standard}$  Does not meet if  $Receipts_{i,j} > Receipts \text{ equivalent industry-based standard}$

The results showed that, excluding invalid observations (*i.e.*, observations with missing receipts-to-employee ratios or invalid NAICS codes with no size standards), 99.6% of SBA loan recipients during fiscal years 2021–2022 were deemed to be at or below their

industry size standards. These results, however, do not enable the estimation of how often lenders applied industry-based size standards in approving loan applications.

Table 5, Applicant's Eligibility Under the Statutory Alternative and Industry-Based Size Standards (FY 2021–2022), summarizes the applicant's eligibility results for the statutory alternative size standard and industry based size standard. The data in Table 5 shows that 99.5% of loan recipients (*i.e.*,  $117,288/117,882 = 0.995$ ) were found to have met both the industry-based and statutory alternative size standard. Similarly, about 0.4% of loan recipients (*i.e.*,  $500/117,882 = 0.004$ ) that exceeded the industry-based size seemed to have qualified under the statutory alternative size standard. There were about 0.1% of loans (*i.e.*,  $81/117,882 = 0.001$ ) that seemed to have exceeded the statutory alternative size standard but appeared to have qualified under the industry-based size standard. Overall, 99.9% (*i.e.*,  $117,788/117,882 = 0.999$ ) of total loan recipients were deemed small under the statutory alternative size standard and 99.6% (*i.e.*,  $117,369/117,882 = 0.996$ ) of loan recipients were deemed small under the industry-based size standard. Only 0.1% of loan recipients were found to have exceeded the statutory alternative size standard and 0.4% of recipients exceeded the industry-based size standard.

<sup>6</sup> The SBA electronic business loan data only contains applicants that were approved for loans. Thus, the available data does not show the number of applicants that were denied for SBA loans based on their size eligibility.

TABLE 5—APPLICANT'S ELIGIBILITY UNDER THE STATUTORY ALTERNATIVE AND INDUSTRY-BASED SIZE STANDARDS  
[FY 2021–2022]

		Alternative size standard		Total
		Meets	Does not meet	
Industry size standard .....	Meets .....	117,288	81	117,369
	Does not meet .....	500	13	513
Total .....		117,788	94	* 117,882

\*Note: This excludes invalid or incomplete observations in the form of invalid NAICS codes or missing RMA or receipts-to-employee ratios to estimate tangible net worth, net income, or receipts equivalent size standards.

Based on the results obtained from this analysis, SBA estimates that about 500 or 0.4% of loan approvals issued during fiscal years 2021–2022 went to firms that exceeded their industry based size standard, thereby implying that these firms were most likely qualified under the statutory alternative size standard. Based on the business loan data for fiscal years 2021–2022, SBA estimates the total value of such loans to be \$1 billion, or 1.3% of \$79.64 billion in total loans approved during that period. Such a small percentage (0.4%) of loan approvals issued to firms

that exceeded their industry-based size standards suggests that a vast majority of small businesses receiving loans through SBA's Business Loan Programs would have qualified under their industry-based size standards and would not be impacted significantly by a modification, if any, to the statutory alternative size standard.

The evaluation of the business loan data for fiscal years 2021–2022 showed that the vast majority of SBA business loans have gone to businesses much smaller than the statutory alternative or industry-based size standard. For example, as shown in Table 6,

Distribution of Number of Loans and Loan Amount by Employment Size (FY 2021–2022), 71% of total business loans and 51.5% of loan amount went to businesses that had just 10 or fewer employees (including those with no employees). Similarly, loan recipients with 50 or fewer employees (including those with no employees) accounted for nearly 97% of loans and 92% of the loan amount. The average loan amount increased from less than \$200,000 for loan recipients with no employees to about \$2.9 million for those with more than 200 employees.

TABLE 6—DISTRIBUTION OF NUMBER OF LOANS AND LOAN AMOUNT BY EMPLOYMENT SIZE  
[FY 2021–2022]

Applicant size (Number of employees)	Number of loans			Approved loan amount			Average loan amount (\$)
	Count	%	Cum. %	Amount (\$ million)	%	Cum. %	
0 .....	11,398	9.6	9.6	\$2,230.3	2.8	2.8	\$195,673
1 to 10 .....	72,723	61.4	71.0	38,757.1	48.7	51.5	532,941
11 to 25 .....	22,371	18.9	89.9	21,956.8	27.6	79.0	981,483
26 to 50 .....	8,302	7.0	96.9	10,554.4	13.3	92.3	1,271,302
51 to 75 .....	1,902	1.6	98.5	2,948.8	3.7	96.0	1,550,356
76 to 100 .....	890	0.8	99.3	1,446.3	1.8	97.8	1,625,044
101 to 150 .....	507	0.4	99.7	1,003.2	1.3	99.1	1,978,692
151 to 200 .....	204	0.2	99.9	374.4	0.5	99.5	1,835,244
201 to 250 .....	69	0.1	100.0	200.2	0.3	99.8	2,901,916
>250 .....	58	0.0	100.0	167.0	0.2	100.0	2,878,597
Total .....	118,424	100.0	.....	79,638.3	100.0	.....	672,485

Distributions of number of loans and loan amount by tangible net worth and net income also showed similar patterns in that smaller loan recipients that were way below the size standard accounted for the vast majority of total loans and total loan amount. For example, as shown in Table 7, Distribution of Loans

and Loan Amount by Tangible Net Worth (FY 2021–2022), below, loan recipients with less than \$250,000 in tangible net worth accounted for 81% of total loans and about 63% of loan amount. Similarly, loan recipients with less than \$1 million in tangible net worth accounted for 95% of total loans

and about 89% of total loan amount. Finally, about 99.5% of total loans and loan amount went to businesses with less than \$15 million in tangible net worth. The average loan amount generally increased with the level of tangible net worth.

TABLE 7—DISTRIBUTION OF LOANS AND LOAN AMOUNT BY TANGIBLE NET WORTH  
[FY 2021–2022]

Applicant size (\$ millions of tangible net worth)	Number of loans			Approved loan amount			Average loan amount (\$)
	Count	%	Cum. %	Amount (\$ million)	%	Cum. %	
0 .....	11,330	9.6	9.6	\$2,219.7	2.8	2.8	\$195,910
0 to 0.1 .....	64,628	54.6	64.1	31,615.8	39.7	42.5	489,196
0.1 to 0.25 .....	19,971	16.9	81.0	16,289.3	20.5	62.9	815,650
0.25 to 0.5 .....	10,448	8.8	89.8	11,922.1	15.0	77.9	1,141,085
0.5 to 0.75 .....	4,051	3.4	93.2	5,478.6	6.9	84.8	1,352,396
0.75 to 1.0 .....	2,229	1.9	95.1	3,163.8	4.0	88.8	1,419,390
1.0 to 2.5 .....	3,723	3.1	98.3	5,920.6	7.4	96.2	1,590,286
2.5 to 5.0 .....	978	0.8	99.1	1,785.4	2.2	98.4	1,825,532
5.0 to 7.5 .....	238	0.2	99.3	456.9	0.6	99.0	1,919,827
7.5 to 10.0 .....	93	0.1	99.4	167.9	0.2	99.2	1,804,951
10.0 to 12.5 .....	65	0.1	99.4	114.5	0.1	99.4	1,760,852
12.5 to 15.0 .....	34	0.0	99.5	61.8	0.1	99.4	1,817,097
15.0 to 20.0 .....	40	0.0	99.5	83.4	0.1	99.5	2,085,250
20.0 to 25.0 .....	18	0.0	99.5	32.5	0.0	99.6	1,804,189
25.0 to 30.0 .....	8	0.0	99.5	21.2	0.0	99.6	2,648,163
>30.0 .....	28	0.0	99.5	41.2	0.1	99.7	1,469,957
NA * .....	542	0.5	100.0	263.8	0.3	100.0	486,792
Total .....	118,424	100.0	.....	79,638.3	100.0	.....	672,485

\* NA represents observations for which tangible net worth couldn't be estimated due to missing receipts-to-jobs and RMA ratios or invalid NAICS codes.

As shown in Table 8, Distribution of Loans and Loan Amount by Net Income (FY 2021–2022), below, nearly 80% of total loans and 78% of loan amount went to recipients with less than \$100,000 in net income. Similarly, 99.2% of total loans and 98.7% of loan amount went to recipients with less than \$1 million in net income. Recipients at or below \$5 million in net income accounted for 99.5% of total loans and 99.7% of total loan amount.

TABLE 8—DISTRIBUTION OF LOANS AND LOAN AMOUNT BY NET INCOME  
[FY 2021–2022]

Applicant size (\$ millions of net income)	Number of loans			Approved loan amount			Average loan amount (\$)
	Count	%	Cum. %	Amount (\$ million)	%	Cum. %	
0 .....	11,330	9.6	9.6	\$2,219.7	2.8	2.8	\$195,910
0 to 0.1 .....	94,360	79.7	89.2	59,995.2	75.3	78.1	635,812
0.1 to 0.25 .....	8,423	7.1	96.4	10,627.2	13.3	91.5	1,261,693
0.25 to 0.5 .....	2,481	2.1	98.5	3,920.3	4.9	96.4	1,580,116
0.5 to 0.75 .....	677	0.6	99.0	1,312.9	1.6	98.0	1,939,273
0.75 to 1.0 .....	256	0.2	99.2	497.0	0.6	98.7	1,941,401
1.0 to 2.5 .....	308	0.3	99.5	694.8	0.9	99.5	2,255,715
2.5 to 5.0 .....	38	0.0	99.5	92.6	0.1	99.7	2,436,392
5.0 to 7.5 .....	5	0.0	99.5	4.1	0.0	99.7	813,560
7.5 to 10.0 .....	2	0.0	99.5	5.6	0.0	99.7	2,805,850
10.0 to 12.5 .....	1	0.0	99.5	1.0	0.0	99.7	1,000,000
12.5 to 15.0 .....	.....	0.0	99.5	0.0	0.0	99.7	.....
15.0 to 20.0 .....	1	0.0	99.5	4.2	0.0	99.7	4,160,000
NA * .....	542	0.5	100.0	263.8	0.3	100.0	486,792
Total .....	118,424	100.0	.....	79,638.3	100.0	.....	672,485

\* NA represents observations for which tangible net worth couldn't be estimated due to missing receipts-to-jobs and RMA ratios or invalid NAICS codes.

The business loan data for fiscal years 2021–2022 shows that the vast majority of loan actions occurred in industries with receipts-based size standards. For example, as shown in Table 9, Distributions of Loans and Loan Amount by Size Standards Type (FY 2021–2022), industries with receipts-based size standards accounted for nearly 87% of total loans and about 83% of loan amount. Industries with employee-based size standards accounted for about 13% of loans and about 17% of loan amount.



TABLE 9—DISTRIBUTIONS OF LOANS AND LOAN AMOUNT BY SIZE STANDARDS TYPE  
[FY 2021–2022]

Size standard type	Number of loans		Approved loan amount	
	Count	%	Amount (\$ billion)	%
Employee-based .....	15,682	13.2	13.8	17.3
Receipts-based .....	102,612	86.6	65.8	82.6
NA* .....	130	0.1	0.0	0.0
Total .....	118,424	100.0	79.6	100.0

\*NA represents observations for which tangible net worth couldn't be estimated due to missing receipts-to-jobs and RMA ratios or invalid NAICS codes with missing size standards.

The distributions of number of loans and loan amount by NAICS sector are presented in Table 10, Distributions of Loans and Loan Amount by NAICS Sector (FY 2021–2022). Consistent with Table 9, above, sectors with receipts-based size standards account for the largest proportions of loans and loan

amount. For example, based on the data for fiscal years 2021–2022, sectors with receipts-based size standards, including Sector 72 (Accommodation and Food Services), Sector 44–45 (Retail Trade), Sector 62 (Health Care and Social Assistance), Sector 23 (Construction), and Sector 81 (Other Services) account

for 56% of loans and 58% of loan amount during fiscal years 2021–2022. Among the sectors with employee-based size standards, Sector 31–33 (Manufacturing) accounted for 7.6% of loans and 9.8% of loan amount.

TABLE 10—DISTRIBUTIONS OF LOANS AND LOAN AMOUNT BY NAICS SECTOR  
[FY 2021–2022]

Sector code	Sector title	Number of loans		Approved loan amount	
		Count	%	Amount (\$million)	%
11 .....	Agriculture, Forestry, Fishing and Hunting.	1,465	1.2	1,050	1.3
21 .....	Mining, Quarrying, and Oil and Gas Extraction.	245	0.2	236	0.3
22 .....	Utilities .....	190	0.2	98	0.1
23 .....	Construction .....	2,713	10.7	5,933	7.4
31–33 .....	Manufacturing .....	8,968	7.6	7,788	9.8
42 .....	Wholesale Trade .....	5,488	4.6	5,005	6.3
44–45 .....	Retail Trade .....	5,851	13.4	11,730	14.7
48–49 .....	Transportation and Warehousing .....	7,254	6.1	2,888	3.6
51 .....	Information .....	989	0.8	643	0.8
52 .....	Finance and Insurance .....	2,531	2.1	1,460	1.8
53 .....	Real Estate and Rental and Leasing	3,840	3.2	3,031	3.8
54 .....	Professional, Scientific, and Technical Services.	10,181	8.6	5,505	6.9
55 .....	Management of Companies and Enterprises.	99	0.1	103	0.1
56 .....	Administrative and Support and Waste Management and Remediation Services.	5,811	4.9	2,391	3.0
61 .....	Education Services .....	1,616	1.4	927	1.2
62 .....	Health Care and Social Assistance	12,205	10.3	8,970	11.3
71 .....	Arts, Entertainment, and Recreation	3,384	2.9	2,079	2.6
72 .....	Accommodation and Food Services	15,039	12.7	13,664	17.2
81 .....	Other services .....	10,555	8.9	6,138	7.7
Grand Total .....		118,424	100.0	79,638	100.0

#### IV. Comparing Industry-Based Size Standards With Statutory Alternative Size Standard

For this, SBA converted all industry-based size standards to tangible net worth and net income equivalents using the following steps:

*Step 1:* Convert all industry-based size standards to the receipts-equivalent size standard. If an industry has a receipt-based size standard, the receipts-equivalent size standard is the receipts-based size standard itself. If an industry has an employee-based size standard, the receipts-equivalent size standard is

obtained by multiplying the employee-based size standard (number of employees) by the ratio of small business receipts to small business number of employees for that industry.

*Step 2:* Estimate net fixed assets (NFA) using the receipts equivalent size standard for the  $j$ -th industry.

$$NFA_j = Receipts\ equivalent\ size\ standard_j / \left( \frac{Net\ sales}{NFA} \right)_j$$

where  $NFA_j$  is an estimate of net fixed assets corresponding to the receipts equivalent size standard in the  $j$ -th industry and  $\left( \frac{Net\ sales}{NFA} \right)_j$  is the net sales to net fixed assets ratio in the  $j$ -th industry from RMA.

*Step 3:* Estimate tangible net worth (TNW) equivalent of receipts equivalent size standard for the  $j$ -th industry.

equivalent size standard in the  $j$ -th industry and  $\left( \frac{Net\ sales}{NFA} \right)_j$  is the net sales to net fixed assets ratio in the  $j$ -th industry from RMA.

Step 3: Estimate tangible net worth (TNW) equivalent of receipts equivalent size standard for the  $j$ -th industry.

where  $TNW_j$  is an estimate of tangible net worth corresponding to the receipts equivalent size standard in the  $j$ -th

industry and  $(NFA/TNW)_j$  is the net fixed assets to tangible net worth ratio in the  $j$ -th industry from RMA.

*Step 4:* Estimate net income (NI) equivalent of the receipts equivalent size standard for the  $j$ -th industry.

$$NI_j = 0.79 * TNW_j \times \left( \frac{Average\ profit\ before\ taxes}{TNW} \right)_j$$

where  $NI_j$  is an estimate of net income after taxes corresponding to the receipts equivalent size standard for the  $j$ -th industry and

$\left( \frac{Average\ of\ profit\ before\ taxes}{TNW} \right)_j$  is the ratio between average of profit before taxes to tangible net worth.

*Step 5:* Determine whether the industry size standard is lower or higher than the statutory alternative size standard in relative terms using tangible net worth equivalent obtained in Step 3 and net income equivalent from Step 4. *whether the industry size standard for the  $j$ -th industry is lower or higher than the alternative size standard:*

{Lower if  $TNW_j \leq \$15\ million$  and  $NI_j \leq \$5\ million$  Higher if  $TNW_j > \$15\ million$  or  $NI_j > \$5\ million$  or both

Excluding observations with missing or incomplete information (*i.e.*,

observations with missing receipts-to-job ratios or missing one or more of the RMA ratios), above analysis yielded tangible net worth and net income equivalents of the industry-based size standards for 955 industries under NAICS 2022, a distribution of which is shown in Table 11, Comparison Between Industry-Based and Statutory Alternative Size Standards (FY 2021–2022). The results show that whether the industry-based size standard is lower or higher than the statutory alternative size standard in relative terms is contingent on whether the

industry has a receipts- or employee-based size standard. For example, in relative terms, for 82.5% of industries with employee-based size standards, the industry based size standard is found to be higher than the tangible net worth (\$15 million) and net income (\$5 million) based interim statutory alternative size standard. It is quite opposite among the industries with the receipts-based size standards. For nearly 93% of industries that have a receipts-based size standard, the industry size standard is relatively smaller than the statutory alternative size standard.

These results suggest that the statutory alternative size standard provides more benefits to applicants in the receipts-based industries as compared to employee-based industries. Table 12, Comparison Between Industry-Based and Statutory Alternative Size Standards by NAICS Sector (FY 2021–2022), summarizes these results by

sector. For the vast majority of industries in such sectors as Mining, Utilities, and Manufacturing which mostly have employee-based size standards, the industry-based size standards are relatively higher than the statutory alternative size standard. Opposite is the case for industries in sectors with receipts-based size

standards, such as Agriculture, Retail Trade, Professional and Administrative Support Services, Education Services, Health Care, Accommodation and Food Services, and Other Services where the statutory alternative size standard is relatively higher than the industry-based size standards.

TABLE 11—COMPARISON BETWEEN INDUSTRY-BASED AND STATUTORY ALTERNATIVE SIZE STANDARDS [FY 2021–2022]

Size standard type	Whether industry size standard is lower or higher than statutory alternative size standard		Total
	Higher	Lower	
Employee-based .....	392 (82.5%)	83 (17.5%)	475 (100%)
Receipts-based .....	35 (7.3%)	445 (92.7%)	480 (100%)
Total .....	427 (44.7%)	528 (55.3%)	955 (100%)

Note: Figures in parentheses are percentages based on row totals.

TABLE 12—COMPARISON BETWEEN INDUSTRY-BASED AND STATUTORY ALTERNATIVE SIZE STANDARDS BY NAICS SECTOR [FY 2021–2022]

Sector code	Sector title	Whether industry size standard is lower or higher than statutory alternative size standard		Total
		Higher	Lower	
11 .....	Agriculture, Forestry, Fishing and Hunting .....	0 (0.0%)	63 (100.0%)	63 (100.0%)
21 .....	Mining, Quarrying, and Oil and Gas Extraction .....	17 (81.0%)	4 (19.0%)	21 (100.0%)
22 .....	Utilities .....	12 (85.7%)	2 (14.3%)	14 (100.0%)
23 .....	Construction .....	0 (0.0%)	30 (100.0%)	30 (100.0%)
31–33 .....	Manufacturing .....	319 (92.2%)	27 (7.8%)	346 (100.0%)
42 .....	Wholesale Trade .....	22 (31.9%)	47 (68.1%)	69 (100.0%)
44–45 .....	Retail Trade .....	0 (0.0%)	57 (100.0%)	57 (100.0%)
48–49 .....	Transportation and Warehousing .....	15 (27.8%)	39 (72.2%)	54 (100.0%)
51 .....	Information .....	8 (28.6%)	20 (71.4%)	28 (100.0%)
52 .....	Finance and Insurance .....	0 (0.0%)	16 (100%)	16 (100.0%)
53 .....	Real Estate and Rental and Leasing .....	10 (41.7%)	14 (58.3%)	24 (100.0%)
54 .....	Professional, Scientific, and Technical Services .....	3 (6.3%)	45 (93.8%)	48 (100.0%)
55 .....	Management of Companies and Enterprises .....	0 (0.0%)	2 (100.0%)	2 (100.0%)
56 .....	Administrative and Support and Waste Management and Remediation Services.	0 (0.0%)	44 (100.0%)	44 (100.0%)
61 .....	Education Services .....	3 (17.6%)	14 (82.4%)	17 (100.0%)
62 .....	Health Care and Social Assistance .....	3 (7.7%)	36 (92.3%)	39 (100.0%)
71 .....	Arts, Entertainment, and Recreation .....	9 (36.0%)	16 (64.0%)	25 (100.0%)
72 .....	Accommodation and Food Services .....	1 (6.7%)	14 (93.3%)	15 (100.0%)
81 .....	Other services .....	5 (11.6%)	38 (88.4%)	43 (100.0%)
Total .....		427 (44.7%)	528 (55.3%)	955 (100.0%)

V. Advanced Notice of Proposed Rulemaking (ANPRM)

In 2018, SBA published in the Federal Register an advanced notice of proposed rulemaking (ANPRM) seeking public input to assist in establishing a permanent alternative size standard for its 7(a) and CDC/504 Loan Programs (83 FR 12506; March 22, 2018). SBA also invited suggestions on sources of relevant data and information that SBA should evaluate in developing a

permanent alternative size standard and in assessing its impact. Specifically, ANPRM sought the comments on the following issues:

1. SBA sought comment on whether the level of the temporary statutory alternative size standard (i.e., \$15 million in tangible net worth and \$5 million in average net income) is appropriate as a new permanent alternative size standard under the credit environment at that time. SBA asked commenters to provide data and

supporting analysis for supporting or not supporting the statutory alternative size standard as a permanent alternative size standard.

2. SBA sought comment on the impact of using an alternative size standard on small businesses seeking loans through its Business Loan Programs, specifically information on industries/sectors where small businesses benefit the most or do not benefit at all from the use of an alternative size standard. SBA also asked for data on the number of

businesses approved for SBA's Business Loans under the interim statutory alternative size standard that otherwise could not have been approved under their industry based size standards.

3. SBA invited suggestions on sources of relevant data and information, especially tangible net worth and average net income of applicants to SBA's Business Loan Programs, that SBA can evaluate to assess the impact of the statutory alternative size standard on small businesses and use in developing a new permanent alternative size standard and in estimating its impact.

4. SBA also sought comments on how the statutory alternative size standard has affected the processes used by lenders participating in the Business Loan Programs and what impacts a permanent alternative size standard would have on application processes and processing times.

#### *Discussion of Comments*

SBA received a total of 34 comments on the ANPRM, of which 11 were found to be not pertinent to the scope of the ANPRM. Of the 23 comments that were pertinent, all 23 not only supported the statutory alternative size standard, but also recommended making it the permanent alternative size standard for the SBA's 7(a) and CDC/504 Loan Programs.

Commenters included two associations of lenders offering loans to applicants to the Business Loan Programs—one representing lenders that primarily served applicants to the 7(a) business loan program and other representing mostly CDCs that offered loans under the 504/CDC loan program—and their members supporting their respective position on the ANPRM. Specifically, there were 11 comments (six of which were from different individuals of one 7(a) lender) that supported the position of the association of 7(a) lenders and 8 comments that either supported the position of the association of the CDCs or provided the similar comments as that association. The remainder of commenters consisted of individual lending entities that provided SBA's guaranteed loans. Interestingly, commenters included no small businesses that applied to or received loans from SBA's Business Loan Programs. Below SBA discusses these comments by topic.

#### *Comments on Appropriateness of the Statutory Alternative Size Standard as A Permanent Alternative Size Standard*

An association commenter expressed support for establishing a permanent

alternative size standard to applicants for the SBA's Loan Programs. In order to provide meaningful comments to the ANPRM, the association conducted an informal survey seeking comments from its 572 members, of which 67 responded. While an overwhelming majority of the respondents (88%) supported making the statutory alternative size standard permanent, three recommended decreasing the standard and one recommended increasing it to \$20 million in tangible net worth and \$7.5 million in average net income. Based on the input from its members, the association recommended that the statutory alternative size standard should be made permanent because it has not only simplified the loan application process, but it also has enabled a small number of businesses above the industry specific size standards to qualify for SBA's 7(a) financing. Additionally, the association maintained that it is not aware of any negative impacts of using the statutory alternative size standard, such as exclusion of businesses from loan eligibility. However, citing the lack of information the association did not provide any data and analysis to support its position.

Another association stated that making the statutory alternative size standard permanent is vital for allowing small businesses to access credit through the SBA's 504 loan program. The association maintained that the statutory alternative size standard has enabled small businesses that were not otherwise eligible under their industry-based size standards to receive CDC/504 loans. It added that using industry-based size standards in conjunction with the statutory alternative size standard has been beneficial to capturing small businesses that require credit through the CDC/504 Loan Program. As to whether the level of the statutory alternative size standard is still appropriate, the association stated that the current level is sufficient and should remain as is until such time as economic conditions, inflation, and other factors warrant an increase. It expressed concerns with potential unintended consequences of deviating from the statutory alternative size standard. A few other individual lenders also supported making the statutory alternative size standard permanent for SBA's Business Loan Programs.

#### *SBA Response*

Section 1116 of the Jobs Act requires SBA to establish a permanent alternative size standard using maximum tangible net worth and

average net income for applicants of the SBA's Business Loan Programs. The Jobs Act also established for applicants for the SBA's Business Loan Programs a statutory alternative size standard of not more than \$15 million in tangible net worth and of not more than \$5 million in the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application. SBA agrees with the commenters that the statutory alternative size standard has not only simplified the loan application process but also has enabled some applicants above the industry-based size standard to qualify for SBA's Business Loan Programs. Based on the analysis of its internal business loan data for fiscal years 2021–2022, SBA found that 500 loans totaling more than \$1 billion were approved under the statutory alternative size standard which otherwise would not have qualified under the industry-based size standard. SBA agrees with the comment that the interim statutory alternative size standard has not caused any negative impacts such as excluding applicants from loan eligibility. Rather, using the statutory alternative size standard in conjunction industry-based size standards has expanded eligibility for SBA Business Loan Programs, especially for applicants from industries with receipts-based size standards. In absence of its negative impacts on businesses seeking SBA loans, SBA agrees with the commenters that the statutory alternative size standard can serve as a permanent alternative size standard.

#### *Comments Relating to the Impact of Using the Statutory Alternative Size Standard on Small Businesses*

An association maintained that the statutory alternative size standard has both simplified the loan application process and allowed a small number of businesses that might not have qualified under the industry based size standards to receive 7(a) financing. Based on input from its members, the association identified various industries/sectors that benefit from the use of the statutory alternative size standard for the SBA's 7(a) loan program. These include manufacturers; distributors; software, technology and professional services; construction; warehousing; retail trade (e.g., car dealers); hospitality industry; and agriculture businesses. Other commenters maintained that healthcare firms and professional organizations have also benefited from the SBA's Business Loan Programs. However, the association indicated that it does not have the data related to the number of

businesses that might have qualified for loans under the statutory alternative size standard, which would not have qualified under the industry-based size standards.

Another association indicated that certified development companies (CDCs) have historically used the alternative size standard to establish eligibility for the CDC/504 program and that only circumstance where the industry-based size standard would be used is when the applicant is too large to qualify under the alternative size standard but would meet the industry-based size standard. The association was also unable to offer data on the number of applicants approved under CDC/504 loans under the statutory alternative size standard that could not otherwise be approved under the industry-based size standard because, it stated, most CDCs use the alternative size standard for eligibility purposes and therefore do not capture data relevant to eligibility under the industry-based size standard.

#### *SBA Response*

SBA agrees with the commenters that the statutory alternative size standard has not only simplified the loan application process, but it also has enabled some applicants to SBA's Business Loan Programs which might otherwise not have qualified under the industry-based size standards to receive SBA loans. This is consistent with SBA's analysis which showed 500 or 0.4% of loans which would likely not have qualified under the industry-based size standards to qualify under the statutory alternative size standard. SBA agrees with a commenter's list of industries or sectors that have benefited most from the statutory alternative size standard. SBA's analysis of the data for fiscal years 2021–2022 also showed hospitality, health care, construction, manufacturing, retail trade, and professional services industries benefiting most from the statutory alternative size standard.

#### *Comments Pertaining to Data Sources*

Based on the input from its members responding to the survey, the above-referenced association suggested a few data sources, including the Risk Management Association (RMA), Moody's, Dun and Bradstreet, PayNet, IBISWorld, Federal tax returns, Survey of Business Owners, SBA's own loan application and oversight data, and the U.S. Business Census. Another commenter also suggested RMA, IBISWorld, and Dun and Bradstreet. A separate association commenter suggested that SBA should use its own

data on applicants to the CDC/504 loan program.

#### *SBA Response*

In response to the comment, SBA has evaluated the various RMA financial ratios for estimation of tangible net worth and net income for applicants to the SBA's Business Loan Programs. By combining industry ratios from RMA with receipts-to-job ratios from Economic Census tabulations, as discussed previously, SBA was able to estimate tangible net worth and net income for each recipient of SBA's business loans. By combining these results with industry-based size standards, SBA was able to estimate the number of loans that were approved under the statutory alternative size standard which otherwise would not have qualified under the industry-based size standards.

#### *Comments Relating to Impacts of a Permanent Alternative Size Standard on Application Process and Processing Times*

Based on the survey responses and anecdotally, an association maintained that the statutory alternative size standard has simplified and streamlined the 7(a) loan application process because it is the same for all businesses and lenders do not have to look up NAICS codes. Citing one lender, the association added that using industry-based size standards takes more time and can be more difficult if the company's operation involves multiple NAICS codes. As to the effects a permanent size standard would have on application processes and processing times, the association noted that because lenders participating in the 7(a) program have treated the current "temporary" alternative size standard as if it were permanent, it would not expect a "permanent" alternative size standard to significantly alter either application processes or loan processing times.

Another commenter maintained that because most CDCs have historically used the alternative size standard for small business eligibility purposes, a permanent alternative size standard would be "business as usual" for the CDC industry with no effect on application processes and processing times.

One commenter indicated that the alternative size standard has aided in streamlining the lending process and served as catalyst to increase lending to small businesses, thereby contributing to the recovery from the 2007–2009 Great Recession.

#### *SBA Response*

SBA agrees with the comment that, by avoiding the use of NAICS codes in determining applicants' size eligibility, using the alternative size standard has benefitted lenders in terms of simplifying and streamlining the loan application process. It has also helped relieve applicants of the burden of keeping three years or potentially five years of data to establish eligibility using industry-based size standards.

#### **VI. Appropriateness of Interim Statutory Alternative Size Standard as the Permanent Alternative Size Standard**

Section 1116 of the Jobs Act directed SBA to establish an alternative size standard based on tangible net worth and net income for determining size eligibility for applicants to the Agency's 7(a) and CDC/504 Loan Programs. As stated previously, the Jobs Act also established the interim statutory alternative size standard of \$15 million tangible net worth and \$5 million of net income to remain in effect until SBA establishes a permanent alternative size standard based on tangible net worth and net income.

In the absence of evidence of supporting a different alternative size standard for 7(a) and CDC/504 Loan Programs and in the absence of any negative impacts of using the statutory alternative size standard, SBA is proposing to adopt the statutory alternative size standard of \$15 million in tangible net worth and \$5 million in net income as the permanent alternative size standard, subject to adjustment for inflation that has occurred since the establishment of the statutory alternative size standard in 2010. Most commenters to the March 2018 ANPRM also recommended adopting the interim statutory alternative size standard as a permanent alternative size standard for SBA's Business Loan Programs. This proposed rule seeks comment and public input on adopting the interim statutory size standard as the permanent alternative size standard. The commenters to the ANPRM maintained that the statutory alternative size standard has enabled applicants that would not have otherwise qualified under the industry-based size standards to receive SBA's financing. The commenters stated that the statutory alternative size standard has also benefited the SBA lenders in terms of simplifying and streamlining the loan application process.

The analytical results presented in the previous sections support using the statutory alternative size standard as a

permanent alternative size standard. Based on the data for fiscal years 2021–2022, nearly all (99.9%) of recipients of loans from SBA’s Business Loan Programs were found to be at or below the interim statutory alternative size standard (see Table 5). In comparison, about 95–96% of firms are considered small under the current industry-based size standards. The interim statutory alternative size standard seemed to have enabled 500 applicants that would not have otherwise qualified under the industry-based size standard to receive SBA’s loans. The vast majority of business loans and loan amounts went to businesses that were well below the statutory alternative size standard. For example, during fiscal years 2021–2022, loan recipients with tangible net worth of just \$1 million or less accounted for 95% of loans and nearly 89% of loan amount (see Table 7). Similarly, 98.5% of loans and 96.4% of loan amount went to businesses with net income of \$0.5 million or less (see Table 8). These results indicate that the interim statutory alternative size standard, subject to adjustment for inflation, is serving well its intended purposes in terms of rendering applicants that do not qualify under the industry-based size standard eligible for SBA’s Business Loan Programs.

For nearly 93% of industries with receipts-based size standards, in relative terms, the interim statutory alternative size standard was higher than the current industry-based size standard. Industries with receipts-based size standards accounted for the vast majority of loan actions, accounting for 87% of total loans and 83% of loan amount during fiscal years 2021–2022 (see Table 9). Only for 17.5% of the industries with employee-based size standards, the industry-based size standard was, in relative terms, smaller than the statutory alternative size standard. However, industries with employee-based size standards accounted for 13% loans and 17% of loan amount. Applicants in those industries will continue to qualify under the industry-based size standards, many of which have been increased as part of the second five-year review of size standards under Section 1344 of the Jobs Act.

SBA also considered returning the alternative size standard to that adopted

by SBA prior to the passage of the Jobs Act (*i.e.*, \$8.5 million in tangible net worth and \$3 million in net income), but, because the statutory alternative size standard significantly exceeded the prior alternative size standard, using the prior alternative size standard would be counter to Congressional direction. Additionally, the old alternative size standard would have rendered 144 applicants ineligible for SBA’s Business Loan Programs which would otherwise have qualified under the interim statutory alternative size standard.

SBA also considered increasing the statutory alternative size standard beyond inflation-adjusted levels of \$15 million of tangible net worth and \$5 million of net income. However, the analytical results presented and discussed in the previous sections did not indicate that an increase is warranted. Almost all loan recipients under the SBA’s Business Loan Programs seemed to be at or below the statutory alternative size standard and the vast majority of loans went to businesses that were significantly below the statutory alternative size standard.

Accordingly, SBA proposes to adopt the statutory alternative size standard as the permanent alternative size standard, subject to inflation adjustment as discussed in the next section.

## VII. Inflation Adjustment of Statutory Alternative Size Standard

For the inflation adjustment of the statutory alternative size standard for SBA’s Business Loan Programs, SBA has used the inflation adjustment methodology it describes in its “Size Standards Methodology” white paper, available at [www.sba.gov/size](http://www.sba.gov/size). SBA applied the same methodology in its previous inflation adjustments, including the latest inflation adjustment in 2022 (87 FR 69118; November 17, 2022). This methodology can be described in terms of the following steps:

1. Selecting an inflation measure.
2. Selecting the base and end periods.
3. Calculating the inflation rate.
4. Making adjustments to the size standard.

### 1. Selecting an Inflation Measure

SBA establishes small business size standards to determine the eligibility of businesses for a wide variety of SBA’s and other Federal programs. Many

businesses participating in those programs are engaged in multiple industries and are producing a wide range of goods and services. Therefore, it is important that the Agency use a broad measure of inflation to adjust its size standards. SBA’s preferred measure of inflation has consistently been the chain-type price index for the U.S. Gross Domestic Product (GDP price index), published by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA) on a quarterly basis as part of its National Income and Product Accounts (NIPA), available at [www.bea.gov](http://www.bea.gov).<sup>7</sup>

### 2. Selecting the Base and End Periods

For this inflation adjustment of the statutory alternative size standard, SBA selected the third quarter of 2010 as the base period because the size standard was enacted on September 27, 2010. SBA selected the fourth quarter of 2022 as the end period because it was the latest quarter for which GDP price index data were available when this rule was developed.

### 3. Calculating the Rate of Inflation

The GDP price index for the base period (*i.e.*, 3rd quarter of 2010) was 96.312 and, according to the BEA GDP third estimate released on March 30, 2023 (the latest available when this rule was prepared), the GDP price index for the end period (*i.e.*, 4th quarter of 2022) was 129.502. Accordingly, inflation increased 34.46% from the third quarter of 2010 to the fourth quarter of 2022 ( $((129.502 \div 96.312) - 1) \times 100\% = 34.46\%$ ).

### 4. Making Adjustments to the Size Standard

Tangible net worth (\$15 million) and net income (\$5 million) of the interim statutory alternative size standard were adjusted by multiplying their current levels by 1.3446 and rounding the results to the nearest \$500,000. The results were \$20.169 million for tangible net worth and \$6.723 million for net income, which were rounded to \$20 million and \$6.5 million, respectively. These results are presented in Table 13, Adjustment of Statutory Alternative Size Standard for SBA Business Loan Programs for Inflation.

<sup>7</sup> As part of the 2014 inflation adjustment (79 FR 33647 (June 12, 2014)), SBA reviewed various measures of inflation published by the Federal Government, including the GDP price index, consumer price index (CPI), producer price index

(PPI), personal consumption expenditures (PCE) price index, and unit labor cost. Based on that review, SBA determined that the GDP price index is the most appropriate measure of inflation for purposes of adjusting size standards for inflation.

Historically, SBA has used the GDP price index for adjusting size standards for inflation.

TABLE 13—ADJUSTMENT OF STATUTORY ALTERNATIVE SIZE STANDARD FOR SBA BUSINESS LOAN PROGRAMS FOR INFLATION

Threshold name and value		Base period and GDP price index		End period and GDP price index		Inflation %	Adjusted threshold (not rounded)	Adjusted threshold (rounded)
Name	Value	Base period	GDP price index	End period	GDP price index			
Tangible net worth (Interim Rule).	\$15,000,000	Third quarter of 2010.	96.312	Fourth quarter of 2022.	129.502	34.46	\$20,169,138	\$20,000,000
Net income (Interim Rule).	5,000,000	Third quarter of 2010.	96.312	Fourth quarter of 2022.	129.502	34.46	6,723,046	6,500,000

**VIII. Inflation Adjustment to Surety Bond Guarantee Limits**

Section 1695 of the National Defense Authorization Act for Fiscal Year 2013 (“NDAA 2013”) (Pub. L. 112–239; January 2, 2013) increased the SBG guarantee limit to \$6.5 million, and up to \$10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary.<sup>8</sup> The act also included a provision to periodically increase the \$6.5 million limit for inflation in accordance with 41 U.S.C. 1908.

That provision, 41 U.S.C. 1908, provides that inflation adjustments for acquisition-related dollar thresholds are to be set by the Federal Acquisition Regulatory Council (FAR Council). It also requires that the Consumer Price Index (CPI) is used to measure inflation. The FAR Council is established under 41 U.S.C. 1302 to assist in the direction and coordination of procurement policy and regulatory activities for the Federal Government. The FAR Council is required to adjust acquisition-related dollar thresholds every five years.

Based on CPI, inflation has increased more than 30% since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by

Congress in 2013. SBA has an important statutory requirement to adjust the bonding limits in accordance with CPI and the FAR Council. The current limits are \$6.5 million and \$10 million for Federal contracts if a Federal agency certifies that a greater amount is necessary. SBA has not adjusted its bonding limits since 2013.

The FAR Council has not set a specific threshold in the Federal Acquisition Regulations (FAR) for SBA bonding limits. The FAR Council adjusts the acquisition-related dollar thresholds every five years with the last adjustments occurring in 2015 and 2020. The FAR Council had a \$6.5 million acquisition-related threshold in effect in 2013 when the SBA bonding limits were set. In 2015, as part of inflationary adjustments to the acquisition-related dollar thresholds, the FAR Council increased the \$6.5 million threshold to \$7 million (80 FR 38293; July 2, 2015). Likewise, in 2020, the FAR Council adjusted the \$7 million threshold to \$7.5 million (85 FR 62485; October 2, 2020). The FAR did not have a \$10 million threshold in effect in 2013.

In the absence of a specific FAR threshold for SBA bonding limits, SBA

proposes this adjustment which is to follow the FAR adjustment from \$6.5 million to \$7.5 million in 2020 and then calculate an adjustment from 2020 to 2023 using the same CPI methodology.

SBA is also adjusting the existing limit of \$10 million to maintain the same percentage spread (the lower limit is 65% of the upper limit). By adjusting both at the same time, SBA maintains the effectiveness of the necessity provision and avoids the upper limit becoming meaningless, because if only the lower limit is adjusted then at some point it will exceed the necessity limit. This rulemaking fulfills the statutory objective of maintaining the value of monetary-based bonding limits in real (*i.e.*, inflation-adjusted) terms.

The results of the inflation adjustment were \$8,764,625 and \$13,846,154 million if a Federal agency certifies necessity, which were rounded to \$9 million and \$14 million, respectively. These results are presented in Table 14, Adjustment of Lower Surety Bond Contract Limit (\$6.5 Million) for Inflation Using CPI from 2020 to 2023 and Table 15, Adjustment of Surety Bond Upper Contract Limit (\$10 Million) from 2013 to 2023.

TABLE 14—ADJUSTMENT OF SURETY BOND LOWER CONTRACT LIMIT (\$6.5 MILLION) FOR INFLATION USING CPI FROM 2020 TO 2023

Threshold name and value		Base period and consumer price index (CPI)		End period and consumer price index (CPI)		Inflation	Adjusted threshold (not rounded)	Adjusted threshold (rounded)
Time period	Value	Base period	CPI *	End period	CPI *			
2013 to 2020 .....	\$6,500,000	In 2015, the FAR Council adjusted the \$6.5 million threshold to \$7 million, and in 2020 adjusted it to \$7.5 million.						\$7,500,000
2020 to 2023 .....	7,500,000	March 2020 .....	258.124	February 2023 .....	301.648	16.86%	\$8,764,625	9,000,000

\* Note: CPI data downloaded from the U.S. Bureau of Labor Statistics website on March 28, 2023.

<sup>8</sup> Section 508 of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5; Feb 17, 2009) temporarily increased, from February 17, 2009, through September 30, 2010, the

maximum bond amount from \$2 million to \$5 million. The act also authorized the SBA to guarantee a bond of up to \$10 million for Federal contracts if a Federal contracting officer certified

that such a guarantee was necessary. Using its rulemaking authority, SBA made ARRA’s temporary size standard permanent on August 11, 2010 (76 FR 48549).

TABLE 15—ADJUSTMENT OF SURETY BOND UPPER CONTRACT LIMIT (\$10 MILLION) FROM 2013 TO 2023

	Current		Adjusted threshold (not rounded)		Adjusted threshold (rounded)
	Value	Spread (%)	Value	Spread (%)	Value
Contract value: Lower limit .....	\$6,500,000	65	\$9,000,000	65	\$9,000,000
Contract value: Upper limit .....	10,000,000	100	13,846,154	100	14,000,000

**IX. Section-by-Section Analysis**

*A. Section 121.301(a)*

Section 1116 of the Jobs Act established a statutory alternative size standard using maximum tangible net worth of \$15 million and maximum net income of \$5 million, and it permanently extended the application of the alternative size standard to the applicants to 7(a) Business Loan Program. Prior to the Jobs Act, the alternative size standard applied to 7(a) Business Loan Program on a temporary basis. To recognize that the alternative size standard is no longer temporary, § 121.301(a) is revised as follows: “For Business Loans and for Disaster Loans (other than physical disaster loans), an applicant business concern must satisfy two criteria:”

*B. Section 121.301(b)*

For the same reason as for §§ 121.301(a) and 121.301(b) is revised as follows: “For 7(a) Business Loans and Development Company programs, an applicant must meet one of the following standards:”

*C. Section 121.301(e)*

The Department of Labor (DOL) no longer issues the “Area Trends in Employment and Unemployment” monthly publication, and DOL publishes the list of Labor Surplus Areas (LSAs) annually rather than monthly. To reflect this change, SBA is amending the second sentence in § 121.301(e) as follows: “The U.S. Department of Labor (DOL) issues the Labor Surplus Area (LSA) list on a fiscal year basis on its website at [www.dol.gov/agencies/eta/lssa](http://www.dol.gov/agencies/eta/lssa).”

*D. Section 115.10 “Applicable Statutory Limit”*

Section 411(a)(1)(A) of the Small Business Investment Act of 1958 established a statutory limit for the maximum amount of a contract for which SBA can guaranty a bond at \$6.5 million. It also requires that the \$6.5 million limit be adjusted for inflation in accordance with 41 U.S.C. 1908. Section 411(a)(1)(B) established that the \$6.5 million limit can be exceeded up to a \$10 million maximum if a contracting

officer of a Federal agency certifies that such a guaranty is necessary.

To implement the inflation adjustment of the \$6.5 million threshold, and to maintain a proportional relationship between the lower contract maximum and the upper contract maximum, the definition of “Applicable Statutory Limit” found in § 115.10 is revised by removing \$6.5 million and replacing it with \$9 million, and by removing \$10 million and replacing it with \$14 million in § 115.12(e)(3).

For the same reason as for the definition of “Applicable Statutory Limit” found in §§ 115.10, and 115.12(e)(3) is revised by removing \$6,500,000 and replacing it with \$9,000,000, and by removing \$10,000,000 and replacing it with \$14,000,000.

**X. Request for Comments**

SBA invites public comments on this proposed rule, especially on the following issues:

1. SBA welcomes comments from interested parties on SBA’s size standards methodology for inflation adjustment to the statutory alternative size standard. Specifically, SBA seeks comment on whether the GDP price index is an appropriate measure of inflation for adjusting the alternative size standard. The Agency invites suggestions, along with supporting data and analysis, if a different measure of inflation would be more appropriate.

2. SBA seeks comment on whether the inflation-adjusted level of the interim statutory alternative size standard (*i.e.*, \$15 million in tangible net worth and \$5 million in average net income, as of 2010) is appropriate as a new permanent alternative size standard under the current credit environment. SBA also invites data and supporting analysis for supporting or not supporting the statutory alternative size standard as a permanent alternative size standard.

3. SBA seeks comment on the impact of using the statutory alternative size standard as the permanent alternative size standard on small businesses seeking loans through its Business Loan Programs. SBA also welcomes data on the number of businesses approved for

SBA’s Business Loans under the statutory alternative size standard that otherwise could not have been approved under their industry-based size standards.

4. SBA invites suggestions on sources of relevant data and information, especially tangible net worth and average net income of applicants to SBA’s Business Loan Programs, that SBA can evaluate to assess the impact on small businesses of using the statutory alternative size standard as the new permanent alternative size standard.

5. SBA invites comments on its methodology for adjusting statutory contract limits for its SBG Program, especially on SBA’s approach to adjust the \$10 million contract limit for Federal contracts. SBA also seeks comment on impacts the inflationary adjustment for contract limits would have on small businesses seeking surety bonds.

**XI. Compliance With Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, 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 proposed rule is a significant regulatory action for purposes of Executive Order 12866. This proposed rule would affect applicants for SBA’s 7(a) Business and CDC/504 Loan Programs and, and businesses and sureties that use the SBG Program. To help explain the need for this rule and the rule’s potential benefits and costs, SBA is providing below a Regulatory Impact Analysis for this rule.

*Regulatory Impact Analysis*

1. What is the need for this regulatory action?

SBA is required by the Jobs Act to adopt an alternative size standard based on tangible net worth and net income after taxes for its 7(a) and CDC/504 Loan Programs. SBA believes that adopting an alternative size standard is in the best interests of small businesses seeking SBA’s financial assistance. SBA’s



mission is to aid and assist small businesses through a variety of financial, procurement, business development, and counseling programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions (usually referred to as “size standards”) to determine which businesses are deemed small businesses. One of the SBA’s missions has been to provide necessary financing to small businesses that are not able to obtain loans in the commercial market in reasonable terms. Many businesses that have exceeded their industry-based size standards cannot grow and support their employees without additional capital from SBA’s financial assistance programs. The alternative size standard established by Congress assisted some small businesses that could not have otherwise qualified under their industry-based size standards.

SBA is required to assess the impact of inflation on its monetary-based size standards at least once every five years (67 FR 3041 (January 23, 2002) and 13 CFR 121.102(c)). Inflation, as measured by the change in GDP price index, has increased more than 34% from the enactment of the interim statutory alternative size standard in 2010. Inflation has caused the statutory alternative size standard to decrease in real terms, thereby forcing some businesses to lose small business status and eligibility for SBA’s Business Loan Programs. As stated previously, SBA adjusted its monetary size standards three times since the establishment of the statutory alternative size standard in 2010, but the Agency did not adjust the statutory alternative size standard for SBA’s Business Loan Programs. SBA has an important policy objective of maintaining the value of monetary-based size standards in real (*i.e.*, inflation-adjusted) terms, and by adjusting the statutory alternative size

standard for inflation this rulemaking fulfills that objective.

The Small Business Act delegates to SBA’s Administrator responsibility for establishing definitions for small business. The Act requires that small business definitions vary to reflect industry differences. 15 U.S.C. 632(a). Some businesses in need of financial assistance from SBA’s 7(a) and CDC/504 Loan Programs may exceed the applicable size standard for their industries. The alternative size standard, in addition to the industry-based size standards, would apply uniformly across all industries and expand credit opportunities to businesses that are in need of SBA’s financial assistance. The inflationary adjustment of the statutory alternative size standard would not affect existing industry-based size standards, but would rather supplement them and make financing available to otherwise eligible applicants that exceed their industry-based size standards.

NDA 2013 increased the SBG guarantee limit to \$6.5 million, and up to \$10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary. The act also included a provision to increase the \$6.5 million limit periodically for inflation in accordance with 41 U.S.C. 1908. Based on the CPI, inflation has increased more than 30% since 2013. SBA has not adjusted its bonding limits since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013. The adjustment of the SBG contract limits will bring them in line with ongoing inflation and current contracting trends and increase contracting opportunities to small businesses.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit of this regulatory action for businesses is that

certain businesses, especially in industries with receipts-based size standards, would gain eligibility for SBA’s Business Loan Programs for which they would not otherwise be eligible based on their industry-specific size standards or current alternative size standards. This would allow them to attain financing that may be critical to their continued growth or economic viability, which would enable them to create or support more jobs in the economy.

Table 16, Comparison Between Industry-Based and Inflation-Adjusted Statutory Alternative Size Standard (FY 2021–2022), compares the percentages of industries that have higher industry-based size standards relative to inflation-adjusted statutory size standard by type of size standard. For nearly 96% of industries with receipts-based size standards, the inflation-adjusted alternative size standard is found to be, in relative terms, higher than the industry-based size standards, thereby allowing businesses exceeding industry-based size standards in those industries to qualify for 7(a) and CDC/504 Loan Programs under the inflation-adjusted alternative size standard. The corresponding figure for the interim statutory alternative size standard was nearly 93%. On the other hand, for 77% of industries with employee-based size standards, industry-based size standards were, in relative terms, higher than the inflation-adjusted alternative size standard. That figure for the interim statutory alternative size standard was 82.5%. This suggests that the alternative size standard provides more benefits to businesses in the receipts-based industries than those with employee-based size standards. The higher inflation-adjusted alternative size standard would continue to help businesses above the industry-based size standards to receive SBA’s financing.

TABLE 16—COMPARISON BETWEEN INDUSTRY-BASED AND INFLATION-ADJUSTED ALTERNATIVE SIZE STANDARD [FY 2021–2022]

Size standard type	Whether industry size standard is higher or lower than interim statutory alternative standard (Table 11)		Whether industry size standard is higher or lower than inflation-adjusted statutory alternative standard		Total
	Higher	Lower	Higher	Lower	
Employee-based .....	392 (82.5%)	83 (17.5%)	366 (77.1%)	109 (22.9%)	475 (100.0%)
Receipts-based .....	35 (7.3%)	445 (92.7%)	20 (4.2%)	460 (95.8%)	480 (100.0%)
Total .....	427 (44.7%)	528 (55.3%)	386 (40.4%)	569 (59.6%)	955 (100.0%)

Table 17, Comparison Between Industry-Based and Inflation-Adjusted

Statutory Alternative Size Standards by Sector (FY 2021–2022), shows by sector

the impacts of inflation adjustment to the statutory alternative size standard

on proportions of industries for which industry-based size standards are higher than the inflation-adjusted alternative size standard. Compared to the interim statutory alternative size standard, the proportions of industries for which alternative size standard is higher than the industry-based size standards are higher under the inflation-adjusted

alternative size standard, especially for industries with employee-based size standards. For example, for just 7.8% of industries in manufacturing, the statutory size alternative size standard was higher than the industry-based size standards. That figure increases to 13.3% under the inflation-adjusted size standard. Another example is wholesale

trade, where the percentage of industries for which the statutory alternative size standard is higher than the industry-based size standard increases from about 68% under the statutory alternative size standard to about 78% under the inflation-adjusted alternative size standard.

TABLE 17—COMPARISON BETWEEN INDUSTRY-BASED AND INFLATION-ADJUSTED STATUTORY ALTERNATIVE SIZE STANDARDS BY SECTOR  
[FY 2021–2022]

Sector code	Sector title	Whether industry size standard is higher or lower than interim statutory alternative standard (Table 12)		Whether industry size standard is higher or lower than inflation-adjusted statutory alternative standard		Total
		Higher	Lower	Higher	Lower	
11	Agriculture, Forestry, Fishing and Hunting.	0 (0.0%)	63 (100.0%)	0 (0.0%)	63 (100.0%)	63 (100.0%)
21	Mining, Quarrying, and Oil and Gas Extraction.	17 (81.0%)	4 (19.0%)	17 (81.0%)	4 (19.0%)	21(100.0%)
22	Utilities	12 (85.7%)	2 (14.3%)	12 (85.7%)	2 (14.3%)	14 (100.0%)
23	Construction	0 (0.0%)	30 (100.0%)	0 (0.0%)	30 (100.0%)	30 (100.0%)
31–33	Manufacturing	319 (92.2%)	27 (7.8%)	300 (86.7%)	46 (13.3%)	346 (100.0%)
42	Wholesale Trade	22 (31.9%)	47 (68.1%)	15 (21.7%)	54 (78.3%)	69 (100.0%)
44–45	Retail Trade	0 (0.0%)	57 (100.0%)	0 (0.0%)	57 (100.0%)	57 (100.0%)
48–49	Transportation and Warehousing	15 (27.8%)	39 (72.2%)	12 (22.7%)	42 (77.8%)	54 (100.0%)
52	Finance and Insurance	0 (0.0%)	16 (100%)	0 (0.0%)	16 (100.0%)	16 (100.0%)
53	Real Estate and Rental and Leasing	10 (41.7%)	14 (58.3%)	6 (25.0%)	18 (75.0%)	24 (100.0%)
54	Professional, Scientific, and Technical Services.	3 (6.3%)	45 (93.8%)	3 (6.3%)	45 (93.8%)	48 (100.0%)
55	Management of Companies and Enterprises.	0 (0.0%)	2 (100.0%)	0 (0.0%)	2 (100.0%)	2 (100.0%)
56	Administrative and Support and Waste Management and Remediation Services.	0 (0.0%)	44 (100.0%)	0 (0.0%)	44 (100.0%)	44 (100.0%)
61	Education Services	3 (17.6%)	14 (82.4%)	2 (11.8%)	15 (88.2%)	17 (100.0%)
62	Health Care and Social Assistance ...	3 (7.7%)	36 (92.3%)	3 (7.7%)	36 (92.3%)	39 (100.0%)
71	Arts, Entertainment, and Recreation	9 (36.0%)	16 (64.0%)	4 (16.0%)	21 (84.0%)	25 (100.0%)
72	Accommodation and Food Services	1 (6.7%)	14 (93.3%)	0 (0.0%)	15 (100.0%)	15 (100.0%)
81	Other services	5 (11.6%)	38 (88.4%)	4 (9.3%)	39 (90.7%)	43 (100.0%)
Total		427 (44.7%)	528 (55.3%)	386 (40.4%)	569 (59.6%)	955 (100.0%)

SBA cannot make a precise determination of the number of businesses that were approved under the alternative size standard for 7(a) or CDC/504 Business Loans since the enactment of the statutory alternative size standard in 2010, because the Agency does not store the data on whether an applicant for its 7(a) or CDC/504 Loan Program was qualified under its industry-based size standard or under the alternative size standard. The available data show that the alternative size standard established by Congress enabled some small businesses above the industry-based size standards to get SBA’s financing. However, SBA is still seeking public comment regarding the regulation’s specific impact.

As stated elsewhere, SBA also does not compile the data on average annual receipts, net worth, and net income. The only available data on business size is

the number of employees. SBA examined its 7(a) and CDC/504 loan data for fiscal years 2021–2022. Based on this data, SBA estimates that 500 recipients of the SBA Business Loans (or 0.4% of the total loans) that appeared to have exceeded their industry-based size standards were granted 7(a) and CDC/504 loans, implying that most likely they qualified under the statutory alternative size standard. Thus, this result indicates that the higher interim alternative size standard expanded credit availability to more small businesses through SBA’s 7(a) and CDC/504 Loan Programs. The even higher inflation-adjusted alternative size standards would further expand the financing to small businesses that would not have otherwise qualified under the interim alternative size standard or under the industry-based size standards. This would lead to more

business formation, entrepreneurship, job growth, and community development.

Table 18, Applicant’s Eligibility Under the Inflation-Adjusted Statutory Alternative and Industry-Based Size Standards (FY 2021–2022), shows the eligibility of recipients of SBA loans through 7(a) and CDC/504 Programs during fiscal years 2021–2022 under the industry-based and inflation-adjusted alternative size standard. More than 99.5% (*i.e.*, 117,327/117,882 = 0.9953) of loan recipients were found to have met both the industry-based size standards and the inflation-adjusted alternative size standard. As in the case of the statutory alternative size standard, about 500 or 0.4% of loan recipients that did not meet the industry-based size standard met inflation-adjusted alternative size standard. About 0.1% (*i.e.*, 94/117,882 =

0.001) of loan recipients were found to have exceeded the interim statutory alternative size standard. That figure was 0.05% (*i.e.*, 54/117,882 = 0.0005) for the inflation-adjusted alternative size standard. Thus, 40 loan recipients that did not meet the statutory size standard met the inflation-adjusted alternative size standard.

TABLE 18—APPLICANT’S ELIGIBILITY UNDER THE INFLATION-ADJUSTED STATUTORY ALTERNATIVE AND INDUSTRY-BASED SIZE STANDARDS [FY 2021–2022]

		Interim statutory alternative size standard (Table 5)		Inflation-adjusted alternative size standard		Total
		Meets	Does not meet	Meets	Does not meet	
Industry size standard .....	Meets .....	117,288	81	117,327	42	117,369
	Does not meet .....	500	13	501	12	513
Total .....	.....	117,788	94	117,828	54	* 117,882

\* **Note:** This excludes invalid or incomplete observations in the form of invalid NAICS codes or missing RMA or receipts-to-employee ratios to estimate tangible net worth, net income, or receipts equivalent size standard.

Based on the data for 2017 Economic Census, Agricultural Census, and County Business Patterns special tabulations, SBA estimated that about 6,275 businesses that are above the interim statutory alternative size standard would qualify under the inflation-adjusted alternative size standard. About 25 additional SBA Business Loans, totaling up to \$50 million, would be made to these newly-qualified businesses using the higher inflation-adjusted alternative size standard. That constitutes less than 0.1% of the loan activity during fiscal years 2021–2022. These results are consistent with results in Tables 7 and 8 (above) which showed that only a very small fraction of the SBA Business Loans and loan amount go to businesses that were close to the tangible net worth and net income thresholds of the statutory size standard. As discussed previously, the results in Tables 7 and 8 (above) showed that the vast majority of SBA Business Loans go to businesses that are significantly below the tangible net worth and net income thresholds of the statutory alternative size standard.

The 7(a) Loan Program, SBA’s largest loan program, includes financial help for businesses with special requirements. Small businesses can use SBA’s 7(a) guaranteed loans for short and long term working capital,

revolving funds based on inventory or receivables, fixed assets, and refinancing. Small businesses can use SBA’s CDC/504 loans for the purchase of land, buildings, improvements, and equipment. These loans provide long-term, fixed-rate financing to small businesses to acquire real estate or machinery or equipment for expansion or modernization. The CDC/504 loan proceeds are generally limited to fixed assets and their related soft costs.

Businesses are often denied SBA’s loans for reasons unrelated to the use of the loan proceeds, the concern’s ability to repay the loan, or other credit based reasons. Rather, they can be denied because they exceed the size standards for their industries. Some business concerns that exceed their industry-based size standards might be eligible for SBA’s financial assistance under the alternative size standard that this proposed rule adopts.

Raising the SBG bond guarantee limits would increase contracting opportunities for more small businesses and bring the limits in line with inflation. Due to the lack of data, SBA is unable to estimate the number of additional small businesses that would qualify to apply for bonding through the SBG Program for non-Federal (*e.g.*, state government, local government, private-sector, etc.) contracting because of

proposed increases to bond guarantee limits for inflation. Because the construction sector accounts for more than 95% of surety bonds and total value of bonded contracts, to estimate the number of additional small businesses and contracts that would qualify for surety bonds on Federal contracts, SBA analyzed the small business contract awards from FPDS–NG for the construction sector for fiscal years 2021–2022. These results are presented in Table 19, Federal Contracts in Construction for Fiscal Years 2021–2022. Because of the proposed increase to the lower contract limit from \$6.5 million to \$9 million, without contracting officer’s certification, annually up to about 150–155 additional small businesses would be eligible to apply for surety bonds on about 175–180 Federal construction contracts totaling between \$1.4 billion and \$1.5 billion in value. Similarly, as a result of the proposed increase to the upper contract limit from \$10 million to \$14 million, with contracting officer’s certification, annually up to about 100–110 additional small businesses would be eligible to apply for surety bonds on 110–120 Federal construction contracts totaling between \$1.3 billion and \$1.4 billion in value. This increase in small business contracting would support job creation and economic growth.

TABLE 19—FEDERAL CONTRACTS IN CONSTRUCTION FOR FISCAL YEARS 2021–2022

Contract limits	Number of small firms	Number of contracts	Total contract value (\$ billion)
≤\$6.5 million .....	6,100	25,312	10.7
>\$6.5 million ≤\$9 million .....	155	179	1.4
>9 million ≤\$10 million .....	45	45	0.4
>\$10 million to ≤\$14 million .....	106	115	1.3
>\$14 million .....	142	172	5.3

TABLE 19—FEDERAL CONTRACTS IN CONSTRUCTION FOR FISCAL YEARS 2021–2022—Continued

Contract limits	Number of small firms	Number of contracts	Total contract value (\$ billion)
Total .....	6,547	25,822	19.1

Raising the contract bond limits could lead to larger contracts being guaranteed by the SBA and, as a result, could increase the risk of program losses. To determine if higher contract limits would increase the risk of program losses, SBA analyzed all claim activity from October 1, 2020 to March 31, 2023. These results are presented in Table 20, Net Claims by Contract Size for October

1, 2020 to March 31, 2023. The results showed a positive relationship between contract size and net claims. For example, contracts below \$1 million in value accounted for nearly 66% of total claims but accounted for only 29% of net claim amount. On the other hand, contracts above \$1 million in value accounted for 34% of claims but accounted for 71% of total net claim

amount. Thus, the data suggest that higher contract limits may lead to larger contracts being guaranteed, which in turn may lead to an increase in defaults and, as a result, higher losses. However, SBA is unable to estimate exact losses due to the lack of data to estimate the number of additional surety bonds on non-Federal contracts resulting from increases to contract bond limits.

TABLE 20—NET CLAIMS BY CONTRACT SIZE FOR OCTOBER 1, 2020 TO MARCH 31, 2023

Contract size (\$ million)	Number of claims			Net claim		
	Count	%	Cum. %	Amount (\$ million)	%	Cum. %
<0.1 .....	12	5.8	5.8	\$0.5	0.9	0.9
0.1 to 0.25 .....	32	15.4	21.2	2.3	4.3	5.2
0.25 to 0.5 .....	50	24.0	45.2	4.2	7.9	13.1
0.5 to 1.0 .....	43	20.7	65.9	8.5	16.1	29.3
1.0 to 2.0 .....	44	21.2	87.0	17.7	33.5	62.8
2.0 to 3.0 .....	8	3.8	90.9	5.1	9.6	72.4
3.0 to 4.0 .....	10	4.8	95.7	5.5	10.5	82.9
4.0 to 5.0 .....	7	3.4	99.0	5.0	9.4	92.3
5.0 to 6.5 .....	2	1.0	100.0	4.1	7.7	100.0
Total .....	208	100.0	.....	52.7	100.0	.....

Increasing the interim alternative size standard applicable to SBA’s 7(a) and CDC/504 Loan Programs for inflation and enabling more small businesses to obtain SBA’s financing as a result would entail no additional implementation or operational costs as the necessary administrative and regulatory requirements are already in place. Same holds true for proposed inflationary increases to contract limits for the SBG program.

*Initial Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small entities. As described above, this proposed rule could affect small entities seeking assistance through SBA’s (7a) and CDC/504 Loan and SBG Programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the proposed rule?; (2) What are SBA’s description and estimate of the number of small entities to which the proposed rule would apply?; (3) What are the

projected reporting, record keeping, and other compliance requirements of the proposed rule?; (4) What are the relevant Federal Government rules that may duplicate, overlap, or conflict with the proposed rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What are the need for and objective of the rule?

Under the Jobs Act, SBA is required to adopt an alternative size standard using maximum tangible net worth and net income for its 7(a) and CDC/504 Loan Programs. The Jobs Act defined an interim statutory alternative standard based on tangible net worth of \$15 million and net income of \$5 million until the SBA Administrator permanently designates an alternative size standard based on tangible net worth and net income for those programs. Many businesses that exceed their industry-based size standards cannot grow and support their employees and other businesses that depend on them without additional

capital from SBA’s financial assistance programs. The proposed inflation-adjusted alternative size standard would enable such businesses to qualify for SBA’s 7(a) and CDC/504 Loan Programs.

Section 3(a) of Small Business Act (15 U.S.C. 632(a)) gives the SBA’s Administrator responsibility to establish and change small business size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least once every five years (13 CFR 121.102(c)) and make any changes as appropriate. SBA has adjusted its monetary-based size standards three times since the enactment of the interim statutory alternative size standard in 2010. However, SBA did not adjust the statutory alternative in each of those adjustments. Inflation, as measured by the change in GDP price index, has increased more than 34% since 2010. This has eroded the value of the statutory alternative size alternative in real terms. Consequently, many businesses above their industry-based size standards and in need of financial assistance from SBA’s 7(a) or CDC/504

Loan Programs may have exceeded the statutory alternative size standard and lost eligibility for benefits of those programs. The inflationary adjustment of the statutory alternative size standard in this proposed rule will enable such businesses to qualify for those programs. The alternative size standard applies uniformly across all industries and does not affect existing size standards by industry. Rather it supplements them, by making more financing available to otherwise ineligible businesses that exceed their industry-based size standard.

Regarding the SBG Program, NDAA 2013 increased the SBG guarantee limit to \$6.5 million, and up to \$10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary. The act also included a provision to increase the \$6.5 million limit periodically for inflation in accordance with 41 U.S.C. 1908. Based on the CPI, inflation has increased more than 30% since 2013. SBA has not adjusted its bonding limits since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013. This has adversely impacted small business contractors seeking bonding assistance from the SBA SBG Program. The adjustment of the SBG contract limits will bring them in line with ongoing inflation and current contracting trends and increase contracting opportunities to small businesses.

(2) What are SBA's description and estimate of the number of small entities to which this proposed rule would apply?

This rule would apply to more than 8.1 million employer firms, of which 98.2% are small under industry-based size standards and 92.5% are small under the interim statutory alternative size standard. About 92.6% of firms would qualify as small under the inflation-adjusted alternative size standard. About 6,275 firms that are above the interim statutory alternate size standard would qualify as small under the inflation-adjusted size alternative standard. That is less than 0.1% of firms that are small under the interim statutory alternative size standard.

For the reasons provided elsewhere in this rule, because of lack of relevant data (e.g., receipts, tangible net worth and net income of loan recipients), SBA cannot precisely state the number of businesses that were approved under the alternative size standard for 7(a) or CDC/504 loans and the number of newly-defined small businesses that

will qualify under the inflation-adjusted alternative size standard for loans under these programs. However, based on the analysis of the available data for fiscal years 2021–2022, SBA estimates that at least 500 7(a) or CDC/504 loans (or 0.4% of total loans) were likely approved under the alternative size standard that otherwise would not have qualified under the industry-based size standard.

With respect to the SBG program, more than 95% of the bonding activity is concentrated in the construction sector. Based on the 2017 Economic Census, there are 689,260 small employer firms in construction to which this proposed rule would apply. Additionally, about 2.5% of the bonding activity occurs in 11 industries in Sector 56 with more than 209,000 small firms in those industries to which this rule would also apply. More small businesses would qualify to apply for surety bonds as a result of proposed increases to statutory bonding limits.

(3) What are the projected reporting, record keeping, and other compliance requirements of the proposed rule?

A new size standard does not impose any additional reporting, record keeping, or compliance requirements on small entities. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as the size standards neither regulate nor control business behavior.

(4) What are the relevant Federal Government rules that may duplicate, overlap, or conflict with the rule?

This proposed rule does not overlap with other Federal rules because it is limited to SBA's own 7(a) and CDC/504 Loan Programs.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

There are no alternatives to establishing a size standard for the Agency's 7(a) and CDC/504 Loan Programs based on an applicant's tangible net worth and net income because this is a statutory requirement. Specifically, the Jobs Act directs the Agency to use a firm's tangible net worth of not more than \$15 million and average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years immediately before its application is not more than \$5 million until the Administrator adopts a different, permanent alternative size standard based on net worth and net income measures. SBA has proposed to make the interim

statutory alternative size standard as a permanent alternative size standard, subject to adjustment for inflation that has occurred since the standard's establishment in 2010. SBA has requested information from the public on using the interim statutory alternative size standard as the permanent alternative size standard and on adjusting it for inflation.

#### *Executive Order 13563*

A description of the need for this proposed regulatory action and its associated benefits and costs associated with this action, including possible impacts that relate to Executive Order 13563 are included above in the Regulatory Impact Analysis. This proposed rule will, if adopted, further expand the benefits of the Jobs Act which also increased the upper limits of loans available under the 7(a) and CDC/504 Loan Programs, without restricting their access and availability to qualified entities. By increasing the SBG statutory contract limits would increase contracting opportunities to small businesses.

#### *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 rule does not have retroactive or preemptive effect.

#### *Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined this rulemaking 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 proposed rule has no federalism implications warranting preparation of a federalism assessment.

#### *Paperwork Reduction Act*

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rulemaking will not impose any new reporting or record keeping requirements.

#### **List of Subjects**

##### *13 CFR Part 115 and 13 CFR Part 121*

Administrative practice and procedure, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping

requirements, Bonding, Surety, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 115 and 13 CFR part 121 as follows:

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 636i, 687b, 687c, 694a, and 694b note.

PART 115—SURETY BOND GUARANTEE

■ 2. Amend § 115.10 by revising the definition of “Applicable Statutory Limit” to read as follows:

§ 115.10 Definitions.

Applicable Statutory Limit means the maximum amount, set forth below, of any Contract or Order for which SBA is authorized to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond:

(1) \$9 million (as adjusted for inflation in accordance with 41 U.S.C. 1908);

(2) \$14 million if a contracting officer of a Federal agency certifies, in accordance with section 115.12(e)(3), that such guarantee is necessary; or

(3) if SBA is guaranteeing the bond in connection with a procurement related to a major disaster pursuant to section 12079 of Public Law 110–246, see section 115.12(e)(4).

■ 3. Amend § 115.12 by revising paragraph (e)(3) to read as follows:

§ 115.12 General program policies and provisions.

\* \* \* \* \*

(e) \* \* \*

(3) Federal Contracts or Orders in excess of \$9,000,000 (as adjusted for inflation in accordance with section 1908 of title 41, United States Code). SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than \$9,000,000 (as adjusted for inflation in accordance with 41 U.S.C. 1908), but not exceeding \$14 million, upon a signed certification of a Federal contracting officer that the SBA guarantee is necessary. The certification must be either express mailed to SBA, Office of Surety Guarantees, 409 Third Street SW, Washington, DC 20416 or sent by email to suretybonds@sba.gov, and include the following additional information:

(i) Name, address and telephone number of the small business;

(ii) Offer or Contract number and brief description of the contract; and

(iii) Estimated Contract value and date of anticipated award determination.

\* \* \* \* \*

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 4. The authority citation for Part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, 694a(9), and 9012.

■ 5. Amend § 121.301 by revising paragraphs (a), (b), (b)(2), and (e) to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

\* \* \* \* \*

(a) For Business Loans (other than for 7(a) Business Loans) and for Disaster Loans (other than physical disaster loans), an applicant business concern must satisfy two criteria:

\* \* \* \* \*

(b) For 7(a) Business Loans and Development Company programs, an applicant business concern must meet one of the following standards:

(1) \* \* \*

(2) Including its affiliates, tangible net worth not in excess of \$20 million, and average net income after Federal income taxes (excluding any carry over losses) for the preceding two completed fiscal years not in excess of \$6.5 million.

\* \* \* \* \*

(e) The applicable size standards for purposes of SBA’s financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. The U.S. Department of Labor (DOL) issues the Labor Surplus Area (LSA) list on a fiscal year basis on its website at www.dol.gov/agencies/eta/lsa.

\* \* \* \* \*

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–15899 Filed 7–27–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1642; Project Identifier MCAI–2023–00183–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–18–14, which applies to certain Airbus SAS Model A330–200 series, A330–200 Freighter series, A330–300 series, A330–800 series, and A330–900 series airplanes. AD 2022–18–14 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–18–14, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2022–18–14, and would require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in two European Union Aviation Safety Agency (EASA) ADs, which are proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 11, 2023. ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

• Federal eRulemaking Portal: Go to regulations.gov. Follow the instructions for submitting comments.

• Fax: 202–493–2251.

• Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–1642; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference: • For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at