

PUBLICATION

SBA Small Businesses: New Law Increases Annual Receipts Measurement for Size Calculations

January 17, 2019

On December 17, 2018, President Trump signed into law the **Small Business Runway Extension Act of 2018**, which increases the measurement period for calculating the average annual receipts for small business size purposes from three years to five years.

A small business concern may self-certify as small for federal contract purposes if it meets the size standards associated with applicable NAICS codes, which can be found at 13 CFR 121.201. Each size standard is generally determined by the number of employees at the business or its average annual receipts.

Before the passage of the Act, when calculating annual receipts for purposes of small business size standards, the statute required a concern to calculate its total receipts for its three most recently completed fiscal years and divide that total by three. However, with this recent change, the statute now states that the calculation of annual receipts must be determined by a five-year period instead of a three-year period.

As shown by the below examples addressing NAICS Code 541511 for Custom Computer Programming Services, which has a size standard of \$27.5 million, this change can have a significant impact if a business has either declining or increasing revenues. Some businesses with declining revenues that were expecting to be small under the three-year calculation will now remain large, while other businesses with increasing revenues will now have more time to remain small.

| | Five-Year Measurement | Three-Year Measurement |
|--|---|---|
| Example Business A (Increasing Revenues) NAICS Code 541511 \$27.5 million | <ul style="list-style-type: none">• 2014 – \$9 million• 2015 – \$20 million• 2016 – \$30 million• 2017 – \$30 million• <u>2018 – \$35 million</u> \$24,800,000 average annual receipts (small) | <ul style="list-style-type: none">• 2016 – \$30 million• 2017 – \$30 million• <u>2018 – \$35 million</u> \$31,666,667 average annual receipts (large) |
| Example Business B (Decreasing Revenues) NAICS Code 541511 \$27.5 million | <ul style="list-style-type: none">• 2014 – \$35 million• 2015 – \$30 million• 2016 – \$30 million• 2017 – \$25 million• <u>2018 – \$20 million</u> \$28,000,000 average annual receipts (large) | <ul style="list-style-type: none">• 2016 – \$30 million• 2017 – \$25 million• <u>2018 – \$20 million</u> \$25,000,000 average annual receipts (small) |

But Is It Now Effective?

Soon after the Act was signed into law, the Small Business Administration (SBA) issued Information Notice 6000-180022 stating that "the Act is not presently effective and is therefore not applicable to present contracts, offers, or bids until implemented through the standard rulemaking process." However, [the Act](#), which is only a few sentences long, does not include any language delaying its effective date. Under U.S. Supreme Court case law, a statute typically becomes effective on the date it is enacted unless it states a different prospective or retroactive effective date. Because [the Act](#) in this case does not state any other effective date, case law holds that it should have become effective on December 17, 2018.

Therefore, contractors have good arguments that the SBA's delay of the Act's effective date is incorrect. However, the SBA has clearly staked out its position and, similar to other recent statutory changes that have not yet been implemented into the Federal Acquisition Regulation or the SBA regulations, contractors are again left deciding how to best address these various conflicting rules and directions.

For more information on how this change in the law impacts your particular business and potential methods you can use to address those impacts, please contact any member of Baker Donelson's [Government Contracts Team](#).