

**Supporting Statement for Paperwork Reduction Act Submissions
SBA Form 355, Information for Small Business Size Determination**

A. JUSTIFICATION

1. Circumstances necessitating the collection of Information

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The U.S. Small Business Administration (SBA) and other Federal agencies offer financial assistance and special contracting opportunities for small business concerns, according to size standards found at 13 CFR 121.201. This form provides information about the business being reviewed to determine whether it is eligible for small business programs. The form also collects information to allow SBA to determine whether the business seeking assistance has one or more affiliates, based on the affiliation rules in 13 CFR 121.103 (contracting and development programs), 121.301 (financial assistance), and 121.702 (SBIR/STTR).

Section 8(b)(6) of the Small Business Act authorizes SBA to determine as a “small business concern” for a business seeking assistance under the Act, and 13 CFR 121.1008(c) authorizes SBA to collect information about the business subject to a review.

Small Business Runway Extension Act Amendments

Public Law No. 115-324 (the “Small Business Runway Extension Act of 2018”) amended section 3(a)(2)(C)(ii)(II) of the Small Business Act, 15 U.S.C. 632(a)(2)(C)(ii)(II), to modify the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards.

Under section 3(a)(2)(C)(ii) of the Small Business Act as amended, an agency without separate statutory authority to issue size standards must satisfy three requirements to prescribe a size standard. First, the agency must propose the size standard with an opportunity for public notice and comment. Second, the agency must provide for determining the size of a manufacturing concern based on a 12-month average of the concern’s employment, the size of a services concern based on a 5-year average of gross receipts, and the size of another business concern on the basis of data of not less than 3 years. Third, the agency must obtain approval of the size standard from the SBA Administrator. These changes require revisions to the Form 355 in Parts III and IV to address the change from 3 years to 5 years for calculating annual average receipts.

Additional Amendments

Other proposed revisions to the form would be to delete unnecessary questions, clarify certain previously approved requests for information, and in some instances, to request additional information where SBA has determined there is a programmatic need. The proposed deletions and clarifications, though not required by the statute, should alleviate the additional burden posed by changing from 3 years to 5 years for calculating annual average receipts.

- SBA is amending the General Instructions section to define “concern” and “principal stockholders”; state that separate affiliation rules apply in some of SBA’s loan and research programs; remove the requirement to identify a labor surplus county, as well as obsolete information about industries with special size standards; and to include in the certification a statement that accompanying documentation is true and correct.
- In Part 1, SBA is clarifying that the information relates to the applicant business; adding a checkbox for the firm to identify its corporate organization structure; requiring a firm to disclose whether it is organized for profit; and removing various obsolete or unnecessary information regarding county/city, purpose of the size determination, the contracting agency, the business’s major products or services and shares of sales, addresses of owners or officers, and recently completed mergers. Part 1 also is amended to request ownership information for owners that are entities until the respondent identifies the ultimate owners that are natural persons. SBA routinely asks for this information in follow-up questions during size determinations, and making the change in the form will lessen the need to respond to additional inquiries from SBA.
- In Part II, SBA is limiting the information requested about employees to businesses that are being evaluated under an employee-based size standard.
- In Part III, SBA is limiting the information request about receipts to businesses that are being evaluated under a receipts-based size standard. SBA is adding 2 additional lines to the entries for annual receipts so that a business that has been in business for 5 years provides information about its most recently completed 5 fiscal years.
- In Part IV, SBA is adding that the business must provide information for any business that the applicant’s owner reports on a Schedule C or Schedule E of the owner’s personal tax returns, if the owner or an immediate family member has a controlling interest in the business; removing the request for addresses of individual owners and managers; requesting ownership information for owners that are entities until the respondent identifies the ultimate owners that are natural persons; limiting the request for employee information to applicants being evaluated under an employee-based size standard; limiting the request for receipts information to applicants being evaluated under a receipts-based size standard; and adding two rows to the receipts table so that the receipts of acknowledged affiliates are reported based on a 5-year average.
- Sixth, in Part V, SBA is removing requests about acknowledged affiliates that are covered in Part IV; deleting questions about performance of work on the contract, financial impact of termination for default, and specific terms and conditions of the contract; and adding a question about actual or proposed subcontracts between the applicant and any of its alleged affiliates.

2. How, by whom, and for what purpose information will be used

Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information collected by SBA using this form will be used to verify a business’s self-certification as a small business. When a size protest or administrative request for a size

determination is filed with SBA at one of its Government Contracting Area Offices or Disaster Area Offices, a size specialist will inform the business that its size is being challenged and includes this form with the notice letter. The size specialist will advise the business that the information requested in SBA Form 355 will be used in determining whether the business qualifies as small. The information collected is about the business' organization; its owners and operators; its relationships, both personal and business-wise; and, depending on whether the determination is to be based on employees or receipts, the employees or the receipts received by the firm and its acknowledged affiliates and possible affiliates. The form explains that there are criminal penalties for false statements. The information collected will be used to measure whether a business is small or other than small, based on the applicable size standard, and based on the specific affiliation that applies to the program from which the business seeks assistance.

3. Technological collection techniques

Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce the burden.

Some SBA Government Contracting Area Offices use electronic delivery of this form and other information related to size. In other instances, the business will send its responses in writing, supplemented by other paper documents, through the U.S. mail and business delivery services, like FedEx or UPS. For electronic submissions, SBA allows submission through e-mail system and encrypted file sharing (Box.com). File sharing through Box.com was introduced to the agency in 2019 and has not been adopted fully by the Government Contracting Area Offices yet. Electronic information collection represents about 40% of all information collected. The remainder comes

4. Avoidance of Duplication

Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

SBA conducted a full review of the Form 335 and deleted questions that are duplicative or unnecessary. For the questions concerning affiliation and size, there is no information available to SBA. Thus, SBA requires this information to accomplish the form's purpose of rendering a determination on a firm's size.

5. Impact on small businesses or other small entities

If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

This information collection does not have a significant economic burden on small businesses. In nearly all cases where a business is seeking SBA assistance, a small business self certifies its size status and SBA does not conduct a size determination. SBA only collects this information in the event of a size protest or request for size determination, which affects only 500 to 600 businesses per year.

6. Consequences if collection is not conducted

Describe the consequence to the Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The Federal Government would not be able to properly confirm a small business concern's size without the collection of this data. Information about a business is collected to assist in determining its status as a small business for program participation purposes in cases where eligibility is questioned.

7. Existence of special circumstances

Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;*
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- requiring respondents to submit more than an original and two copies of any document;*
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- requiring the use of a statistical data classification that has not been approved by OMB;*
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use;*
- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

The form requires respondents subject to receipts-based size standards to retain financial records for five years in order to report average annual receipts for an average of five years. This five-year averaging period is required by Public Law No. 115-324, which changes the receipts averaging period from three years to five years for certain industries and for certain agencies' size standards.

8. Solicitation of public comments

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize comments received. Describe efforts to consult with persons outside the agency to obtain their views

As authorized by 5 CFR 1320.8(d)(3), SBA is seeking public comments on the revised collection of information through the Notice of Proposed Rulemaking to implement the Small Business Runway Extension Act. (Copy of rule attached). Any relevant comments received will be addressed at the final rule stage when this collection is also finalized.

9. Payment of gifts

Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No gifts or payments will be given to respondents.

10. Assurance of confidentiality

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The information is maintained under conditions designed to preclude access by other than Agency personnel who have need to such access. It is available for review by the Government Contracting Area Office and the Disaster Area Offices when making formal size determinations or by the Office of Hearings and Appeals in the event a party to a size protest or size determination appeals the decision. Because the information collected is not maintained in a system of Records, the Privacy Act is not implicated. SBA's rules require that SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law. 13 CFR 121.1008(d).

11. Questions of a sensitive nature

Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a sensitive nature are asked.

12. Estimate the hourly burden of the collection of information

Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated...

Based on latest trends in the number of size protests, the number of respondents to SBA Form 355 is estimated to be about 590 annually. The SBA estimates 4 hours per response. Thus, total annual burden hours are calculated at 2,360 hours.. The estimated annualized cost to the respondent for SBA's collection of information is estimated at \$65,372. This calculation is based on 2,360 hours times \$27.70/hour¹ (approximate wage rate for Federal government employees at a GS-9 step 10 level who would perform similar administrative support).

13. Estimate the total annual cost burden for submission

Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information...

There are no capital or start-up cost components, nor are there any operation or maintenance and purchase of services components associated with this collection of information.

14. Annualized cost to the Federal Government

Provide estimates of annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours,

¹ Base wage rate based on the Office of Personnel Managements Salary Table 2019-GS, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/GS_h.aspx

operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

The estimated annual cost to the Federal Government of this collection of information is \$82,600, calculated as follows:

$$590 \text{ respondents} \times 4 \text{ hours per respondent} = 2,360$$

$$2,360 \text{ hours} \times \$ 36.75/\text{hour}^2 = \$82,600$$

15. Explanation of program changes in Items 13 or 14 on OMB 83-I
Explain reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I

There are no program changes.

16. Collection of information whose results will be published
For collection of information whose results will be published, outline plans for tabulation and publication. Address complex analytical techniques... Provide time schedules for the entire project...

No publishing is planned.

17. Expiration date for collection of information
If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why the display would be inappropriate.

Not applicable.

18. Exceptions to certification in block 19 on OMB Form 83-I
Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB Form 83-I
There are no exceptions to the certification statement.

- B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**
Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent select

This collection of information does not employ statistical methods.

² Base wage rate of GS-13 step 1 based on the Office of Personnel Management's Salary Table 2019-GS, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/GS_h.aspx