

ALERT

SBA Issues Final Rule to Extend Size Calculation Period From 3 Years to 5 Years

December 9, 2019

WHAT: The U.S. Small Business Administration (SBA) has issued its final rule to implement the Small Business Runway Extension Act, which changed the calculation to determine a concern's size status to its five-year average annual receipts, instead of three years. The final rule applies to all small business concerns for which size is based on average annual receipts, regardless of industry, for revenue-based size standard.

WHEN: The rule is effective January 6, 2020. Notably, the rule includes a transition period until January 6, 2022, where firms can choose to use the new five-year period or the old three-year period for calculating their size. Unlike other recent changes to small business regulations, this rule does not require a corresponding change to the FAR to become operative.

WHAT DOES IT MEAN FOR INDUSTRY: As we previously discussed when the Act was signed and when SBA issued its proposal rule, the purpose of the Runway Extension Act was to extend the time during which companies remain eligible small businesses to "allow small businesses at every level more time to grow and develop their competitiveness and infrastructure, before entering the open marketplace."

As in the proposed rule, SBA has maintained in the final rule that the language of the Act does not require SBA to make this change but that it is making it nevertheless to "promote consistency government-wide" and to implement the "intent" of the Act.

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SBA also again cautioned that this new five-year rule could negatively affect larger firms and firms close to becoming large that have had declining revenues, especially during economic downturns, because they will have to wait longer to become small. To mitigate this negative impact, SBA has included a two-year transition period where firms can choose between the three-year and five-year period for calculating their size.