

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

Proposed Revisions related to NPRM :*Small Business Size Standards: Calculation of Number of Employees for All Programs and of Average Annual Receipts in the Business Loan, Disaster Loan, and Small Business Investment Company Programs.*

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.

This PRA submission seeks to amend the SBA Form 355, Information for Small Business Size Determination, to make two changes discussed in an SBA proposed rule, which is being submitted to OIRA for review concurrently.

NDAA FY21 Amendments

The National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (NDAA FY21), changed the averaging period for SBA’s employee-based size standards from 12 months to 24 months. SBA proposed to amend the form that SBA uses to determine the size of a business, in order to change the averaging period on the form to 24 months.

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. Specifically, such an agency must provide for 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. NDAA FY21 extended those same requirements to SBA. As a result, SBA proposes to amend the SBA Form 355 to, in its Business and Disaster Loan programs, allow applicants to submit their gross receipts on the basis of either a 3-year or 5-year average.

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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 is now 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.

In 2019, 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. This proposed change does not contain any new requests that could duplicate others.

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

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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.*

Using a 24-month average requires the respondent to retain employment records for each pay period over the prior 24 months. SBA will adopt that average, as required by the NDAA FY21. In the Business and Disaster Loan Programs, SBA will allow applicants the option of using a 5-year average. In those programs, an applicant that chooses the option will need to retain financial records for five years in order to report average annual receipts for an average of five years.

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

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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 NDA FY21 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...

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 \$67,732. This calculation is based on 2,360 hours times \$28.70/hour¹ (approximate wage rate

¹ Base wage rate based on the Office of Personnel Managements Salary Table 2021-GS, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/21Tables/html/GS_h.aspx

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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 \$89,869, calculated as follows:

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

$$2,360 \text{ hours} \times \$ 38.08/\text{hour}^2 = \$89,869$$

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 were no changes to the estimated burden.

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

² Base wage rate of GS-13 step 1 based on the Office of Personnel Management's Salary Table 2021-GS, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/21Tables/html/GS_h.aspx

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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.