

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

OIRA conditionally approved this information collection under Control Number 3245-0101 during the proposed stage of the Small Business Size Standards: Calculation of Annual Average Receipts rule (RIN:3245-AH16). This submission finalizes the information collection.

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 business concerns that are small 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) and 121.301 (financial assistance).

Section 8(b)(6) of the Small Business Act authorizes SBA to determine status 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

The “Small Business Runway Extension Act of 2018” (Public Law 115-324) 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.

In the Final Rule, SBA adopts a transition period through December 31, 2021, during which firms may choose between using a 3-year averaging period and a 5-year averaging period.

Additional Amendments

Other revisions to the form include deletion of unnecessary questions, clarification of certain previously approved requests for information, and in some instances, a request for additional information where SBA has determined there is a programmatic need. The deletions and clarifications, though not required by the statute, should alleviate the additional burden on those businesses impacted by the change from 3 years to 5 years for calculating annual average receipts.

Summary of Changes:

- a) SBA amended 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 obsolete information about industries with special size standards; state that dormant or inactive firms must be disclosed; and to include in the certification a statement that accompanying documentation is true and correct.
- b) In Part 1, SBA clarified that the information relates to the applicant business; added a checkbox for the firm to identify its corporate organization structure; required a firm to disclose whether it is organized for profit; and removed 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 was also amended to request ownership information, for owners that are entities, until the respondent identifies the ultimate owners that are natural persons.
- c) In Part II, SBA limited the information requested about employees to businesses that are being evaluated under an employee-based size standard.
- d) In Part III, SBA limited the information request about receipts to businesses that are being evaluated under a receipts-based size standard. SBA also added two additional lines to the entries for annual receipts so that a business that has been in business for 5 years can provide information about its most recently completed 5 fiscal years. SBA added a question to allow the concern to elect a 3-year average or a 5-year average during the transition period that ends January 6, 2022. Because the 5-year average was not applied to the Business Loan or Disaster Loan programs, this transition period does not apply to those programs.
- e) In Part IV, SBA added 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; removed the request for addresses of individual owners and managers; requested ownership information for owners that are entities until the respondent identifies the ultimate owners that are natural persons; limited the request for employee information to applicants being evaluated under an employee-based size standard; limited the information request for receipts information to applicants being evaluated under a receipts-based size standard; and added two rows to the receipts table so that the receipts of acknowledged affiliates are reported based on a 5-year average.
- f) In Part V, SBA removed requests about acknowledged affiliates that are covered in Part IV; deleted questions about performance of work on the contract, financial impact of termination for default, and specific terms and conditions of the contract; and added 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.

This information collection 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.

The SBA Government Contracting Area Offices use electronic delivery of this form and other information related to size. For electronic submissions, SBA allows submission through encrypted file sharing (Box.com). File sharing through Box.com was introduced to the agency in 2019 and, as of December 2019, is fully adopted.

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 similar information available to SBA.

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-I), describe any methods used to minimize burden.

This information collection does not have a significant economic burden on a substantial number of small businesses, given the universe of businesses that fall into that category. A small business typically 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.

Outside of the Business Loan and Disaster Loan Programs, respondents subject to receipts-based size standards can average receipts over five years or three years for certifications prior to 1/6/22. For certifications after 1/6/22 outside of the loan programs, respondents must use a 5-year average. Using a five-year average requires the respondent 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 sought public comments on the revised collection of information through the Notice of Proposed Rulemaking to implement the Small Business Runway Extension Act. . SBA received one comment on the revisions to the form. A small business Federal contractor submitted the following comments on the proposed amendments to the Form 355: (i) the proposed changes are necessary and practical, particularly eliminating inapplicable questions, (ii) the burden estimate is fundamentally sound, including the time to gather information about the prior 5 fiscal years, (iii) the Government could more rapidly collect and disseminate the information gathered, and (iv) the Government may employ off-the-shelf technology, such as Survey Money, to request the answers to the questions on the form. To address the technology concern expressed in the comment, SBA has moved toward electronic collection of the form, using Box.com.

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, 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 program changes that result in both increased and reduced reporting burden. The net difference in burden is zero.

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

¹ Base wage rate 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

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

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.

