September 21, 2026

VIA ELECTRONIC SUBMISSION

Mr. Ryan Lambert
Associate Administrator
Office of Government Contracting and Business Development
U.S. Small Business Administration
409 Third Street SW, Mail Code 6530
Washington, DC 20416

Re: Small Business Size Standards, RIN 3245–AI67, Docket No. SBA–2026–0199;

Small Business Size Standards: Revised Size Standards Methodology, Docket No. SBA–2026–0265

Dear Mr. Lambert:

The American Investment Council (AIC) appreciates the opportunity to comment on the U.S. Small Business Administration's proposed revisions to its small-business size standards[1] and the methodology used to set them.[2] We refer to the proposed standards and methodology together as the "proposal." AIC is the leading trade association for the private equity and private credit industry.[3] Its members invest in businesses across the economy, including thousands of small and mid-sized companies that supply federal agencies, support the defense and industrial base, and create American jobs. AIC supports SBA's effort to modernize its size standards and shares the agency's objective of ensuring that they reflect current market conditions. We offer these comments to help SBA consider the full framework that determines which businesses actually qualify as small before it changes a central part of that framework, and we would welcome the opportunity to work through these questions with SBA's staff.

Small-business status depends on two things. First, SBA sets a size limit for each industry, usually based on either a company's annual revenue (which SBA

[1] *Small Business Size Standards*, 91 Fed. Reg. 53,741 (Aug. 20, 2026) ("*Standards*").
[2] *Small Business Size Standards: Revised Size Standards Methodology*, 91 Fed. Reg. 54,096 (Aug. 20, 2026) ("*Methodology*").
[3] *See Our Mission*, AIC, https://www.investmentcouncil.org/about/#our-mission (last visited Sept. 21, 2026).

calls "receipts") or its number of employees.[4] Second, SBA decides whose revenues or employees count toward that limit.[5] Under SBA's rules, a company must count its own receipts or employees, as well as those of its affiliates, to determine whether it falls under the small business limit for a particular industry.[6] The SBA defines "affiliate" broadly, and in general a company is required to add the revenues or employees of other businesses under common control—even businesses that operate in different industries and compete in different markets.[7] A company that would qualify as small on its own can therefore be classified as other than small and ineligible for small business set-asides because of its affiliates, while a larger competitor with no such affiliates qualifies as small.

SBA now proposes to raise many of the size limits without examining how those new limits will operate with the existing affiliation rules.[8] That interaction can reshape competition and discourage the very investment SBA seeks to promote. A higher limit may allow one competitor to become newly eligible for small-business contracts while a smaller competitor remains ineligible because of affiliation. And as more firms qualify as small, more federal procurements may have to be reserved for small businesses under the "Rule of Two" described below, preventing firms classified as other than small from competing for work that was previously open to them.[9] The affiliation rules can also affect how businesses finance growth: a company may grow through earnings or debt without changing its status, but an equity investment that creates affiliation can cause a smaller company to lose small-business eligibility immediately.

SBA's new methodology compounds this problem. The methodology sets size limits by looking to the competitive market in which a business operates.[10] SBA asks, in substance, how large a firm can become in that market before it risks becoming "dominant in its field of operation."[11] But once SBA sets that market-based limit, the affiliation rules may measure a particular company against it using revenue or employees from businesses that operate *outside* the market altogether. The limit is based on the company's competitive market; the company's size may not be. SBA should explain why that approach makes

[4] *See* 13 C.F.R. § 121.104(a); *see also Standards*, 91 Fed. Reg. at 53,769.
[5] *See* 13 C.F.R. § 121.103(a)(6).
[6] *See id.* § 121.103(a)(1), (6) (providing that entities are affiliated where one controls or has the power to control another, or a third party controls or has the power to control both, and requiring SBA to count the "receipts, employees, or other measure of size" of the concern and "all of its domestic and foreign affiliates").
[7] *Id.*
[8] *See Standards*, 91 Fed. Reg. at 53,745-69.
[9] *See* 48 C.F.R. § 19.502-2(b). This requirement is commonly known as the "Rule of Two." *See* pp. 4-5, *infra*.
[10] *See Methodology*, 91 Fed. Reg. at 54,143-44, 54,153.
[11] *Id.* at 54,143.

sense and consider whether a more tailored affiliation regime could preserve legitimate protections against evasion without producing that mismatch.

These questions should be resolved before SBA finalizes the proposed standards. Congress requires SBA to examine the competitive environment and likely effects of a revised size standard in each affected industry.[12] The APA likewise requires SBA to consider important aspects of the problem and reasonable alternatives.[13] And SBA is still taking comments on the methodology that produced the proposed standards.[14] SBA should therefore resolve the methodology, examine how the resulting standards will interact with the affiliation rules, complete the required industry-specific analysis, and consider reasonable alternatives. It should then repropose the resulting standards so the public can comment on the framework SBA actually intends to adopt. AIC raises these points to help SBA build a record that will support the revised standards, and we are prepared to assist with the industry data and analysis that effort would require. If SBA nevertheless proceeds on the current timetable, it should at least provide a meaningful transition period for affected businesses.

I. SBA Should Complete the Industry-Specific Analysis Congress Requires Before Deciding Whether to Proceed with the Proposed Standards.

The industry-specific analysis Congress calls for would allow SBA and commenters alike to evaluate the proposed standards, but the proposal does not include it. The Small Business Act imposes specific requirements whenever SBA establishes or revises a size standard. Section 632(a)(6) requires SBA to provide a "detailed description" of each affected industry, analyze "the competitive environment for that industry," explain the approach and data used to develop the proposed standard, and assess the rule's anticipated effect "on the industry."[15] Those requirements are especially important here because SBA proposes to alter the regulatory status of more than 100,000 businesses across hundreds of industries,[16] with consequences for access to federal contracts, loans, and other government programs.[17] Before making changes of that scale, SBA should understand what those changes will do in the industries they affect.

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[12] *See* 15 U.S.C. § 632(a)(6).
[13] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 48, 51 (1983).
[14] *See Methodology*, 91 Fed. Reg. at 54,096 (inviting comments on the Revised Methodology through September 21, 2026, and explaining that SBA applied that methodology to the proposed size standards published concurrently).
[15] 15 U.S.C. § 632(a)(6)(A)-(D).
[16] *See Standards*, 91 Fed. Reg. at 53,769, 53,774.
[17] *See id.* at 53,770, 53,774.

The proposal does not provide the industry-specific analysis Section 632(a)(6) requires. SBA explains how it *calculated* the proposed thresholds, using measures such as national industry size, the number of geographic markets, and import competition.[18] But those inputs do not describe how a particular industry operates, analyze its competitive environment, or assess how the proposed threshold will affect that industry, as the Act requires. The proposal does not examine, for example, the distribution of firms by size, barriers to entry or expansion, whether firms near the proposed threshold compete with materially smaller firms, or—where federal contracting is significant—the role of federal procurement and the composition of the bidder pool. SBA's prior methodology expressly treated those conditions as relevant, considering the degree of competition, start-up costs and entry barriers, the distribution of firms by size, and federal-contracting disparities in industries with substantial federal procurement.[19] Yet the proposal does not analyze those industry-specific competitive conditions.

The proposal also fails to establish the competitive baseline necessary to assess how the new thresholds will affect competition. SBA assumes that classifying more firms as small will increase competition.[20] But SBA does not first determine how competition currently works in each affected industry. In federal contracting, that means identifying, among other things, how much work is currently competed openly, how much is already reserved for small businesses, and how many procurements currently have enough qualified small businesses to support a set-aside. Without that starting point, SBA cannot know whether the new thresholds will increase or reduce competition.[21]

The "Rule of Two" makes that missing analysis especially important. Some federal procurements are open to businesses of any size; others are reserved for small businesses. Under the "Rule of Two," a contracting officer generally must reserve or "set aside" a procurement for small businesses when the officer reasonably expects offers from at least two responsible small businesses at fair market prices.[22] Raising a size threshold can therefore convert a procurement from open competition to a small-business set-aside. If a procurement currently

[18] *See Methodology*, 91 Fed. Reg. at 54,141 (explaining that SBA calculates average market size using "national industry size, number of geographic markets, and an adjustment factor for net imports," and then uses that measure to calculate the size standard).
[19] *See Standards*, 91 Fed. Reg. at 53,742 (explaining that SBA's 2024 methodology examined "the degree of competition," "start-up costs and entry barriers," and the "distribution of firms by size," and, for industries averaging at least $20 million in annual federal contract dollars, two measures of federal-contracting disparities).
[20] *See Standards*, 91 Fed. Reg. at 53,770-71.
[21] *See Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010) (an agency "could not accurately assess any potential increase or decrease in competition" without assessing the existing level of competition).
[22] *See* 48 C.F.R. § 19.502-2(b).

has only one qualifying small business, it may remain open to firms of all sizes. If the new threshold causes a second capable firm to qualify as small, the procurement may have to be set aside, and firms that remain classified as other than small can no longer compete. The new threshold may thus increase the number of firms eligible for the set-aside while shrinking the overall pool of firms permitted to compete.

That shift matters not only to firms excluded from the restricted competition, but also to the federal government itself. SBA cites a Naval Postgraduate School study concluding that "restricted competition contributes to weak competitive procurements" by limiting the government's choices as to cost, quality, and delivery.[23] But SBA never analyzes whether the proposed thresholds will cause more procurements in particular industries to move from open to restricted competition. SBA's own estimates underscore the importance of that missing analysis. It projects that 114,541 additional businesses will qualify as small, including 37,002 existing federal contractors that held more than $71 billion in contracts in FY 2025.[24] It does not estimate how many procurements will consequently satisfy the Rule of Two and become set-asides, or how many firms will thereby be excluded. Without that analysis, SBA cannot know whether classifying more firms as small will increase competition or improve procurement outcomes. Congress required SBA to answer those and other questions before proceeding with the proposed thresholds.

II. SBA Should Address Other Important Aspects of the Small-Business Framework Before Proceeding.

The APA requires SBA to examine the relevant data, consider the important aspects of the problem before it, and consider reasonable alternatives to its chosen approach.[25] Several features of the proposal warrant further analysis before SBA decides whether and how to revise the size standards. In particular, SBA should consider how the proposed thresholds will interact with its existing affiliation rules, whether those rules remain consistent with the market-based methodology SBA now proposes to use, how that interaction will affect competition and growth, and whether alternative approaches could better advance SBA's stated objectives.

[23] *See Standards*, 91 Fed. Reg. at 53,771 (citing Amanda M. Girth & Trevor L. Brown, *Examining the Effects of Set Aside Policies on Competition and Growth for Small and Mid-Sized Suppliers* (Acquisition Research Program, Naval Postgraduate School, Sponsored Report Series, Report No. OSU-CM-18-232, Sept. 6, 2018)).
[24] *Standards*, 91 Fed. Reg. at 53,774.
[25] *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43.

A. *SBA Should Consider How the Proposed Size Standards Will Interact with Existing Affiliation Rules.*

SBA cannot assess the competitive effects of the proposed size standards without considering how its existing affiliation rules will operate alongside them. As described above, the size standards establish the maximum revenues or employees a business may have and still qualify as small in a particular industry.[26] The affiliation rules determine whose receipts or employees count toward that limit. When SBA determines that businesses are affiliated, it generally aggregates their revenues, employees, or other measure of size.[27] A business that is smaller than the applicable threshold on its own may therefore be classified as other than small because of the aggregate size of its affiliates.

The interaction between those rules can produce materially different treatment of businesses competing in the same market. After SBA raises a size threshold, one firm may qualify as small even though it is as large as—or larger than—a competing firm on a standalone basis. The competitor may nevertheless remain other than small because SBA attributes to it the revenues or employees of affiliated businesses. And those affiliates need not compete in the same industry. Businesses of comparable standalone size, competing for the same customers and contracts, may therefore receive different regulatory classifications because one firm's size calculation includes businesses operating elsewhere in the economy.

Those classifications have immediate competitive consequences. A firm classified as small may compete for contracts reserved exclusively for small businesses, receive preferences or advantages in other federal procurement programs, and qualify for loans and other government programs tied to small-business status.[28] A similarly sized competitor classified as other than small may be excluded from those opportunities altogether. In federal contracting, the disparity can be particularly significant: the two firms may compete directly for unrestricted work, yet only one may be permitted to bid when the same agency reserves a procurement for small businesses.[29] Raising the threshold can therefore alter the competitive position of firms within an industry even when their own economic scale relative to one another has not changed.

[26] *See* 13 C.F.R. §§ 121.104(a), 121.106(a), 121.201.
[27] *See id.* § 121.103(a)(6).
[28] *See Standards*, 91 Fed. Reg. at 53,770, 53,774.
[29] *See* 48 C.F.R. § 52.219-6(c)(1) (providing that, for a total small-business set-aside, "[o]ffers are solicited only from small business concerns" and offers from concerns that are not small businesses "will be rejected"); *see also id.* § 6.203(a) (explaining that contracting officers may set aside solicitations to allow only small businesses to compete).

The proposal does not examine how the new thresholds will affect that competitive dynamic. SBA does not consider how firms that newly qualify as small will compete against similarly situated firms that remain other than small because of affiliation, how often those firms compete in the same markets, or how the resulting differences in program eligibility will affect competition within the affected industries. Those consequences bear directly on whether the revised standards will promote the competition and growth SBA seeks to advance.

Raising the thresholds changes the line between small and other-than-small businesses, while the affiliation rules determine how individual firms are measured against that line. SBA should evaluate how those two components will operate together—and the competitive landscape they will create—before proceeding with the proposed standards.

B. SBA Should Explain How Cross-Market Affiliation Fits Its Market-Based Methodology.

SBA's revised methodology creates an important mismatch between how SBA sets a size standard and how it determines the size of the business measured against that standard. The Small Business Act defines a small business as one that is both "independently owned and operated" and "not dominant in its field of operation."[30] SBA's revised methodology focuses on the second requirement. It asks how large the market is in which a business competes and how much scale a firm can attain in that market before it risks becoming dominant.[31] SBA treats the "field of operation" as having both a product and a geographic dimension, expressly drawing on the way the FTC and DOJ define relevant markets.[32] A firm competing in a large national market may accordingly qualify as small at a greater size than a firm competing in a narrow local market, because the same amount of economic scale carries very different competitive significance in those two markets.

SBA grounds its affiliation rules in the Act's separate requirement that a small business be "independently owned and operated." SBA has explained that it interprets that requirement to call, in some circumstances, for counting other entities affiliated with the business in determining its size.[33] The rules therefore focus principally on control rather than competitive overlap: businesses may be affiliated where one controls or has the power to control another, or where a third party controls or has the power to control both, whether or not that control is

[30] 15 U.S.C. § 632(a)(1).
[31] *See Methodology*, 91 Fed. Reg. at 54,096, 54,143.
[32] *See id.* at 54,144, 54,153.
[33] *See* 13 C.F.R. § 121.301.

actually exercised.[34] Once SBA finds affiliation, it generally counts the affiliates' receipts, employees, or other measure of size.[35] SBA has justified those rules as a means of ensuring that small-business contracting benefits go to small businesses rather than other entities, including by preventing businesses from using nominally separate entities to continue receiving those benefits.[36]

That rationale may justify looking beyond formal corporate separateness when determining whether a business is truly independent. But it does not answer the separate question of how broadly SBA should aggregate the economic activity of affiliated businesses once it finds common control. The statutory independence requirement does not itself require SBA to count the receipts or employees of affiliated businesses operating in unrelated markets in every circumstance. The breadth of that aggregation is a regulatory choice—and one that now sits uneasily with SBA's market-based methodology. The revised methodology defines the relevant product and geographic market with considerable precision when determining how large a business can become before it risks dominance, while the affiliation rules measure that business against the resulting threshold using receipts or employees generated outside that market. An operating company controlled by a private-equity sponsor may therefore have to count the size of affiliated portfolio companies that sell different products, serve different customers, and compete in entirely different markets. A regional specialty contractor, for example, may have to count the revenues of affiliated software or healthcare companies even though those companies do not compete for the contractor's customers, do not increase its market share, and do not make it more dominant in its field of operation.

SBA should explain why that cross-market aggregation remains appropriate under a methodology that otherwise turns on market-specific measures of competitive scale. The two statutory requirements need not be coextensive, and affiliation rules can properly implement the independence requirement. But SBA has not explained why the independence prong requires an economy-wide measure of size when the dominance prong is calibrated to a defined competitive

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[34] *See id.* § 121.103(a)(1) (providing that concerns are affiliates when one "controls or has the power to control" another, or a third party controls or has the power to control both, and that "[i]t does not matter whether control is exercised, so long as the power to control exists").

[35] *See id.* § 121.103(a)(6) (providing that SBA counts the "receipts, employees, or other measure of size" of the concern and "all of its domestic and foreign affiliates").

[36] *See Affiliation for Business Loan Programs and Surety Bond Guarantee Program*, 81 Fed. Reg. 41,423, 41,427 (June 27, 2016) (explaining that the general affiliation rules applicable to federal contracting are intended to ensure that small businesses, rather than another entity, receive and perform contracts carrying small-business preferences, and that the newly organized concern rule prevents former small businesses from creating spin-off companies to continue receiving small-business contracting benefits).

market, or whether a more tailored affiliation rule could preserve program integrity without producing that mismatch.

C. SBA Should Consider Whether the Proposal Will Undermine Its Stated Policy Objectives.

SBA should assess whether the proposal may work against the same policy objectives it invokes to justify expanding the size standards. SBA emphasizes increased competition, improved access to capital, greater room for businesses to grow, and a stronger industrial base.[37] But the interaction between the proposed thresholds and the existing affiliation rules may produce countervailing effects in each area. It may reduce overall competition for federal work, recreate the capital-access and growth disincentives SBA seeks to address, and discourage investment in businesses that support the federal industrial base.

1. The Proposal May Reduce Overall Competition in Federal Contracting.

The proposed standards may reduce overall competition in federal contracting if SBA raises the size thresholds without also addressing the existing affiliation rules. As explained above, expanding the small-business pool may cause additional procurements to satisfy the Rule of Two and move from unrestricted competition to small-business set-asides.[38] Firms classified as other than small—including firms that remain so because of affiliation—then lose access to work for which they previously could compete. The concern is not simply that more procurements may become set aside. It is that the proposal may create more set-asides without bringing into the small-business pool all similarly sized firms that actually compete for that work. A firm may newly qualify as small under the higher threshold while a smaller direct competitor remains excluded because SBA counts the size of affiliates operating in unrelated markets. By contrast, a more tailored affiliation rule could also produce additional set-asides, but it would also bring more of those direct competitors into the small-business pool, increasing competition within the resulting set-asides.

SBA's own analysis makes that distinction important. As Section I discusses, SBA's own record includes evidence that restricted competition weakens procurement outcomes for the government.[39] Yet its analysis generally treats an increase in the number of businesses qualifying as small as an increase in competition.[40] The relevant question is therefore not only how many procurements become restricted, but also how many firms that actually compete

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[37] *See Standards*, 91 Fed. Reg. at 53,743, 53,770-71.
[38] *See* pp. 4-5, *supra*.
[39] *Standards*, 91 Fed. Reg. at 53,771.
[40] *See id.* at 53,770-71, 53,773.

for that work remain eligible once the restriction applies. The GAO finding SBA itself invokes—that more competition leads to better performance and price[41]—makes that question important to the government as well as to the affected firms. SBA should evaluate that effect before relying on increased competition as a justification for the proposed standards.

2. The Proposal May Recreate the Growth and Capital-Access Problems SBA Seeks to Address.

SBA should consider whether the existing affiliation rules will recreate the same capital-access and growth disincentives that the proposed standards are designed to alleviate. SBA explains that loss of small-business status can restrict access to SBA-backed loans and guarantees and, in turn, limit investment in "equipment, technology, and workforce development."[42] Raising the size standards is intended to give businesses more room to obtain capital, invest, and grow before losing the benefits of small-business status.[43]

The affiliation rules can undermine that objective, particularly for the mid-sized suppliers the government has an interest in retaining and growing. These are businesses large enough to perform complex federal contracts, but still small enough on a standalone basis to qualify for set-aside opportunities. Yet the affiliation rules can make their eligibility turn not on how large they are, but on how they finance their growth. A company can expand through retained earnings or debt without triggering affiliation so long as it remains below the applicable size threshold. But the same company may lose small-business status when it accepts an equity investment that brings growth capital, industry expertise, and governance support, because SBA may aggregate the revenues or employees of other portfolio companies even though the operating company's own revenues, employees, and competitive position have not changed.

That asymmetry can move the "benefit cliff" from the point at which the business actually outgrows the size standard to the point at which it accepts the investment needed to grow. And it can be especially consequential where outside capital is needed to meet federal contracting requirements—for example, to obtain or maintain facility security clearances, upgrade technology or cybersecurity systems, acquire specialized equipment, or build the capacity to perform larger contracts. The rules can therefore create an incentive to decline or delay productive equity investment in precisely the suppliers SBA and federal agencies have an interest in helping scale. SBA should account for that effect in

[41] *Id.* at 53,771.
[42] *Id.* at 53,743.
[43] *See id.* at 53,770-71.

evaluating whether the proposed standards will achieve their growth and capital-access objectives.

3. The Proposal May Undermine SBA's Industrial-Base Objectives.

SBA should consider whether the interaction between the proposed thresholds and existing affiliation rules will discourage the private investment needed to strengthen the small-business industrial base. SBA itself relies on Executive Order 14,267's directive to reduce anticompetitive regulatory barriers in declining to lower any size standard.[44] It reasons that pushing firms out of small-business status may cause firms to be acquired or exit, increasing consolidation, reducing innovation and choice, and raising costs to the government.[45] The same concern applies when the affiliation rules push otherwise-small firms out of small-business status because of the size of affiliated businesses operating in unrelated markets. Those are the same trends SBA says its proposal is intended to reverse.

Growth capital can be an important part of reversing those trends. Small and mid-sized suppliers may need outside investment to expand production, acquire equipment, develop new technologies, hire employees, or build the capacity required to perform larger and more demanding government contracts. Yet, as discussed above, an equity investment can trigger affiliation with other portfolio companies and cause an otherwise small operating company to lose small-business status. That consequence can make investment in those suppliers less attractive precisely when SBA is seeking to expand the pool of capable firms and strengthen the resilience of the industrial base.

SBA should account for that effect in assessing the proposal's industrial-base consequences. Raising the thresholds may give some firms additional room to grow, but the benefit may be limited for businesses whose access to growth capital carries affiliation consequences. SBA should consider whether the combined regime will encourage capital to flow into small defense and industrial suppliers or instead create incentives to invest elsewhere. That inquiry bears directly on SBA's stated goals of reducing consolidation, expanding the supplier base, and strengthening the Nation's industrial capacity.

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[44] *See id.* at 53,743; *see also* Exec. Order No. 14,267, *Reducing Anti-Competitive Regulatory Barriers*, 90 Fed. Reg. 15,629 (Apr. 9, 2025).

[45] *See Standards*, 91 Fed. Reg. at 53,743 (explaining that firms excluded from small-business status may "be acquired or exit," consolidating sectors including manufacturing, construction, and IT, "reducing innovation and choice, and raising costs to the taxpayer").

D. SBA Should Consider Reasonable Alternatives That Would Better Align the Affiliation Rules with the Proposed Standards.

SBA has several readily available ways to address the interaction between the new size standards and the existing affiliation rules while preserving the affiliation rules' function, but the proposal considers none of them. SBA's alternatives analysis considers two principal options: retaining the existing size standards or updating them under the prior methodology.[46] Neither alternative addresses the affiliation rules or asks whether those rules should be adjusted as SBA adopts a fundamentally different, market-based approach to setting size standards. That leaves unexplored the central issue raised above: whether SBA can better align the way it measures a firm's size with the competitive market that now determines the appropriate threshold.

One straightforward alternative would be to adopt a rebuttable presumption or safe harbor for commonly controlled businesses operating in unrelated markets. Businesses in different markets could be presumed not to have their size aggregated unless the facts show meaningful operational integration: common officers or directors; shared facilities or personnel; joint contract performance or cross-subcontracting above a specified threshold; economic dependence; or reliance on an affiliate's past performance or resources to compete for federal work. Such an approach would preserve SBA's ability to address evasion and genuine integration while focusing aggregation on relationships that bear some connection to competitive capacity.

SBA could also limit aggregation when affiliated businesses operate in unrelated competitive markets. SBA could, for example, aggregate the receipts or employees of affiliates that compete in the same or related product and geographic markets, while excluding affiliates whose operations have no competitive relationship to the business whose size is being determined. It could use NAICS classifications as an administrable screen, the product-and-geographic-market framework already built into the revised methodology, or some combination of the two. That approach would preserve aggregation where affiliated businesses operate together or in related markets while avoiding the result in which a contractor's small-business status turns on the revenues of an affiliated healthcare or software company that does not compete for the same customers or contracts.

SBA could alternatively tailor the affiliation rules for particular programs or forms of investment. Its existing regulations already show that affiliation need not operate identically in every context. For example, SBA's general affiliation rules provide that businesses owned and controlled by Indian Tribes, Alaska Native

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[46] *See id.* at 53,773.

Corporations, Native Hawaiian Organizations, and Community Development Corporations are not affiliated with their parent entities or sister concerns based on common ownership or management.[47] Applicants for the Business Loan, Disaster Loan, and Surety Bond Guarantee Programs are also subject to a separate set of affiliation rules.[48] The regulations create express exceptions to affiliation, including for businesses owned in whole or substantial part by investment companies licensed under the Small Business Investment Act of 1958.[49] And SBA uses a separate affiliation framework for the Small Business Innovation Research and Small Business Technology Transfer programs, including rules specifically addressing portfolio companies and private-equity investment.[50] These provisions show that SBA can calibrate affiliation rules to the objectives and risks of a particular program or form of investment rather than treating the general affiliation rule as the only available approach. They also reflect, for the most part, SBA's own regulatory judgment rather than a congressional directive. Congress has identified which entities and firms may participate in particular programs, but the decision to disapply the general affiliation rule in these contexts is one SBA made in exercising its authority under 15 U.S.C. § 632(a)(2)(A) to specify the detailed standards by which a concern is determined to be small. SBA has that same discretion here.

SBA should evaluate these and other alternatives before deciding to pair substantially revised, market-based thresholds with the existing affiliation regime unchanged. Each offers a way to preserve safeguards against manipulation while addressing the competitive, capital-access, and industrial-base concerns discussed above. The APA requires consideration of obvious alternatives within the ambit of an agency's existing policy, particularly where those alternatives could advance the agency's objectives while avoiding significant countervailing effects.[51]

III. SBA Should Resolve the Methodology and Repropose the Resulting Standards.

SBA cannot finalize size standards generated by a methodology that is itself still under review. SBA has proposed new size standards while simultaneously

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[47] *See* 13 C.F.R. § 121.103(b)(2).
[48] *See id.* §§ 121.103(a)(8), 121.301.
[49] *See id.* § 121.103(b)(1).
[50] *See id.* §§ 121.103(a)(7), (b)(8), 121.702(c) (establishing specialized affiliation rules for the Small Business Innovation Research and Small Business Technology Transfer programs); *see also id.* § 121.702(c)(4)(iii), (9), (11) (providing, among other things, that shared investors alone do not establish affiliation with another portfolio company, creating a separate portfolio-company exception in certain circumstances, and incorporating the exception for certain investment companies).
[51] *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020).

asking the public to comment on the methodology used to calculate them.[52] The two proposals have the same comment deadline.[53] SBA is therefore asking the public, at the same time, whether the formula is correct and whether the outputs of that formula are correct.

Any material change to the methodology will necessarily call the proposed standards into question. SBA has specifically asked whether it chose the right level of industry aggregation, the right measure of size, the right method for defining geographic markets, and the right anchor points for converting average market size into a size standard.[54] If comments persuade SBA to change any of those features, the methodology will produce different standards. The standards the public commented on will no longer be the standards generated by the methodology SBA ultimately adopts.

The public should have an opportunity to comment on those resulting standards before they become final. The better course is to avoid a sequence in which SBA asks the public to comment on one set of thresholds, revises the methodology in response to comments, generates a different set of thresholds, and adopts those new thresholds for the first time in the final rule. The public would never have had an opportunity to evaluate whether the revised thresholds are appropriate, how they affect particular industries, or whether the revised methodology has been applied correctly. Notice and comment must occur after SBA has identified the standards it actually proposes to adopt, not before.[55]

The same sequencing concern applies to the analysis the proposal does not yet contain. As discussed above, SBA has not analyzed how the new thresholds will interact with the affiliation rules or what the proposed standards will do to competition in the affected industries.[56] If SBA undertakes that analysis in response to comments, the results may affect both the appropriate thresholds and SBA's justification for adopting them. The public must have an opportunity

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[52] *See Standards*, 91 Fed. Reg. at 53,741 (explaining that SBA is publishing the revised methodology for public comment "in conjunction with" the proposed rule and that the revised methodology "was used to calculate the size standards proposed herein"); *Methodology*, 91 Fed. Reg. at 54,096 (explaining that SBA applied the revised methodology to the proposed size standards published concurrently).
[53] *See Standards*, 91 Fed. Reg. at 53,741 (requiring comments by September 21, 2026); *Methodology*, 91 Fed. Reg. at 54,096 (same).
[54] *See Methodology*, 91 Fed. Reg. at 54,154.
[55] *See Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008).
[56] *See* pp. 9-12, *supra*.

to examine that analysis, test its assumptions, and comment on its implications before SBA acts on it.[57]

SBA therefore should resolve these issues and repropose the resulting standards. It should first consider the comments on the methodology and the interaction between the size standards and affiliation rules, determine the methodology and analysis it intends to rely on, and calculate the standards that follow. It can then give the public a meaningful opportunity to comment on the actual standards and reasoning that SBA proposes to adopt.

IV. At Minimum, SBA Should Provide a Meaningful Transition Period Before Implementing Any New Standards.

Any new size standards should be phased in gradually so that businesses and agencies can adjust to the substantial changes they will produce in the federal marketplace. The proposed standards would change which firms qualify as small, which firms may compete for set-aside work, and—through the Rule of Two—which procurements may move from unrestricted competition to small-business set-asides. Those changes will affect not only individual bids but the competitive assumptions on which contractors have planned their businesses.

Contractors make significant investments years before a particular procurement reaches award. They hire and train employees, acquire equipment, develop past performance, form teaming relationships, pursue acquisitions, and invest in capabilities based on the markets and contract vehicles in which they expect to compete. A firm may have made those investments expecting to compete for work that is currently unrestricted, only to find that the work becomes unavailable because the new standards cause future orders or procurements to be reserved for small businesses. Small businesses likewise need time to assess how a larger pool of eligible competitors will affect their pipelines and investment plans. Immediate implementation would force both groups to adjust to a materially different competitive environment after many of those decisions have already been made.[58]

A transition period would allow SBA to obtain the benefits it anticipates from revised standards without unnecessarily disrupting existing contracting

[57] *See Chamber of Com. v. SEC*, 443 F.3d 890, 899-900 (D.C. Cir. 2006) (holding that the agency could not rely on new analysis developed after the comment period without affording interested parties an opportunity to comment).

[58] *See Regents of the Univ. of Cal.*, 591 U.S. at 30, 33 (explaining that an agency must consider "serious reliance interests" engendered by an existing policy and "assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns"); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (explaining that it is arbitrary or capricious to ignore serious reliance interests engendered by a prior policy).

relationships and investments. SBA therefore should phase in any materially revised standards over at least five years. A five-year transition corresponds to a common federal contracting horizon. The Federal Acquisition Regulation generally limits the combined basic and option periods of service contracts to five years absent agency approval,[59] and separately provides that the ordering period for task-order contracts for advisory and assistance services normally may not exceed five years.[60] That five-year horizon is also reflected in federal contracting practice: agencies often structure indefinite-delivery, indefinite-quantity contracts with a one-year base period followed by four one-year options.[61]

At minimum, SBA should apply the new standards prospectively to new contracting opportunities and preserve the existing eligibility framework for orders and opportunities under contract vehicles that businesses entered or invested in under the current rules. That approach would give contractors time to adjust their pipelines, workforce plans, investments, teaming arrangements, and acquisition strategies while allowing the federal marketplace to transition in an orderly way.

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AIC supports thoughtful modernization of the small-business size standards. We ask that SBA, before finalizing, address the interaction between the new thresholds and the existing affiliation rules, complete the industry-specific analysis Congress requires, and resolve the methodology on which the proposed standards depend. Those issues go to the core of how the revised framework will operate in practice—who will qualify as small, how competition will change, and whether the new standards will advance SBA's stated objectives. SBA should address those issues and repropose the resulting standards for public comment.

AIC and its members are committed to working constructively with SBA and its staff as SBA considers these questions. We appreciate SBA's consideration of these comments and would welcome the opportunity to discuss the issues raised in this letter and to provide additional information that may assist SBA in developing a framework that promotes competition, growth, access to capital, and a strong industrial base.

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[59] *See* 48 C.F.R. § 17.204(e).
[60] *See id.* § 16.505(c)(1).
[61] *See, e.g.*, *DRS Technical Services, Inc.*, B-412070, at 2 (Comp. Gen. Dec. 2, 2015) (describing an indefinite-delivery, indefinite-quantity contract with a one-year base period and four one-year options); *Spur Design, LLC*, B-412245.3, at 2 (Comp. Gen. Feb. 24, 2016) (same); *Team Systems International, LLC*, B-410420, at 1 (Comp. Gen. Dec. 19, 2014) (same).

Respectfully submitted,

/s/ Shelby Telle

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