

## SBA Amends the Employee Size Standards Calculation Period

AUGUST 8, 2022

On June 6, 2022, the U.S. Small Business Administration (the “SBA”) issued a final rule increasing from 12 months to 24 months the calculation period for determining the number of employees in a business when applying the SBA’s employee-based size standards. Pursuant to the rule, which took effect on July 6, 2022, the SBA will calculate the number of employees of a business concern based on its average number of employees for each pay period in the preceding completed 24 calendar months. This change could potentially increase the number of businesses eligible for certain government contracts and various SBA financing programs, including financing by small business investment companies (“SBICs”).

The SBA uses size standards based on a concern’s employees or receipts to determine whether a concern is a small business and thus eligible for certain federal government contracting programs or financial assistance from or through the SBA. Business concerns may also qualify for SBIC financing based on their tangible net worth or net income.

The SBA stated that increasing the lookback period for counting employees from 12 to 24 months will allow businesses to more effectively adjust to surges in employment numbers in both the short- and medium-term, and to retain eligibility for SBA programs. The SBA noted that it “expects employment to continue its increasing trend in the coming months” and “expects the 24-month employee average to be lower than the 12-month average for most businesses.”

When counting employees, the SBA will continue to aggregate all individuals employed on a full-time, part-time, temporary, or other basis as full-time employees. If a business has not been in operation for 24 months, the SBA will average its number of employees for each prior pay period during which it has been in business. While this rule applies to all industries with size standards based on employees, the SBA notes that this change will predominantly impact manufacturers and certain other businesses in the mining, utilities, transportation, insurance, and environmental remediation sectors.

If you have any questions regarding how this change may impact your SBIC or its portfolio companies, please contact your SBIC counsel at Winston & Strawn LLP.

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