Billing Code: 8025-01

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AG45

Small Business Size Standards: Finance and Insurance and Management of Companies and Enterprises

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 37 industries in North American Industry Classification System (NAICS) Sector 52, Finance and Insurance, and for two industries in NAICS Sector 55, Management of Companies and Enterprises. In addition, SBA proposes to change the measure of size from average assets to average receipts for NAICS 522293, International Trade Financing. As part of its ongoing comprehensive size standards review, SBA evaluated all receipts based and assets based size standards in NAICS Sectors 52 and 55 to determine whether they should be retained or revised. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled "Size Standards Methodology" and published a notice in the October 21, 2009 issue of the Federal Register to advise the public that the document is available on its website at www.sba.gov/size for public review and comments. The "Size Standards Methodology" White Paper explains how SBA establishes, reviews, and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its

methodology that pertains to establishing, reviewing, and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Identify your comments by RIN 3245-AG45 and submit them by one of the following methods: (1) Federal eRulemaking Portal: www.regulations.gov, following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416, or send an email to sizestandards@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Size Standards Division, (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size – average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. For example, currently six size standards in NAICS Sector 52 are based on total assets. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities ("exceptions" in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also adjusts its monetary based size standards for inflation at least once every five years. SBA's latest inflation adjustment to size standards was published in the Federal Register on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA conduct a review of all size standards at least once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. A NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector 31-33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in a given NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other relevant factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a "Size Standards Methodology" for developing, reviewing, and modifying size standards when necessary. SBA published the document on its website at www.sba.gov/size for public review and comments, and has included it as a supporting document in the electronic docket of this proposed rule at www.regulations.gov. SBA does not apply all features of its "Size Standards Methodology" to all industries because not all features are appropriate for every industry. For example, since 36 of the 42 industries in NAICS Sectors 52 and 55 reviewed in this rule have receipts based size standards, the methodology described in this proposed rule applies only to establishing receipts based size standards. For those interested in SBA's overall approach to establishing, evaluating, and modifying small business size standards, the methodology is available on SBA's website at www.sba.gov/size. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its "Size Standards Methodology," such as whether there are other approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's size standards methodology should be submitted via (1) the Federal eRulemaking Portal:

www.regulations.gov, following the instructions for submitting comments; the docket number is SBA-2009-0008, or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416. As it will do with comments to this and other proposed rules, SBA will post all comments on its methodology on www.regulations.gov. As of May 31, 2012, SBA has received 14 comments to its "Size Standards Methodology." The comments are available to the public at www.regulations.gov. SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its "Size Standards Methodology" submitted by email.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that "…the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure (as described below). In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to size standards in NAICS Sectors 52 and 55. This proposed rule affords the public an opportunity to review and to comment on SBA's proposals to revise size standards in NAICS Sectors 52 and 55, as well as on the data and methodology it used to evaluate and revise the size standards.

Industry Analysis

For the current comprehensive size standards review, SBA has established three "base" or "anchor" size standards – $7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance and for most Federal programs has been 100 employees. However, NAICS codes for the Wholesale Trade Sector and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade (NAICS Sector 42) and for all industries in Retail Trade (NAICS Sector 44-45), is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor is neither a minimum nor a maximum size standard. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from other industries with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the "anchor comparison group"). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is generally appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sectors 52 and 55, SBA has developed a second comparison group consisting of industries that have the highest of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the "higher level receipts based size standard group."

The primary factors that SBA evaluates to examine industry structure include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revised size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, etc.). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sectors 52 and 55 that has a receipts based size standard. A more detailed description of this analysis is provided in SBA's "Size Standards Methodology," available at http://www.sba.gov/size.

1. Average firm size. SBA computes two measures of average firm size: simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts based size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. Startup costs and entry barriers. Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor size standard. In lieu of actual startup cost data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or lower than those of the anchor comparison group is likely to have lower startup costs; this will support the anchor standard or one lower than the anchor.

3. Industry competition. Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the "four-firm concentration ratio," a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will

establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its share of economic activity within the industry is less than 40 percent. For an industry with a four-firm concentration ratio of 40 percent or more, SBA examines the average size of the four largest firms to determine a size standard.

4. Distribution of firms by size. SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor in assessing industry competition. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's "Size Standards Methodology" on its website at www.sba.gov/size.) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry with that for industries in the anchor comparison group. If the Gini coefficient value for an industry is higher than it is for industries in the anchor comparison industry group this may, all else being equal, warrant a size standard higher than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. Impact on Federal contracting and SBA loan programs. SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, this could justify considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may support a size standard larger than the current size standard.

SBA considers Federal contracting trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect significant levels of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. For this, SBA examines the data on volume and number of its guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standards, SBA does not consider this factor when determining the size standard.

Sources of Industry and Program Data

The primary source of industry data that SBA used in evaluating industries in NAICS Sectors 52 and 55 that have receipts based size standards is a special tabulation of the 2007 Economic Census (see www.census.gov/econ/census07/) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The 2007 Economic Census data are the latest available. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, four-firm concentration ratio, and distribution of firms by various receipts and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

Five of the seven industries within NAICS Subsector 525 (Funds, Trusts and Other Financial Vehicles) are not covered by the 2007 Economic Census. All industries in that Subsector currently have a common size standard. To maintain the common size standard, in this proposed rule, SBA applies the results for the two industries (NAICS 525910, Open End Investment Funds, and NAICS 525990, Other Financial Vehicles) for which the Economic Census data are available to those five industries.

To evaluate industries in NAICS Sector 52 that have assets based size standards, as discussed below, SBA obtained the data from the Statistics on Depository institutions (SDI) database of the Federal Depository Insurance Corporation (FDIC) between 1984 and 2011 (http://www2.fdic.gov/sdi/main.asp). SDI does not include a field to classify the institutions by the NAICS definition. However, it has a field that identifies an institution's primary specialization in terms of asset concentration and another field that identifies each institution as a bank or thrift. Since the SDI database does not identify minority owned financial institutions from others, SBA identified them using data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program, compiled by the Federal Reserve Board (FRB) (http://www.federalreserve.gov/releases/mob/). To examine characteristics of minority owned financial institutions, SBA merged the FRB data with SDI database using the common identification number for each institution.

The SDI database does not include Credit Unions, NAICS 522130, while the FRB data is limited to minority-owned credit unions only. The data to evaluate the Credit Unions industry were based on call reports for the fourth quarters of 1994 and 2011 from the National Credit Union Administration (NCUA) website (http://www.ncua.gov/DataApps/QCallRptData/Pages/CallRptData.aspx). The earliest year for which these data were available on the NCUA website is 1994.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008-2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008-2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System – Next Generation (FPDS-NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008-2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's "Size Standards Methodology" White Paper, which is available at www.sba.gov/size.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. § 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation, and (3) within a specific small business definition or size standard established by SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (see 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many applied to one or only a few industries. SBA believes that such a large number of different small business size standards are unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sectors 52 and 55 that has a receipts based standard. The eight "fixed" receipts based size standard levels are \$5 million, \$7 million, \$10 million, \$14 million, \$19 million, \$25.5 million, \$30 million, and \$35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following – \$2.5 million to \$4.5 million, \$7 million, \$9 million to \$10 million, \$12.5 million to \$14.0 million, \$25 million to \$25.5 million, and \$33.5 million to \$35.5 million. SBA selected \$7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard. The lowest or minimum receipts based size level will be \$5 million. Other than the size standards for agriculture that are statutorily set at \$0.75 million and those based on commissions (such as real estate brokers and travel agents), \$5 million includes those industries with the lowest receipts based standards, which ranged from \$2 million to \$4.5 million. Among the higher level size clusters, SBA has set four fixed levels: \$10 million, \$14 million, \$25.5 million, and \$35.5 million. Because of the large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519, and NAICS 811212), even though the industry data might support a distinct size standard for each industry (57 FR 27906 (June 23, 1992)). More recently SBA adopted common size standards for some of the industries in NAICS Sector 44-45, Retail Trade (75 FR 61597 (October 6, 2010)), NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)), and NAICS Sector 48-49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)).

In NAICS Sector 52, currently all industries in NAICS Industry Group 5221 and NAICS Industries 522210 and 522293 have a common size standard of $175 million in total assets. Similarly, all other industries in NAICS Sector 52, with an exception of

NAICS Industry 524126 which has a size standard of 1,500 employees, have a common size standard of $7 million in average annual receipts. Based on the characteristics of those industries, SBA proposes to retain common size standards for all industries within NAICS Industry Group 5222 (with the exception of NAICS 522210, Credit Card Issuing). NAICS 522210 currently has an assets based size standard and based on the evaluation of business operations and characteristics of firms in this industry SBA proposes to maintain the assets based size standard for this industry. NAICS 522293, International Trade Financing, also has an assets based size standard currently, but based on the evaluation of business operations and characteristics of firms involved in this industry, SBA proposes to replace the assets based size standard with a receipts based size standard for this industry. In addition, SBA proposes to apply the same common receipts based size standard for NAICS 522293 as that for NAICS Industry Group 5222 (except for NAICS 522210). SBA also proposes common size standards for industries within NAICS Subsector 523, NAICS Industry Group 5241 (with exception of NAICS 524126), and NAICS Subsector 525. Whenever SBA proposes a common size standard for closely related industries it will provide its justification.

Evaluation of Industry Structure

SBA evaluated 29 industries in NAICS Sector 52, Finance and Insurance, and two industries in NAICS Sector 55, Management of Companies and Enterprises (for which industry data were available from the 20007 Economic Census), to assess the appropriateness of the current receipts based size standards. For this, as described above, SBA compared data on the economic characteristics of each of those industries to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7 million size standards and is referred to as the "receipts based anchor comparison group." Because the goal of SBA's review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The proposed new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the "higher level receipts based size standard comparison group." SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1, Average Characteristics of Receipts Based Comparison Groups, shows the average firm size (both simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

Table 1
Average Characteristics of Receipts Based Comparison Groups

Receipts Based Comparison Group	Avg. Firm Size ($ million)		Avg. Assets Size ($ million)	Four-firm Concentration Ratio (%)	Avg. Receipts of Four Largest Firms ($ million) *	Gini Coeffi-cient
	Simple Average	Weighted Average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, the $7 million anchor size standard is appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million - $1.32 million) ÷ ($5.07 million - $1.32 million) =

0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.61 million ([{$29.0 million – $7.0 million} * 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's "Size Standards Methodology" which is available on its website at www.sba.gov/size. (However, it should be noted that figures in the "Size Standards Methodology" White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its "Size Standards Methodology," the 2007 Economic Census data were not yet available). Table 2, Values of Industry Factors and Supported Size Standards, (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

Table 2
Values of Industry Factors and Supported Size Standards

If Simple Avg. Receipts Size ($ million)	Or if Weighted Avg. Receipts Size ($ million)	Or if Avg. Assets Size ($ million)	Or if Avg. Receipts of Largest Four Firms ($ million)	Or if Gini Coefficient	Then Implied Size Standard is $ million)
< 1.15	< 15.22	< 0.73	< 142.8	< 0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
> 5.71	> 133.41	> 3.61	> 1,577.1	> 0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on

Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in its size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market that SBA should consider.

Eight of the 29 industries in NAICS Sector 52 that have receipts based size standards averaged $100 million or more annually in Federal contracting during fiscal years 2008-2010. The Federal contracting factor was significant (i.e., the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) in three of those eight industries and a separate size standard was derived for that factor for each of them. Federal contracting averaged less than $100 million annually for both industries in NAICS Sector 55 and was not included in the calculations of new size standards for them.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or federal contracting factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard only if its value is 40 percent or more. If the four-firm concentration ratio is 40 percent or more, SBA indicates in column 6 the average size of the industry's four largest firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's "Size Standard Methodology." For comparison with the new standards, the current size standards are in column 10 of Table 3.

Table 3

Size Standards Supported by Each Factor for Each Industry (millions of dollars)

NAICS code/title	Simple average firm size	Weighted average firm size	Average assets size	Four-firm ratio (%)	Four-firm average size	Gini Coeffi-cient	Federal contract factor (%)	New size standard	Current size standard
522220 Sales Financing	$48.8 $35.5	$434.1 $35.5	$162.7 $35.5	42.1	$13,199.9 $35.5	0.880 $35.5		$35.5	$7.0
522291 Consumer Lending	$11.8 $35.5	$364.4 $35.5	$35.4 $35.5	61.2	$6,874.4 $35.5	0.940 $35.5		$35.5	$7.0
522292 Real Estate Credit	$11.5 $35.5	$279.0 $35.5	$31.4 $35.5	38.5	$9,127.3	0.930 $35.5		$35.5	$7.0
522294 Secondary Market Financing	$796.6 $35.5	$6,175.9 $35.5	$2,987.1 $35.5	97.9	$25,931.0 $35.5	0.871 $35.5		$35.5	$7.0
522298 All Other Nondepository Credit Intermediation	$16.6 $35.5	$750.8 $35.5	$62.4 $35.5			0.959 $35.5		$35.5	$7.0
522310 Mortgage and Nonmortgage Loan Brokers	$0.6 $5.0	$6.2 $5.0	$1.2 $10.0	5.2	$186.3	0.583 $5.0		$7.0	$7.0
522320 Financial Transactions, Reserve, and Clearinghouse Activities	$18.9 $35.5	$387.6 $35.5	$12.9 $35.5	33.1	$3,624.7	0.934 $35.5	1.9	$35.5	$7.0
522390 Other Activities Related to Credit Intermediation	$1.9 $10.0	$47.2 $14.0	$1.9 $19.0	19.6	$602.8	0.834 $30.0	-17.0 $10.0	$19.0	$7.0
523110 Investment Banking and Securities Dealing	$74.9 $35.5	$1,453.1 $35.5	$86.4 $35.5	51.7	$26,248.4 $35.5	0.941 $35.5	-1.1	$35.5	$7.0

523120 Securities Brokerage	$17.4 $35.5	$581.4 $35.5	$9.7 $35.5	36.9	$14,369.4	0.952 $35.5		$35.5	$7.0
523130 Commodity Contracts Dealing	$8.4 $35.5	$118.6 $30.0	$13.3 $35.5	43.4	$756.7 $19.0	0.903 $35.5		$30.0	$7.0
523140 Commodity Contracts Brokerage	$4.5 $25.5	$120.3 $30.0	$1.0 $7.0	46.9	$654.9 $14.0	0.886 $35.5		$19.0	$7.0
523210 Securities and Commodity Exchanges	$467.4 $35.5	$852.8 $35.5				0.454 $5.0		$19.0	$7.0
523910 Miscellaneous Intermediation	$2.0 $10.0	$16.6 $7.0	$6.1 $35.5	15.0	$636.0	0.797 $25.5	-27.7 $10.0	$19.0	$7.0
523920 Portfolio Management	$10.2 $35.5	$212.6 $35.5	$6.5 $35.5	12.0	$5,350.2	0.914 $35.5		$35.5	$7.0
523930 Investment Advice	$1.5 $7.0	$40.3 $10.0	$0.6 $5.0	26.7	$1,531.6	0.815 $25.5		$14.0	$7.0
523991 Trust, Fiduciary and Custody Activities	$5.3 $30.0	$64.8 $19.0	$8.9 $35.5	35.2	$887.0	0.876 $35.5		$30.0	$7.0
523999 Miscellaneous Financial Investment Activities	$6.7 $35.5	$124.9 $30.0	$28.8 $35.5			0.909 $35.5	7.0	$35.5	$7.0
524113 Direct Life Insurance Carriers	$635.4 $35.5	$2,977.0 $35.5	$1,003.3 $35.5	26.8	$35,953.1	0.787 $19.0		$30.0	$7.0
524114 Direct Health and Medical Insurance Carriers	$554.7 $35.5	$1,746.5 $35.5	$256.0 $35.5	36.9	$45,842.3	0.684 $5.0	-0.1	$25.5	$7.0
524127 Direct Title Insurance Carriers	$8.9 $35.5	$493.1 $35.5	$4.1 $35.5	84.3	$3,628.8 $35.5	0.954 $35.5		$35.5	$7.0

524128 Other Direct Insurance (except Life, Health and Medical) Carriers	$13.7 $35.5	$152.5 $35.5	$19.6 $35.5	50.9	$755.9 $19.0	0.890 $35.5		$30.0	$7.0
524130 Reinsurance Carriers	$214.5 $35.5	$771.1 $35.5		50.9	$5,405.7 $35.5	0.724 $14.0		$30.0	$7.0
524210 Insurance Agencies and Brokerages	$0.8 $5.0	$26.0 $7.0	$0.5 $5.0	10.3	$2,729.8	0.667 $5.0		$5.0	$7.0
524291 Claims Adjusting	$2.0 $10.0	$73.7 $19.0		46.7	$841.7 $19.0	0.840 $30.0		$19.0	$7.0
524292 Third Party Administration of Insurance and Pension Funds	$8.7 $35.5	$76.2 $19.0	$4.1 $35.5	21.7	$1,622.9	0.847 $30.0	-4.0	$30.0	$7.0
524298 All Other Insurance Related Activities	$1.9 $10.0	$25.5 $7.0	$0.8 $7.0	30.6	$278.7	0.817 $25.5	-24.4 $10.0	$14.0	$7.0
525910 Open-End Investment Funds	$10.0 $35.5	$90.3 $25.5				0.865 $35.5		$35.5	$7.0
525990 Other Financial Vehicles	$2.1 $10.0	$21.4 $7.0				0.811 $25.5		$19.0	$7.0
551111 Offices of Bank Holding Companies	$9.6 $35.5	$30.1 $10.0	$32.2 $35.5			0.644 $5.0		$19.0	$7.0
551112 Offices of Other Holding Companies	$9.4 $35.5	$27.1 $10.0	$35.4 $35.5			0.668 $5.0		$19.0	$7.0

Common Size Standards

When many of the same businesses operate in several closely related industries, SBA believes that a common size standard can be more appropriate for these industries even if the industry and relevant program data might suggest different size standards. For instance, in past rules, SBA established a common size standard for Computer Systems Design and Related Services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the "exception" for Information Technology Value Added Resellers), and NAICS 811212). Another example is the common size standard for certain Architectural, Engineering and Related Services. These include NAICS 541310, NAICS 541330 (excluding the "exceptions"), Map Drafting (an "exception" under NAICS 541340), NAICS 541360, and NAICS 541370 (64 FR 28275(May 25, 1999)). As stated previously, more recently SBA adopted common size standards for the industries in NAICS Sector 44-45, Retail Trade (75 FR 61597 (October 6, 2010)), NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)), and NAICS Sector 48-49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)). Similarly, SBA proposed common size standards for several other industries in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)), and NAICS Sector 62, Health Care and Social Assistance (77 FR 11001 (February 24, 2012)).

For NAICS Sector 52, SBA proposes, as an alternative to a separate size standard for each industry, common size standards for industries in two NAICS Subsectors and two NAICS Industry Groups, as shown in Table 4, NAICS Subsectors and Industry

Groups for Common Size Standards. SBA evaluated industry and Federal contracting factors and derived a common size standard for each NAICS Subsector and Industry Group using the same method as described above. The results are in Table 5, Size Standards Supported by Each Factor for Subsectors and Industry Groups, which immediately follows Table 4, below.

Table 4
NAICS Subsectors and Industry Groups for Common Size Standards

Subsectors/industry groups: NAICS codes	Subsector/industry group title	Industries: 6-digit NAICS codes
5222[a] (except NAICS 522210)	Nondepository Credit Intermediation	522220, 522291, 522292, 522293, 522294, 522298
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	523110, 523120, 523130, 523140, 523210, 523910, 523920, 523930, 523991, 523999
5241[b] (except NAICS 524126)	Insurance Carriers	524113, 524114, 524127, 524128, 524130
525[c]	Funds, Trusts, and Other Financial Vehicles	525110, 525120, 525190, 525910, 525920, 525930, 525990

a. NAICS 522210 is excluded from this Industry Group as that industry currently has an asset based size standard. NAICS 522293 also has an assets based size standard currently, but SBA proposes to replace it with the same common size standard that SBA is proposing for NAICS Industry Group 5222 (except NAICS 522210).

b. NAICS 524126 is excluded from in this Industry Group as that industry currently has an employee based size standard. This will be reviewed at a later date along with other employee based size standards.

c. The 2007 Economic Census special tabulation includes data only for two NAICS codes within NAICS Subsector 525, namely 525910 (Open-End Investment Funds) and 525990 (Other Financial Vehicles). Consequently, SBA proposes to apply the results from NAICS 525910 and 525990 to all remaining industries within this Subsector because they all share the same size standard currently.

Table 5
Size Standards Supported by Each Factor for Subsectors and Industry Groups

(1) NAICS code/ Subsector or Industry Group title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini coeffi-cient	(8) Federal contract factor (%)	(9) Calculated size standard ($ million)	(10) Current size standard ($million)
5222 (except NAICS 522210) Nondepository Credit Intermediation	$23.0 $35.5	$550.3 $35.5	$75.8 $35.5			0.944 $35.5		$35.5	$7.0
523 Securities, Commodity Contracts, and Other Financial Investments and Related Activities	$10.6 $35.5	$319.1 $35.5	$7.7 $35.5	24.6	$37,547.5	0. 938 $35.5	4.5	$35.5	$7.0
5241 (except NAICS 524126) Insurance Carriers	$256.0 $35.5	$1,907.7 $35.5	$185.6 $35.5			0.866 $35. 5	-0.2	$35.5	$7.0
525 Funds, Trusts, and Other Financial Vehicles	$3.6 $19.0	$43.8 $14.0	$14.7 $35.5			0. 860 $35.5		$30.0	$7. 0

$

Evaluation of the Assets Based Size Standard

In 1984, SBA published a notice of policy allowing financial services that prime contractors procure from small minority owned and controlled financial institutions to qualify as subcontracts for purposes of meeting subcontracting goals and credits (see 49 FR 13091-01 (April 2, 1984)). Concurrently, SBA also published a proposed rule that a financial institution with total assets of not more than $100 million would be considered small (see 49 FR 13052-01 (April 2, 1984)). SBA adopted the $100 million in total assets as the size standard for financial institutions (see 49 FR 49398-01 (October 16, 1984)). Over time, the definition of small depository institution was extended to other financial institutions, such as Credit Cards Issuing and International Trade Financing. Since then, along with other monetary based size standards, SBA has periodically adjusted the assets based size standard for inflation, with the latest adjustment increasing it to $175 million (see 73 FR 41237 (July 18, 2008)).

Currently, the $175 million assets based size standard applies to four industries within NAICS Industry Group 5221, Depository Credit Intermediation, and two industries within NAICS Industry Group 5222, Non-depository Credit Intermediation. These are NAICS 522110 (Commercial Banking), NAICS 522120 (Savings Institutions), NAICS 522130 (Credit Unions), NAICS 522190 (Other Depository Credit Intermediation), NAICS 522210 (Credit Card Issuing), and NAICS 522293 (International Trade Financing).

Because only a small number of industries have assets based size standards, no comparison groups could be developed to assess differing characteristics of individual industries based on total assets. Thus, most of the SBA's size standards methodology is not applicable to analyzing the assets based size standards for financial institutions. Consequently, in this proposed rule, SBA has examined trends on financial industry factors since 1984 to assess whether the current $175 million assets based size standard should be modified to reflect today's financial industry structure. Specifically, SBA evaluated changes in average firm size, industry concentration, and distribution of firms by size (i.e., Gini coefficient) for financial institutions. Similarly in the 1984 proposed and final rules, SBA both evaluated depository institutions as a whole and the minority owned and controlled depository institutions separately.

SBA evaluated all depository institutions (except for Credit Unions, NAICS 522130 which were evaluated using the NCUA data) using SDI data. SDI does not provide the NAICS definition for every firm included in the database. However, it has a field called Asset Concentration Hierarchy, which can be used to identify each institution's primary specialization in terms of asset concentration, such as credit card services. Another field, Bank Charter Class, identifies the institutions as banks or thrifts. Because the data are not separated by NAICS code, and also the differences among services offered by different financial instructions (such as commercial banks, saving institutions, and credit card issuing companies) have greatly diminished over the recent decades, SBA has analyzed these financial institutions as one industry group.

Since the SDI database does not distinguish minority owned financial institutions from others, SBA identified them using the data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program, compiled by the Federal Reserve Board (FRB) (http://www.federalreserve.gov/releases/mob/) for the 3rd quarter of 2011, and examined their characteristics using the assets data from the SDI database. The earliest period the FRB data are available is the 2nd quarter of 2003. Thus, to fully capture the changes in industry structure of minority owned financial institutions since 1984, SBA has compared the results based on the FRB and SDI data with those based on the data for minority owned banks from the 1984 proposed and final rules.

SBA evaluated the changes in the industry structure of Credit Unions (NAICS 522130) between 1994 and 2011, using the data from the 5300 Call Reports available on the NCUAwebsite (http://www.ncua.gov/DataApps/QCallRptData/Pages/default.aspx).

The number of all depository institutions (excluding Credit Unions), total assets and calculated industry factors for 1984 and 2011 are shown in Table 6, Industry Factors for All Depository Institutions (excluding Credit Unions). Similar calculations for the minority owned depository institutions (excluding Credit Unions) are shown in Table 7, Industry Factors for Minority Owned Depository Institutions (excluding Credit Unions). The number of Credit Unions, total assets and calculated industry factors for 1995 and 2011 are shown in Table 8, Industry Factors for Credit Unions. For comparability, all monetary values are expressed in 2011 dollars.

Table 6
Industry Factors for All Depository Institutions (excluding Credit Unions).
(All monetary values are in millions of 2011 dollars)

Year	Number of institutions	Total assets	Simple average firm size	Weighted average firm size	Four-firm ratio (%)	Four-firm average size	Gini coeffi-cient
1984*	17,901	$6,702,968	$374	$12,319	10.1	$168,843	0.798
2011	7,445	$13,843,140	$1,859	$81,690	41.4	$1,433,933	0.907

Source: SDI/FDIC (http://www2.fdic.gov/sdi/main.asp).
*1984 dataset is not available online, but is available from FDIC on request.

Table 7
Industry Factors for Minority Owned Depository Institutions (excluding Credit Unions).
(All monetary values are in millions of 2011 dollars)

Year	Number of institutions	Total assets	Simple average firm size	Weighted average firm size	Four-firm ratio (%)	Four-firm average size	Gini coeffi-cient
1984[a]	96	$7,556	$79	$274	N/A	N/A	0.491
2011[b]	108	$39,138	$362	$1,662	40.0	$3,917	0.626

Source: a. 1984 proposed (49 FR 13052-01 (April 2, 1984)) and final (49 FR 49398-01 (October 16, 1984)) rules.
b. FRB ((http://www.federalreserve.gov/releases/mob/) and FDIC.

Table 8
Industry Factors for Credit Unions
(All monetary values are in millions of 2011 dollars)

Year	Number of institutions	Total assets	Simple average firm size	Weighted average firm size	Four-firm ratio (%)	Four-firm average size	Gini coeffi-cient
1994	12,201	$420,606	$34	$733	5.5	$5,742	0.793
2011	7,240	$974,187	$135	$3,543	9.8	$23,907	0.829

Source: NCUA, http://www.ncua.gov/DataApps/QCallRptData/Pages/CallRptData.aspx.

During the 1984 to 2011 span, as shown in Table 6, Industry Factors for All Depository Institutions (excluding Credit Unions), above, the financial industry saw a large drop in the total number of financial institutions, but at the same time it saw a significant increase in asset concentration among fewer of them. The total number of all financial institutions decreased more than half from 17,901 in 1984 to 7,445 in 2011, while their total assets (measured in 2011 dollars) more than doubled during the same period. The average firm size (measured in total assets) also showed significant increase from 1984 to 2011, with their simple average firm size increasing by a factor of 5 and the weighted average firm size increasing by a factor of nearly 7. The four largest institutions' share of total assets (also referred to as four-firm concentration ratio) more than quadrupled (from 10.1% to 41.4%) and their average size increased more than 8 times. The Gini coefficient value also increased from 0.798 in 1984 to 0.907 in 2011, thereby further confirming the trend of increased concentration in the financial industry. The average firm size and Gini coefficient value for the minority owned banks in Table 7, Industry Factors for Minority Owned Depository Institutions (excluding Credit Unions), also strongly confirmed the trend of increased concentration in the financial industry. As shown in Table 8, Industry Factors for Credit Unions, above, the number of Credit Unions decreased by 40 percent and their total assets more than doubled between 1995 and 2011. The average firm size, four-firm statistics, and Gini coefficient for Credit Unions also indicated increased concentration.

For all the six industries in NAICS Subsector 522 that have the $175 million assets based size standard, Federal contracting dollars averaged only about $22 million per year during fiscal years 2008-2010. Thus, under SBA's methodology, Federal contracting was not a significant factor for establishing a size standard for these industries.

Besides the industry structure, SBA also reviewed the relevant literature and information to determine if total assets are a suitable measure of bank size given the current structure of the banking industry. SBA has found that total assets are still the commonly accepted measure of bank size. For example, the Federal Reserve Board, Federal Deposit Insurance Corporation, and U.S. Treasury Department all use total assets to measure bank size for their regulatory and program purposes. Accordingly, SBA proposes to retain total assets to measure the size of financial institutions.

The current structure of the financial industry relative to that for the 1980s and 1990s, as discussed above, strongly supports increasing the current $175 million assets based size standard. The changes in industry factors for all financial institutions in Table 6 as well as the results for the minority owned institutions in Table 7 and Credit Unions in Table 8 support a size standard in the range of $500 million to $1 billion in total assets. SBA is proposing $500 million as it would include about 82 percent of the financial institutions and 7 percent of total assets of all financial institutions as compared to 54 percent of institutions and only about 3 percent of total assets under the current $175 million. It would include about 82 percent of institutions and one-third of the total assets of all minority owned institutions, as compared to 58 percent of institutions and 14 percent of total assets under the current $175 million. Similarly, the $500 million size standard would include nearly 95 percent of all Credit Unions and 36 percent of their total assets, compared to 87 percent of all Credit Unions and 19 percent of their total assets under the current $175 million size standard. SBA considered proposing $1 billion in total assets, but that would include all but the five largest minority owned banks, some of which may not be in need of Federal assistance.

The proposed $500 million assets based size standard would apply to the following five industries within NAICS Subsector 522, Credit Intermediation and Related Activities: NAICS 522110 (Commercial Banking), NAICS 522120 (Savings Institutions), NAICS 522130 (Credit Unions),NAICS 522190 (Other depository Credit Intermediation), and NAICS 522210 (Credit Card Issuing).

Special Considerations

NAICS 522293, International Trade Financing

NAICS 522293, International Trade Financing, currently has the $175 million assets based size standard. However, there are no assets data available to evaluate this industry. Furthermore, most of the receipts and employment data for this industry are suppressed in the 2007 Economic Census special tabulation due to the disclosure limitation. In terms of average size and distribution of firms by receipts and employment size based on SBA's estimated values for missing data, firms primarily engaged in NAICS 522293 are much more similar to those primarily engaged in other industries within NAICS Industry Group 5222 (except for NAICS 522210) that have receipts based size standards than firms primarily engaged in industries in NAICS Industry Group 5221 and NAICS 522210 that have assets based sized standards. Accordingly, for NAICS 522293 SBA is proposing the same $35.5 million receipts based size standard that it has proposed for all industries in NAICS Industry Group 5222 (except for NAICS 522210). SBA welcomes feedback on this proposal.

NAICS Subsector 525, Funds, Trusts, and Other Financial Vehicles

As noted earlier, the 2007 Economic Census special tabulation includes data only for two NAICS codes within NAICS Subsector 525: (1) NAICS 525910, Open-End Investment Funds: and (2) NAICS 525990, Other Financial Vehicles. Because all industries in that Subsector currently share the same $7 million receipts based size standard, SBA applies the results based on data for NAICS 525910 and 525990 to all remaining industries within this Subsector and proposes the same common size standard of $30 million in average annual receipts for all industries in the Subsector. SBA seeks comments on this proposal as well as suggestions on alternative data sources, if any, to evaluate those industries.

NAICS 524126, Direct Property and Causality Insurance Carriers

The current size standard for NAICS 524126, Direct Property and Causality Insurance, is 1,500 employees, which SBA has not reviewed in this proposed rule. SBA will review this size standard together with other employee based size standards at a later date. Until then, SBA proposes to retain the current 1,500-employee size standard for NAICS 524126.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008-2010 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the current size standards that use SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs. Specifically, an applicant exceeding an NAICS industry size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS Sectors 52 and 55 needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 9, Summary of Size Standards Analysis, below, summarizes the results of SBA's analyses of industry specific size standards from Table 3, the results of common size standards analysis from Table 5, and the results of the analysis of the assets based size standard. With the proposed change of an assets based size standard to a receipts based size standard for NAICS 522293, International Trade Financing, the results show increases in size standards for 37 industries, a decrease for one, and no change for one industry in NAICS Sector 52. The results also show increases in size standards for both industries in NAICS Sector 55.

Table 9
Summary of Size Standards Analysis

NAICS code	NAICS title	Current size standard ($ million)	Calculated industry-specific size standard ($ million)	Calculated Common size standard ($ million
522110	Commercial Banking	$175 million in assets		$500 million in assets
522120	Savings Institutions	$175 million in assets		$500 million in assets
522130	Credit Unions	$175 million in assets		$500 million in assets
522190	Other Depository Credit intermediation	$175 million in assets		$500 million in assets
522210	Credit Card Issuing	$175 million in assets		$500 million in assets
522220	Sales Financing	$7.0	$35.5	$35.5
522291	Consumer Lending	$7.0	$35.5	$35.5
522292	Real Estate Credit	$7.0	$35.5	$35.5
522293	International Trade Financing	$175 million in assets		$35.5

522294	Secondary Market Financing	$7.0	$35.5	$35.5
522298	All Other Nondepository Credit Intermediation	$7.0	$35.5	$35.5
522310	Mortgage and Nonmortgage Loan Brokers	$7.0	$7.0	
522320	Financial Transactions, Reserve, and Clearinghouse Activities	$7.0	$35.5	
522390	Other Activities Related to Credit Intermediation	$7.0	$19.0	
523110	Investment Banking and Securities Dealing	$7.0	$35.5	$35.5
523120	Securities Brokerage	$7.0	$35.5	$35.5
523130	Commodity Contracts Dealing	$7.0	$30.0	$35.5
523140	Commodity Contracts Brokerage	$7.0	$19.0	$35.5
523210	Securities and Commodity Exchanges	$7.0	$19.0	$35.5
523910	Miscellaneous Intermediation	$7.0	$19.0	$35.5
523920	Portfolio Management	$7.0	$35.5	$35.5
523930	Investment Advice	$7.0	$14.0	$35.5
523991	Trust, Fiduciary and Custody Activities	$7.0	$30.0	$35.5
523999	Miscellaneous Financial Investment Activities	$7.0	$35.5	$35.5
524113	Direct Life Insurance Carriers	$7.0	$30.0	$35.5
524114	Direct Health and Medical Insurance Carriers	$7.0	$25.5	$35.5
524127	Direct Title Insurance Carriers	$7.0	$35.5	$35.5
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$7.0	$30.0	$35.5
524130	Reinsurance Carriers	$7.0	$30.0	$35.5
524210	Insurance Agencies and Brokerages	$7.0	$5.0	
524291	Claims Adjusting	$7.0	$19.0	
524292	Third Party Administration of Insurance and Pension Funds	$7.0	$30.0	
524298	All Other Insurance Related Activities	$7.0	$14.0	
525110	Pension Funds	$7.0		$30.0
525120	Health and Welfare Funds	$7.0		$30.0
525190	Other insurance Funds	$7.0		$30.0
525910	Open-End Investment Funds	$7.0	$35.5	$30.0

525920	Trusts, Estates and Agency Accounts	$7.0		$30.0
525930	Real Estate Investment Trusts	$7.0		$30.0
525990	Other Financial Vehicles	$7.0	$19.0	$30.0
551111	Offices of Bank Holding Companies	$7.0	$19.0	
551112	Offices of Other Holding Companies	$7.0	$19.0	

Although the results in Table 9, Summary of Size Standards Analysis, seem to support lowering the size industry for one industry (NAICS 524210, Insurance Agencies and Brokerages), SBA believes that lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008-2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate is still high at 8.2 percent in June 2012 and is forecast to remain around this level at least through end of 2012. Recently, Congress passed and the President signed the Jobs Act to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs. A proposal to reduce size standards will have an immediate impact on jobs, and it would be contrary to the expressed will of the President and the Congress.

Lowering size standards would decrease the number of firms that participate in Federal financial and procurement assistance programs for small businesses. It would also affect small businesses that are now exempt from or receive some form of relief from myriad other Federal regulations that use SBA's size standards. That impact could take the form of increased fees, paperwork, or other compliance requirements for small businesses. Furthermore, size standards based solely on analytical results without any other considerations can cut off currently eligible small firms from those programs and benefits. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not intend to reduce size standards for any industries. For one industry where analysis might seem to support lowering the size standard, SBA proposes to retain the current size standard.

Furthermore, as stated previously, the Small Business Act requires the Administrator to "…consider other factors deemed to be relevant…" to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant factors when establishing small business size standards. SBA nevertheless invites comments and suggestions on whether it should lower the size standard for NAICS 524210, Insurance Agencies and Brokerages, to $5 million, or retain the current $7 million, which is the anchor standard for receipts based standards.

Comparing industry specific size standards and common size standards within each Industry Group or Subsector, SBA finds that for several industries, as shown in Tables 4 and 5 above, common size standards are more appropriate for several reasons. First, analyzing industries at the more aggregated Industry Group or Subsector levels simplifies size standards analysis, and the results will be more consistent among related industries. Second, in NAICS Sector 52 most industries within each Industry Group or Subsector currently have the same size standards and SBA believes it is better to keep the revised size standards also same unless industries are significantly different. Third, within each Industry Group or Subsector many of the same businesses tend to operate in the same multiple industries. Thus, SBA believes that common size standards would reflect the Federal marketplace in those industries better than different size standards for each industry.

For industries where both industry specific size standards and common size standards have been calculated, for the above reasons, SBA proposes to apply common size standards. For industries for which SBA has not estimated common size standards it proposes to apply industry specific size standards. As discussed above, lowering small business size standards is inconsistent with what the Federal government is doing to stimulate the economy and would discourage job growth for which Congress established the Recovery Act and Jobs Act. In addition, it would be inconsistent with the Small Business Act requiring the Administrator to establish size standards based on industry analysis and other relevant factors such as current economic conditions.

In addition, retaining current standards when the analytical results can suggest lowering them is consistent with SBA's prior actions for NAICS Sector 44-45 (Retail

Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) that the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency's proposed rule (76 FR 14323 (March 16, 2011)) and final rule (77 FR 7490 (February 10, 2012)) for NAICS Sector 54, Professional, Technical, and Scientific Services, the proposed rule (76 FR 27935 (May 13, 2011)) and final rule ((77 FR 10943 (February 24, 2012)) for NAICS Sector 48-49, Transportation and Warehousing, and proposed rules for NAICS Sector 51, Information (76 FR 63216 (October 12, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 61, Educational Services (76 FR 70667 (November 15, 2011)), NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)), NAICS Sector 62, Health Care and Social Assistance (forthcoming), NAICS Sector 71, Arts, Entertainment and Recreation (forthcoming), and NAICS Sector 23, Construction (forthcoming). In each of those final and proposed rules, SBA opted not to reduce small business size standards, for the same reasons it has provided above in this proposed rule.

Thus, SBA proposes to increase size standards for 37 industries, and retain the current size standards for two industries in NAICS Sector 52. In addition, SBA proposes to change the measure of size for NAICS 522293, International Trade Financing, from total assets to annual receipts. SBA also proposes to increase size standards for two industries in NAICS Sector 55. The SBA's proposed changes are summarized in Table 10, Summary of Proposed Size Standards Revisions, below.

Table 10
Summary of Proposed Size Standards Revisions

NAICS code	NAICS title	Current size standard ($ million)	Proposed size standard ($ million)
522110	Commercial Banking	$175 million in assets	$500 million in assets
522120	Savings Institutions	$175 million in assets	$500 million in assets
522130	Credit Unions	$175 million in assets	$500 million in assets
522190	Other Depository Credit intermediation	$175 million in assets	$500 million in assets
522210	Credit Card Issuing	$175 million in assets	$500 million in assets
522220	Sales Financing	$7.0	$35.5
522291	Consumer Lending	$7.0	$35.5
522292	Real Estate Credit	$7.0	$35.5
522293	International Trade Financing	$175 million in assets	$35.5
522294	Secondary Market Financing	$7.0	$35.5
522298	All Other Nondepository Credit Intermediation	$7.0	$35.5
522320	Financial Transactions, Reserve, and Clearinghouse Activities	$7.0	$35.5
522390	Other Activities Related to Credit Intermediation	$7.0	$19.0
523110	Investment Banking and Securities Dealing	$7.0	$35.5
523120	Securities Brokerage	$7.0	$35.5
523130	Commodity Contracts Dealing	$7.0	$35.5
523140	Commodity Contracts Brokerage	$7.0	$35.5
523210	Securities and Commodity Exchanges	$7.0	$35.5
523910	Miscellaneous Intermediation	$7.0	$35.5
523920	Portfolio Management	$7.0	$35.5
523930	Investment Advice	$7.0	$35.5
523991	Trust, Fiduciary and Custody Activities	$7.0	$35.5
523999	Miscellaneous Financial Investment Activities	$7.0	$35.5
524113	Direct Life Insurance Carriers	$7.0	$35.5
524114	Direct Health and Medical Insurance Carriers	$7.0	$35.5
524127	Direct Title Insurance Carriers	$7.0	$35.5

524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$7.0	$35.5
524130	Reinsurance Carriers	$7.0	$35.5
524291	Claims Adjusting	$7.0	$19.0
524292	Third Party Administration of Insurance and Pension Funds	$7.0	$30.0
524298	All Other Insurance Related Activities	$7.0	$14.0
525110	Pension Funds	$7.0	$30.0
525120	Health and Welfare Funds	$7.0	$30.0
525190	Other Insurance Funds	$7.0	$30.0
525910	Open-End Investment Funds	$7.0	$30.0
525920	Trusts, Estates, and Agency Funds	$7.0	$30.0
525930	Real Estate Investments Funds	$7.0	$30.0
525990	Other Financial Vehicles	$7.0	$30.0
551111	Offices of Bank Holding Companies	$7.0	$19.0
551112	Offices of Other Holding Companies	$7.0	$19.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sectors 52 and 55 for which it has proposed to increase size standards, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards for individual industries, if adopted, the small business share of total industry receipts among those industries with receipts based size standards is, in average, 0.3 percent, varying from .01 percent to 1.3 percent and the small business share among the industries with assets based size standards is .004 percent. These levels of market shares effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. Whether SBA's proposal to simplify size standards by using eight fixed levels for receipts based size standards – $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million – is necessary and whether the proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. Whether SBA's proposal to increase 32 receipts based and five assets based size standards and to retain two receipts based size standards in NAICS Sector 52, is appropriate given the economic characteristics of each industry.

3. Whether SBA's proposal to increase the two size standards in NAICS Sector 55 is appropriate given the economic characteristics of each industry.

4. Whether SBA should change the measure of size for NAICS 522293, International Trade Financing, from total assets to annual receipts.

5. SBA also seeks feedback and suggestions on alternative size standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

6. SBA proposes common receipts based size standards for industries within NAICS Subsectors 523 and 525 as well as NAICS Industry Groups 5222 (except for NAICS 522210) and 5241 (except for NAICS 524126). Similarly, SBA proposes a common assets based size standard for three industries within NAICS Industry

Group 5221 (except for NAICS 522130) and for NAICS 522210. SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt common size standards for those industries or establish a separate size standard for each industry, and

b. Whether the proposed common size standards for those industries are at the correct levels or what would be more appropriate if what SBA has proposed are not appropriate.

7. For several industries in NAICS Sectors 52 and 55, based on industry and program data, SBA proposes large increases, while for others the proposed increases are modest. The SBA seeks feedback on whether, as a policy, it should limit the increase to a size standard or establish minimum or maximum values for its size standards. The SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

8. SBA's proposed size standards are based on five primary factors – average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and, the total share and small business share of Federal contracting dollars of the evaluated industries. SBA welcomes comments on these factors and/or suggestions of other factors that it should consider when evaluating or revising size standards. SBA also seeks information on relevant data sources, other than what it uses, if available.

9. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain

industries. Recommendations to weigh some factors more than others should include suggested weights for each factor along with supporting information.

10. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and its proposed size standards revisions in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts in their industries, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866. In order to help explain the need of this rule and the rule's potential benefits and costs, SBA is providing a Cost Benefit Analysis in this section of the rule. This is also not a "major rule" under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed size standards revisions in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and Enterprises, will better reflect the economic characteristics of small businesses in this Sector and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. SBA estimates that in the 34 industries for which it proposes to increase receipts based size standards in NAICS Sectors 52 and 55, more than 5,400 firms, not small under the existing size standards, will become small under the proposed size standards and therefore eligible for these programs. That is about 2.2 percent of all firms classified as small under the current receipts based size standards in NAICS Sector 52 and 55. If adopted as proposed, this will increase the small business share of total receipts of all industries with receipts based size standards within NAICS Sectors 52 and 55 from 5.1 percent to 7.5 percent. Additionally, due to the proposed increase to the assets based size standard from $175 million to $500 million for four industries in NAICS Sector 52 (i.e., NAICS 522110, 522120, 522190 and 522210), approximately 2,000 additional depository institutions, including about 25 minority owned financial institutions, will qualify as small. This will increase the small business share of total assets in those industries from 2.5 percent under the current assets based size standard to 7 percent for all financial institutions and from 14.4 percent to 33 percent for minority owned institutions. This would also include about 550 additional Credit Unions, but they would not qualify as small business concerns for Federal programs intended for small businesses because they are not-for profit entities. However, they may qualify as small entities for other Federal programs and regulatory purposes.

The following groups will benefit from the proposed size standards revisions in this rule, if adopted as proposed: (1) some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs; (4) prime contractors that could benefit from agreements with the minority owned depository institutions in meeting their subcontracting goals and credits; and (5) potentially small business communities could benefit from increased banking activities in the area.

SBA estimates that firms gaining small business status under the proposed receipts based size standards could receive Federal contracts totaling $8 million to $10 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2008-2010 data, SBA estimates up to 30 additional loans totaling about $4 million to $5 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and, (2) as described above, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these proposed size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of this impact.

To the extent that those 7,400 newly defined firms (including 5,400 firms under the receipts based size standards in 34 industries and 2,000 firms under the assets based size standards in four industries) could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the government associated with there being more bidders on small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Central Contractor Registration (CCR)'s Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, Federal government contracts may have higher costs. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The proposed size standards revisions, if adopted, may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis.

Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision. The proposed revisions to the existing size standards in NAICS Sectors 52 and 55 are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 is included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its size standards methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with a number of industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sectors 52 and 55 is consistent with EO 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule will not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and

Enterprises. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs, as well as subcontracting programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sectors 52 and 55. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that more than 5,400 additional firms will become small because of proposed increases to receipts based size standards for 36 industries in NAICS Sectors 52 and 55. That represents 2.2 percent of total firms that are small under current receipts based size standards in all industries within these Sectors. This will result in an increase in the small business share of total receipts in those industries from 5.1 percent under the current size standards to 7.5 percent under the proposed size standards. Additionally, due to the proposed increase in the asset-based size standard for four industries within NAICS Sector 52 about 2,000 additional financial institutions will qualify as small, including about 25 minority owned financial institutions that could be eligible to participate in agreements with prime contractors for subcontracting goals and credits. In addition, about 550 additional Credit Unions would qualify as small under the higher assets based size standard, but they would not qualify for Federal programs intended for small businesses because they are not-for profit entities. However, they may qualify as small entities for other Federal programs and regulatory proposes. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the CCR database and certify in the Online Representations and Certifications Application (ORCA) that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA's programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the Federal Register a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

<u>List of Subjects in 13 CFR Part 121</u>

Administrative practice and procedure, Government procurement, Government property, Grant programs – business, Individuals with disabilities, Loan programs – business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121 as follows:

PART 121 – SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for Part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, amend the table "Small Business Size Standards by NAICS Industry" as follows:

a. In § 121.201, in the table, revise the entries for “522110”, “522120”, “522130”, “522190”, “522210”, “522220”, “522291”, “522292”, “522293”, “522294”, “522298”, “522320”, “522390”, “523110”, “523120”, “523130”, “523140”, “523210”, “523910”, “523920”, “523930”, “523991”, “523999”, “524113”, “524114”, “524127”, “524128”, “524130”, “524291”, “524292”, “524298”, “525110”, “525120”, “525190”, “525910”, “525920”, “525930”, “525990”, “551111”, and “551112”

b. Revise footnote 8 as shown below after the table.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
522110	Commercial Banking [8]	[8]$500 million in assets	
522120	Savings Institutions [8]	[8]$500 million in assets	
522130	Credit Unions	[8]$500 million in assets	
522190	Other Depository Credit Intermediation [8]	[8]$500 million in assets	
522210	Credit Card Issuing [8]	[8]$500 million in assets	
522220	Sales Financing	$35.5	
522291	Consumer Lending	$35.5	
522292	Real Estate Credit	$35.5	
522293	International Trade Financing	$35.5	
522294	Secondary Market Financing	$35.5	
522298	All Other Nondepository Credit Intermediation	$35.5	

* * * * *			
522320	Financial Transactions, Reserve, and Clearing House Activities	$35.5	
522390	Other Activities Related to Credit Intermediation	$19.0	
* * * * *			
523110	Investment Banking and Securities Dealing	$35.5	
523120	Securities Brokerage	$35.5	
523130	Commodity Contracts Dealing	$35.5	
523140	Commodity Contracts Brokerage	$35.5	
523210	Securities and Commodity Exchanges	$35.5	
523910	Miscellaneous Intermediation	$35.5	
523920	Portfolio Management	$35.5	
523930	Investment Advice	$35.5	
523991	Trust, Fiduciary and Custody Activities	$35.5	
523999	Miscellaneous Financial Investment Activities	$35.5	
* * * * *			
524113	Direct Life Insurance Carriers	$35.5	
524114	Direct Health and Medical Insurance Carriers	$35.5	
	* * * * *		
524127	Direct Title Insurance Carriers	$35.5	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$35.5	
524130	Reinsurance Carriers	$35.5	
* * * * *			
524291	Claims Adjusting	$19.0	
524292	Third Party Administration of Insurance and Pension Funds	$30.0	
524298	All Other Insurance Related Activities	$14.0	
* * * * *			
525110	Pension Funds	$30.0	
525120	Health and Welfare Funds	$30.0	
525190	Other Insurance Funds	$30.0	
525910	Open-End Investment Funds	$30.0	
525920	Trusts, Estates, and Agency Funds	$30.0	
525930	Real Estate Investments Trusts	$30.0	
525990	Other Financial Vehicles	$30.0	
	* * * * *		
551111	Offices of Bank Holding Companies	$19.0	
551112	Offices of Other Holding Companies	$19.0	

* * * * *

Footnotes

8. *NAICS Codes 522110, 522120, 522130, 522190, and 522210* – A financial Institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. "Assets" for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

* * * * *

Dated, June 22, 2012

Karen G. Mills,
Administrator.

[FR Doc. 2012-22258 Filed 09/10/2012 at 8:45 am; Publication Date: 09/11/2012]