

Small business eligibility for an SBA 7(a) guaranteed loan is based on the size standard of the primary industry of the applicant. For ITVARs that are primarily engaged in the Wholesale Trade Sector, the applicable size standard is 100 employees. For ITVARs primarily engaged in computer services, \$21 million in average annual receipts is the applicable size standards. Computer services firms near the \$21 million size standard average in size between 125 to 150 employees.

A review of the distribution of 7(a) loans by employment size of the firm shows that only 10 loans, amounting to \$6.6 million, were made in fiscal years 2001–02 to firms of 100 or more employees. Moreover, all of these loans were to firms in the computer services industries, with only one loan to a computer wholesale trade firm of more than 50 employees. These loans represent only 1% of the number of loans and less than 4% of the dollar value of loans in the two ITVAR industries. This experience indicates the current size standards are not hindering access to this program for small ITVARs. Thus, no need exists to change the current size standards to broaden access to capital for small ITVARs.

Overview: Based on the above analysis, SBA is adopting a 150 employee size standard. All of the industry factors support a size standard lower than the current 500 employee size standard. The factor of distribution of receipts suggests a size standard in the range of 230 to 400 employees since the industry consists of larger-sized businesses that obtain more than half of industry receipts. The industry factors of average size firm and nonpayroll receipts per establishment support a size standard between 65 to 125 employees. The four-firm concentration ratio is a neutral factor. The assessment of program considerations does not indicate a size standard change from the current 500 employee size standard for Federal contracting or the 100 employee size standard for ITVAR in Wholesale Trade. In light of the comments strongly supporting a 100 employee size standard, the SBA believes the evaluation of the industry characteristics should give greater consideration to the smaller range of size standard levels supported by the data, or between the 65 to 230 employee levels. The SBA believes a 150 employee size standard is an appropriate balance between the available information on the industry and the strong view of the comments for a size standard significantly below 500 employees. In addition, 150 employees would be equivalent to a \$21 million

employee size standard applicable to Federal computer services contracts. Since many ITVARs provide primarily computer services, having a size standard at a similar level results in these firms being small for both computer service contracts and ITVAR contracts. The SBA believes this administrative consideration is both practical and desirable. It results in a common size standard for closely related activities and avoids complicating the size standards with a significantly different size standard level applicable to small businesses that operate in the two industry activities.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation, and (3) within detailed definitions or size standards established by the SBA Administrator. When the SBA evaluates a size standard, it considers whether a business concern at or below a size standard could be dominant in its field of operation.

For this assessment the SBA generally considers the market share of firms at the contemplated size standard, or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged. The SBA has determined that no firm at or below a 150 employee size standard would dominate the ITVAR industry on a national basis. The average size firm meeting the size standard of 150 employees generates approximately 0.1% of total industry receipts. This level of market share effectively precludes any firm at or below the proposed size standard from controlling this industry.

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

The Office of Management and Budget (OMB) has determined that the final rule is a “significant” regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism

implications warranting the preparation of a Federalism Assessment. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. Below is a regulatory impact of this size standard change.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. Establishing an industry category and size standard for ITVARs more realistically applies small business eligibility requirements under Federal contracts that combine substantial services with the acquisition of computer hardware and software.

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

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. These include SBA’s financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a new industry category and size standard would accrue to two groups. First, small businesses competing for ITVAR Federal procurements that contain requirements more similar to industry practices. Second, Federal agencies that will be able to more easily classify IT contracts that combine equipment purchases and services.

Newly defined small businesses would benefit from the SBA’s financial programs, in particular its 7(a) Guaranteed Loan Program. Currently, an ITVAR primarily engaged in wholesale trade qualifies for these loans if they