

ALERT

SBA Takes First Step to Implement Runway Extension Act

June 26, 2019

WHAT: The U.S. Small Business Administration (SBA) has issued its long-awaited proposed 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. While SBA's proposed rule contains some notable language disputing whether it must comply with the Act as Congress intended, and when the change is effective, the proposed rule nevertheless would implement the change.

WHEN: The proposed rule was issued on June 24, 2019. Comments are due on August 23, 2019.

WHAT DOES IT MEAN FOR INDUSTRY: As we previously discussed, 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."

Despite Congress' position that the three-to-five year change was effective immediately, SBA took the position that the change was not effective until SBA issued rules consistent with the Act. SBA has maintained that position in the proposed rule and asserts that it will not consider the change retroactively to the Act's enactment when reviewing size challenges. SBA will include the effective date in its final rule.

SBA also cautions in the proposed rule that the change would negatively affect large firms with declining revenue who will now wait longer to become small and would also negatively affect "smaller

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small businesses" because their larger direct competitors will stay small longer.

Lastly, SBA has also taken the opportunity to clarify in the proposed rule that, when a concern sells or acquires a segregable division, rather than a separate entity (i.e. a subsidiary), the concern's annual receipts should not be adjusted to account for the sold or acquired division.