

CLIENT ALERT

## Changes to SBA's Size Standards Based on Average Gross Receipts

FEBRUARY 4, 2020

Effective January 6, 2020, the U.S. Small Business Administration ("SBA") has modified its method for calculating average annual receipts, as used to determine the size of a business (the "Size Standards").

Prior to the modification, SBA used a 3-year average of gross receipts to determine the size of businesses in services-industries. The receipts-based Size Standards for other federal agencies subject to the Small Business Act, and industries other than the service-industries, were calculated using a 5-year average of gross receipts.

Under the modified rules, the receipts-based Size Standards of all federal agencies subject to the Small Business Act, including SBA, will be calculated using the 5-year average of gross receipts for businesses in all industries.

Federal programs that could be impacted by the change include:

- **THE 8(A) BUSINESS DEVELOPMENT PROGRAM**

- The Historically Underutilized Business Zones program

- The Service Disabled Veteran-Owned Small Business program

- The Women-Owned Small Business program

- **THE ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) PROGRAM**

- The Small Business Investment Company program

- The Certified Development Company program

- The SBA's 7(a) loan program

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The modified rules allow for a transition period, lasting through January 6, 2022, in which businesses that were previously permitted to use 3-year average of gross receipts to determine their size may continue to do so. Businesses that determine their size based on industry, tangible net worth, or average net income will not be impacted by the changes.

SBICs applying SBA Size Standards to determine whether a business qualifies for SBIC financing will see no change from this modification when applying the standard tangible net worth and net income tests. However, where an SBIC must apply the SBA Size Standards based on NAICS codes—either in qualifying the business as a “smaller enterprise” under the SBIC regulations or because the business does not meet the standard tangible net worth or net income test—the modified rules will apply where the Size Standard based on the NAICS Code for the applicable industry is based on receipts and not on employees.

If you have any questions regarding how changes to the Size Standards may impact your SBIC or its portfolio companies, please contact your SBIC counsel at Winston & Strawn LLP.

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