



U.S. Small Business  
Administration

# **SMALL BUSINESS COMPLIANCE GUIDE: A GUIDE TO THE SBA'S SIZE PROGRAM AND AFFILIATION RULES**

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U.S. Small Business Administration

A handbook for small businesses and Federal officials interested in learning about the SBA's size program and affiliation rules.

**This document is published by the U.S. Small Business Administration pursuant to the National Defense Authorization Act of Fiscal Year 2013 (NDAA), Pub. L. 112-239, § 1681(c). The NDAA requires that SBA publish this compliance guide to assist business concerns in accurately determining their status as a small business.**

**This guide has no legal effect and does not create any legal rights. Compliance with the procedures described in this guide does not establish compliance with the rule or establish a presumption or inference of compliance. The legal requirements that apply are governed by SBA's size regulations, which control if there is any inconsistency between the rule and the information in this guide.**

# CONTENTS

## OVERVIEW

1. Why is the issue of a firm's size important?
2. What is NAICS?
3. What are size standards?
4. Where can current size standards be found?

## BUSINESS CONCERN

1. How does SBA define the term "small business concern"?
2. Is a small agricultural cooperative a business concern?
3. How must a small business concern be legally organized?
4. How are predecessor entities treated?
5. Where is the regulatory definition of a "business concern"?

## AFFILIATION

1. How does SBA determine affiliation?
2. Where are SBA's regulations governing affiliation?
3. What are the general principles of affiliation?

## BASES FOR AFFILIATION

1. What is affiliation based on stock ownership (13 C.F.R. § 121.103(c))?
2. What is affiliation based on stock options, convertible securities, or an agreement to merge (13 C.F.R. § 121.103(d))?
3. What is affiliation based on common management (13 C.F.R. § 121.103(e))?
4. What is affiliation based on an identity of interest between individuals or businesses, including family members (13 C.F.R. § 121.103(f))?
5. What is affiliation based on the newly organized concern rule (13 C.F.R. § 121.103(g))?
6. What is affiliation based on common investments or economic dependence (13 C.F.R. § 121.103(a) and (f))?
7. When may SBA find affiliation with parties to a joint venture (13 C.F.R. § 121.103(h)(1) and (2))?
8. When may SBA find affiliation between a prime contractor and a subcontractor (13 C.F.R. § 121.103(h)(4))?
9. When may SBA find affiliation as a result of a franchise or license agreement (13 C.F.R. § 121.103(i))?
10. What is affiliation based on the totality of circumstances (13 C.F.R. § 121.103(a)(5))?
11. Are there any exceptions to the rules on affiliation (13 C.F.R. § 121.103(b))?

## SUMMARY OF AFFILIATION

### CALCULATING SIZE – RECEIPTS

1. How does a firm know if it is small for a receipts-based size standard?
2. What if the company has been in business for less than five years?
3. Are receipts of affiliates included?
4. What if an affiliate is recently acquired?
5. What if the affiliate has been in business for less than five years?

6. What if the business is no longer my affiliate?
7. What does SBA mean by the term “receipts”?
8. What items are excluded from the definition of “receipts”?
9. What document(s) are used to determine a firm’s “receipts”?
10. What if a tax return has not yet been filed for a fiscal year?
11. What is a “completed fiscal year”?
12. Where is the regulation governing a firm’s annual receipts?

#### CALCULATING SIZE – EMPLOYEES

1. How does a firm know if it is small for an employee-based size standard?
2. Who is considered an employee?
3. Are volunteers considered employees?
4. Are part-time and temporary employees counted the same as full-time employees?
5. What if the firm has been in business for less than two years?
6. How is the average number of employees calculated, including affiliates?
7. Must the employees of a former affiliate be included in the calculation?
8. Where is the regulation governing a firm’s number of employees?

#### FURTHER INFORMATION AND CONTACTS

# OVERVIEW

## 1. Why is the issue of a firm's size important?

In order to be eligible for certain Federal programs and certain Federal contracts and subcontracts, a firm must be a “small business concern.” SBA's size regulations, which are set forth at [13 CFR part 121](#), are used to determine eligibility for all SBA and Federal programs that require a concern to be small. For example, a business must be small for the following government contracting or business development programs:

- Small business set-asides;
- Small Business Innovation Research (SBIR) program;
- Small Business Technology Transfer (STTR) program;
- Certificate of Competency (COC) program;
- Historically Underutilized Business Zone (HUBZone) program;
- Women-Owned Small Business (WOSB) and Economically Disadvantaged Women-Owned Small Business (EDWOSB) programs;
- Service-Disabled Veteran-Owned Small Business (SDVOSB) program;
- Small business subcontracting;
- 8(a) Business Development program; and
- 7(j) Management and technical assistance program.

SBA's size rules also apply to small business loan programs and grant programs. A number of government agencies, including the Food and Drug Administration and the Department of Veterans Affairs, operate programs for which small business status is a requirement for eligibility. The size rules apply to these programs, as well.

## 2. What is the NAICS?

To be considered small, business concerns must meet the size standard assigned to a six-digit North American Industrial Classification System (NAICS) code. The Office of Management and Budget created and is responsible for maintaining and revising these codes. The Census Bureau [website](#) contains

definitions and examples to help businesses determine which NAICS codes best describe their business. Although the system does not have codes for every single type of business in the United States, it is remarkably comprehensive and every business can find a code that describes the kind of business activity in which it engages. The government revises the codes every five years, so a firm's code(s) may change slightly over time.

**(NOTE:** The Internal Revenue Service uses Principal Business Activity Codes—sometimes known as Principal Business or Professional Activity Codes—which also contain six-digits. Although the IRS codes are based on the NAICS, the two systems are not the same. An IRS code is not the same as an NAICS code and should never be used to determine a company's size.)

Companies are responsible for choosing their own NAICS codes; the Federal government does not select or assign NAICS codes. A company may have a single NAICS code or as many NAICS codes as it needs to describe the various types of economic activity it performs. If a company has more than one NAICS code, it must designate one code as its primary code. Ordinarily, a firm's primary NAICS code describes the activity from which it earns most of its revenue.

### **3. What are size standards?**

A business is considered “small” or “other than small” depending on its size when compared to a size standard. As explained above, SBA assigns a size standard to each 6-digit NAICS code for private sector industries. A business qualifies as a small business concern only by reference to an NAICS code(s). Most size standards are stated in terms of either receipts or employees; in limited cases the size standard is based on something other than receipts or employees (e.g., average assets for certain financial institutions). SBA determines whether an entity qualifies as a small business concern by counting its receipts or employees plus the receipts or employees of all its domestic and foreign affiliates, regardless whether the affiliates are organized for profit. [13 C.F.R. § 121.103\(a\)\(6\)](#).

In order to qualify as a small business concern for a particular federal procurement, a business must meet the size standard that corresponds to the NAICS code assigned to the solicitation and contract. Federal Contracting Officers are required to assign a NAICS code to every procurement.

*Example:* The Contracting Officer assigns NAICS code 541519, “Other Computer Related Services,” to a solicitation. NAICS code 541519 has a size standard of \$34 million in average annual receipts. To be considered a small business for this solicitation and the resulting contract, the average annual receipts of the business plus those of its

affiliates (if any) must total no more than \$34 million. If the total is greater than \$34 million, it is not a small business concern for purposes of this solicitation and contract. (Instructions for calculating receipts are provided below.)

SBA reviews size standards on an on-going basis to determine whether they need to be adjusted in light of current economic conditions. Federal law also requires SBA to review receipts-based size standards at least every five years to adjust them for inflation, if necessary. It is a good practice to consult the [Table of Size Standards](#) from time to time to see whether the size standard(s) for a firm's NAICS code(s) have been modified.

Certain SBA programs have alternative size standards, that is, size standards other than (or in addition to) those listed in the Table of Size Standards. For example, in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, the size standard is 500 employees regardless of NAICS. [13 C.F.R. §121.702\(c\)](#).

In the 7(a) and Development Company Loan Programs, an Applicant business may qualify under either the industry small business size standards or the alternative size standard. To qualify under the alternative size standard, the Applicant (including affiliates) must meet the following:

- a. The maximum tangible net worth may not exceed \$15 million; and
- b. The average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years before the application date may not exceed \$5.0 million.

Applicants for the Small Business Investment Company (SBIC) program may use the Table of Size Standards or the alternative size standard thresholds of \$24 million in tangible net worth and \$8 million in net income. [13 C.F.R. § 121.301\(c\)](#).

Surety Bond Guarantee assistance requires that an applicant, when combined with its affiliates, meet the size standard “for the primary industry in which such business concern, combined with its affiliates, is engaged.” [13 C.F.R. § 121.301\(f\)](#).

#### **4. Where can current size standards be found?**

To help business owners determine whether their businesses are small, SBA publishes a [Table of Small Business Size Standards](#) which lists the size standard that applies to each NAICS code. The current table is based on the 2022 NAICS; the table lists each NAICS code and its assigned size standard. SBA has released a [size standards tool](#) to help businesses determine whether they qualify as small for purposes of Federal contracting.

The size standards also may be found at [13 C.F.R. § 121.201](#).

The industry-based size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are defined by the U.S. Department of Labor (DOL) and listed annually in the Federal Register. The current list of labor supply areas is available on the [DOL's website](#).

## **BUSINESS CONCERN**

### **1. How does SBA define the term “small business concern”?**

In order to be considered a small business, a concern must first satisfy the definition of a “business concern.” A “business concern” is an entity that is:

- organized for profit,
  - has a place of business located in the United States, and
  - operates primarily within the United States
- or**
- makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor.

A firm must satisfy all three elements of that definition to be considered a “business concern.” A nonprofit organization is not a business concern. Once a firm qualifies as a “business concern,” it must then determine whether it is “small” by selecting the applicable NAICS code and calculating whether it satisfies the size standard assigned to that code.

### **2. Is a small agricultural cooperative a business concern?**

A small agricultural cooperative is eligible if it is an association acting pursuant to the provisions of the Agricultural Marketing Act ([12 U.S.C. 1141j](#)) and its size does not exceed the size standard established by SBA for other similar agricultural small business concerns. A small agricultural cooperative's member shareholders are not considered to be affiliated with the cooperative simply because they are members of the cooperative. However, a business concern or cooperative that does not qualify as small may not be a member of a small agricultural cooperative.

### **3. How must a small business concern be legally organized?**

A business concern may be organized as an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative. Where the business is a joint venture, however, there can be no more than 49% participation by foreign business entities in the joint venture.

### **4. How are predecessor entities treated?**

A firm and its predecessor entity will be treated as one business concern if a substantial portion of its assets and/or liabilities are the same. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size of the new business concern.

### **5. Where is the regulatory definition of a “business concern”?**

It is located at [13 C.F.R. § 121.105](#).

## **AFFILIATION**

### **1. How does SBA determine affiliation?**

Concerns and entities are affiliated with each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether the control is exercised, so long as the power to control exists. [13 C.F.R. § 121.103\(a\)\(1\)](#). Affiliation may also be found where one party exercises control *indirectly* through a third party. [13 C.F.R. § 121.103\(a\)\(4\)](#). SBA has a specific set of rules that explain when another person, business or entity is considered an affiliate for size purposes.

### **2. Where are SBA’s regulations governing affiliation?**

SBA’s rules on affiliation for its programs (except SBIR, STTR, Business Loans, Disaster Loans, and Surety Bonds) are found at [13 C.F.R. § 121.103](#). The regulations are available online at [Part 121 of Title 13 of the Code of Federal Regulations \(CFR\)](#). A firm may also contact any of the points of contact at the end of this document to receive a copy of the rules.

For the SBA’s Business Loan, Disaster Loan, and Surety Bond programs, the affiliation regulation can be found at [13 C.F.R. § 121.301\(f\)](#). The Business Loan programs consist of the 7(a) Loan program, the Microloan program, the



Intermediary Lending Pilot program, and the Development Company Loan program (“504 Loan program”). The Disaster Loan programs consist of Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance program loans. Five specific affiliation rules apply to the Business Loan, Disaster Loan, and Surety Bond programs:

- 1) Affiliation based on ownership;
- 2) Affiliation arising under stock options, convertible securities, and agreements to merge;
- 3) Affiliation based on management;
- 4) Affiliation based on identity of interest; and
- 5) Affiliation based on franchise and license agreements.

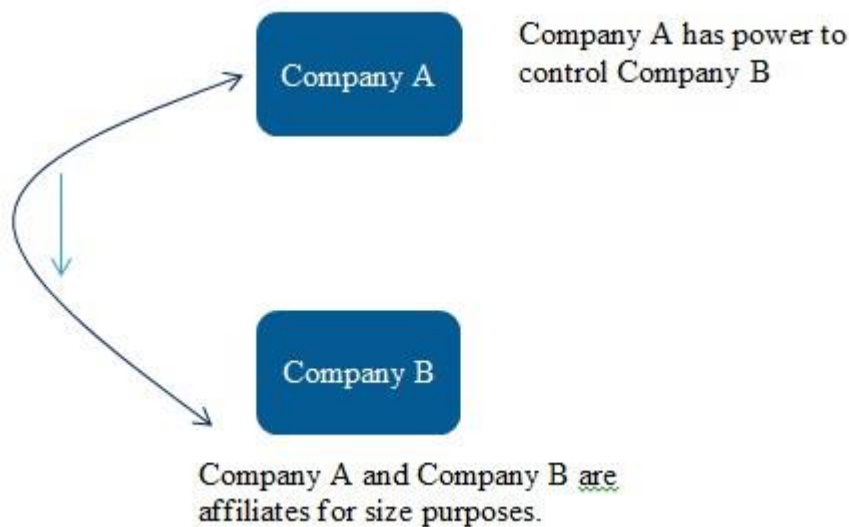
SBA’s affiliation regulations governing the SBIR and STTR programs can be found at [13 C.F.R. § 121.702\(c\)](#). Information about the specific affiliation rules for the SBIR and STTR programs, including a compliance guide and FAQs, is available at the [SBIR webpage](#).

Differences in the treatment of affiliation in these programs are noted below.

### **3. What are the general principles of affiliation?**

Affiliation exists when one business controls or has the power to control another or when a third party controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties.

Control may be affirmative or negative. Negative control includes circumstances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.



If SBA determines that affiliation exists, then SBA will count the receipts, employees, or other measure of size for the concern whose size is at issue plus the receipts, employees, or other measure of size for all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

SBA commonly receives questions about whether affiliation exists. The following is a summary of SBA’s affiliation rules.

## BASES FOR AFFILIATION

### 1. What is affiliation based on stock ownership ([13 C.F.R. § 121.103\(c\)](#))?

Control of 50% or more of voting stock. A person<sup>1</sup> controls or has the power to control an entity if the person owns or controls, or has the power to control, 50% or more of the concern’s voting stock. This is a non-rebuttable basis for finding affiliation.

*Example:* Company A owns Companies B, C and D (54.5%, 81% and 60%, respectively). Company A has the power to control Companies B, C and D. The companies are all affiliated. The receipts and/or number of employees of all four companies will be aggregated in determining the size of any one of them.

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<sup>1</sup> The term “person” used throughout this document and the regulations includes an individual, entity, or business concern. [13 C.F.R. § 121.103\(c\)\(1\)](#).

Control of less than 50% voting stock, but large compared to others. If a person owns and controls, or has the power to control, a block of voting stock that is large compared to all other outstanding blocks of stock (even though it comprises less than 50% of the voting stock). This is a non-rebuttable basis for finding affiliation. This basis for affiliation does not apply to the Business Loan, Disaster Loan, and Surety Bond programs.

*Example 1:* Company A owns 40% of the voting stock of Company B and the next largest share is 2%. Company A controls Company B because it owns the largest block of voting stock of Company B compared to all other outstanding blocks of voting stock. Company A and Company B are affiliates. In addition, all other companies controlled by Company A will be considered affiliates of Company B.

*Example 2:* Two individuals each own blocks of shares of Company A. One individual owns 46.67% of the business and the other owns 33.33%. The individual that owns 46.67% of the stock owns the largest single block, which is large compared to any other block, and therefore has the power to control the concern. This individual also controls Company B. Company A and Company B are affiliated.

Control of less than 50% voting stock by multiple minority owners. If two or more persons each own or control (or have the power to control) less than 50% of a concern's voting stock and (i) the minority holdings are all approximately equal in size and (ii) all of the minority holdings taken together are large compared to any other stock holdings, each of those persons is presumed to control the entity. However, a person may rebut the presumption by showing that it does not have control or the power to control. This basis for affiliation does not apply to the Business Loan, Disaster Loan, and Surety Bond programs.

*Example:* Investor X, Investor Y, and Company A each own 23% of Company B. No other stockholder owns more than 5% of Company B. All three persons will be presumed to control Company B. Each presumed affiliate may attempt to rebut the presumption by showing that its control or power to control does not exist. If the presumption is not overcome, then Company A and Investors X and Y will all be considered affiliates of Company B. In addition, all companies controlled by Company A and Investors X and Y would be affiliates of Company B.

Voting stock is widely held. When a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the

business concern's Board of Directors and Chief Executive Officer (CEO) or President are deemed to have the power to control the concern unless evidence is provided to show otherwise.

*Example:* In a corporation where no one stockholder has a block of voting stock appreciably larger than the others, the concern's Board of Directors and its CEO or President are considered to control the entity. This means that any other business controlled by the Board or by the CEO or President is an affiliate of the business concern in question, unless the Board and CEO or President can rebut this presumption.

Affiliation for the Business Loan, Disaster Loan, and Surety Bond programs (13 C.F.R. § 121.301(f)(1)). For the Business Loan, Disaster Loan, and Surety Bond programs, SBA will deem a minority shareholder to be in control if that individual or entity has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders. If no individual, concern, or entity is found to control based on that test or the 50% test, SBA will deem the Board of Directors or President or CEO (or other officers, managing members, or partners who control the management of the concern) to be in control of the concern.

## **2. What is affiliation based on stock options, convertible securities, or an agreement to merge (13 C.F.R. § 121.103(d))?**

SBA treats stock options, convertible securities, and agreements to merge as though the rights granted have been exercised. SBA gives present effect to an agreement to merge (including an agreement in principle) or to sell stock. If these rights have been granted and they confer the power to control, affiliation exists.

*Example 1:* If Company A holds an option to purchase a controlling interest in Company B, the situation is treated as though Company A had exercised its rights and had become owner of the controlling interests in Company B. Company A and Company B are affiliates. In addition, all companies controlled by Company A will be considered affiliates of Company B.

*Example 2:* Company A and Company B are discussing a potential merger. The companies' representatives have met several times over the past two months. There is neither a formal nor an informal agreement to merge. Unless the two companies have reached an agreement in principle, SBA will not find affiliation between them based solely upon these open and continuing discussions.

### **3. What is affiliation based on common management ([13 C.F.R. § 121.103\(e\)](#))?**

If one or more officers, directors, managing members, or general partners of a business concern also control the Board of Directors and/or the management of another business concern, the concerns are affiliates.

*Example 1:* Controlling members of Company A's Board of Directors occupy three out of five positions in Company B's Board of Directors. The two concerns are affiliated because the controlling members of the Board of Directors of Company A also control the Board of Directors of Company B. In addition, all concerns controlled by Company A will be considered affiliates of Company B and vice versa.

*Example 2:* A controlling member of Company A's Board of Directors has veto rights over the majority decisions of Company B's Board of Directors. By possessing such negative control, Company A has control of the Board of Directors of Company B and the two concerns are affiliated. In addition, all companies controlled by Company A will be considered affiliates of Company B and vice versa.

The test of common management does not require that the person(s) exercising the common management have total control of a concern. Critical influence or the ability to exercise substantive control over the concern's operations is also a basis for finding affiliation between firms. Persons in senior leadership positions, such as the CEO and COO, are presumed to exercise substantive control over a firm's operations, although they can rebut that presumption by showing significant evidence to the contrary.

In the Business Loan, Disaster Loan, and Surety Bond programs, affiliation also arises where a single individual, concern, or entity controls the management of the applicant concern through a management agreement.

### **4. What is affiliation based on an identity of interest between individuals or businesses, including family members ([13 C.F.R. § 121.103\(f\)](#))?**

Individuals or firms that have identical (or substantially identical) business or economic interests may be treated as one party (i.e., affiliated) unless they can demonstrate otherwise. Family members, persons with common investments, or firms that are economically dependent on each other through contractual (or other) relationships, are presumed to be affiliated. However, individuals or firms may seek to demonstrate that no affiliation exists by showing that apparently identical interests are, in fact, separate. Patterns of subcontracting,

commingling of staff and/or facilities, and other substantial ties may demonstrate an identity of interest.

*Example 1:* Several officers of Company A are also officers of Company B. The two companies are in the same line of work and extensively subcontract with each other. The interrelationship between the two companies results in them acting as one, and therefore they have an identity of interest and are considered affiliates.

*Example 2:* Companies A and B share office space and equipment in the same location and also share key employees. In addition, Company A has sent a substantial amount of business to Company B for each of the last three years (which amounts to more than 70% of Company B's total revenues). All these facts, taken together, indicate that the two companies have combined their resources to each other's benefit and therefore are affiliated

*Example 3:* When three of four members of a concern's Board of Directors have multiple investments in common with each other outside the concern, they may be viewed as sharing an identity of interest. The three directors would be deemed to control the Board and to therefore also control the business. Each outside business that these three directors control would be an affiliate of the business concern in question.

*Example 4:* A husband and wife founded an accounting firm in 1974. In 2008, their daughter opened an office supply store using her own funds and a bank loan. Her parents purchase supplies from the daughter's store, and sales to her parents represent 10% of the daughter's revenues. There are no other business interactions between the daughter and her parents. If there are no other indicia of affiliation, SBA would find the business dealings to be minimal and the presumed affiliation due to family relationships to have been rebutted.

The presumption of affiliation between family members is limited to married couples, parties to a civil union, parents, children, and siblings.

In the Business Loan, Disaster Loan, and Surety Bond programs, affiliation based upon an identity of interest is limited to close relatives with identical or substantially identical business or economic interests. For these programs only, a close relative is defined as a spouse, parent, child, sibling, or the spouse of any such person. [13 C.F.R § 120.10](#).

**5. What is affiliation based on the newly organized concern rule ([13 C.F.R § 121.103\(g\)](#))?**

A new concern is affiliated with an existing concern if:

- (1) The former (or current) officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern;
- (2) Both concerns are in the same or related industries or fields of operation;
- (3) The individuals who organized the new concern serve as the new concern's officers, directors, principal stockholders, managing members, or key employees; and
- (4) The one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification or bid or performance bonds, and/or other facilities, whether for a fee or otherwise.

The presumption of affiliation may be rebutted by showing that there is a clear fracture between the two businesses.

*Example:* The former chief executive officer of Company A organizes Company B and serves as Company B's managing member. Companies A and B are in the same or similar industries. Company B receives subcontracts from Company A. Company B is affiliated with Company A unless it can show establish that there is a clear fracture between the two companies.

A clear line of fracture exists if the family members have no business relationship or involvement with each other's business concerns, or the family members are estranged. A clear fracture may be found even if there is a minimal amount of business between two concerns. Factors that may be relevant in deciding whether a clear fracture exists include whether the firms share officers, employees, facilities, or equipment; whether the firms have different customers and lines of business; whether there is financial assistance, loans, or significant subcontracting between the firms; and whether the family members participate in multiple businesses together.

This basis for affiliation does not apply to the Business Loan, Disaster Loan, and Surety Bond programs.

**6. What is affiliation based on common investments or economic dependence ([13 C.F.R § 121.103\(a\) and \(f\)](#))?**

A concern that is economically dependent upon another person or concern may be found to be affiliated with that concern. It may also be found affiliated with

other concerns controlled by the individual or concern on which it is dependent. It may be found affiliated on the basis of control or power to control, an identity of interest, or a combination of these.

Affiliation through economic dependence can be presumed where the concern in question derived 70% or more of its receipts from another concern over the previous three fiscal years. This presumption may be rebutted by showing that despite the contractual relations with another concern, the concern at issue is not solely dependent on that other concern. The presumption may be rebutted by showing that the concern has been in business for a short amount of time and has only been able to secure a limited number of contracts.

*Example 1:* Company A performs subcontracts for Company B, and Company B accounts for 90% of Company A's revenues. Company A's existence depends on work from Company B and the two are deemed affiliates.

*Example 2:* Company A provides significant loans to Company B and guarantees other loans to Company B. Company B's overreliance of dependence on Company A's financial support (both direct and indirect) results in affiliation between the two.

*Example 3:* A loan between two businesses is not an arm's-length transaction and the terms and conditions of the loan demonstrate financial dependence by one business on the other. The two are deemed affiliates.

*Example 4:* Company A obtained a patent for a product it developed. It licenses the use of the product to Company B, and makes it available for other companies to obtain a license. No affiliation exists between Company A and Company B based solely on the licensing agreement.

This basis for affiliation does not apply to the Business Loan, Disaster Loan, and Surety Bond programs.

## **7. When may SBA find affiliation with parties to a joint venture ([13 C.F.R. § 121.103\(h\)\(1\) and \(2\)](#))?**

A joint venture is an association of individuals and/or concerns that combine to carry out a specific business venture for joint profit.

- The parties to a joint venture are considered affiliates for all purposes, unless an exception exists (see below) or the joint venture receives no more than three contract awards over a two-year period.



- The parties to a joint venture are affiliates of each other if any one partner seeks SBA financial assistance for use in connection with the joint venture.
- The parties to a joint venture that submit an offer for a particular procurement or property sale are affiliated with each other for performance of that particular contract, unless an exception to affiliation applies.

Even if an exception to affiliation exists, a party to a joint venture must include in its receipts its proportionate share of receipts generated by the joint venture, and in its total number of employees its proportionate share of joint venture employees when determining its own size.

Exceptions to Affiliation for Joint Venture Partners. ([13 C.F.R. § 121.103\(h\)\(3\)\(i\)-\(iii\)](#)):

- (1) Every party to the joint venture is small. The members of a joint venture comprising two or more businesses will not be affiliated as long as each party is small under the size standard assigned to the procurement.

*Example 1:* Company A and Company B form joint venture AB and submit an offer for a procurement with a NAICS code and corresponding receipts based size standard of \$15 million. The estimated dollar value of the procurement (including options) is \$8 million. Companies A and B are both small for the size standard assigned to the procurement and therefore are not affiliated. The joint venture is therefore considered small for this procurement.

*Example 2:* Company A and Company B form joint venture AB and submit an offer for a procurement with a size standard of 500 employees. The estimated dollar value of the procurement is \$11 million. Companies A and B are both small for the size standard assigned to the procurement and therefore are not affiliated. The joint venture is considered small for the procurement.

- (2) All-Small Mentor-Protégé Joint Ventures. A small business protégé and its approved mentor through the All-Small Mentor-Protégé program may joint venture as a small business for any government contract or subcontract, provided the protégé qualifies as small for the procurement. Such a joint venture may seek any type of small business contract (i.e., small business set-aside, 8(a), HUBZone, SDVOSB, or WOSB) for which the protégé firm qualifies (e.g., a protégé firm that qualifies as a WOSB could seek a WOSB set-aside as a joint venture with its SBA-approved mentor), if the joint venture meets the requirements of the particular program as to contents of the joint venture agreement, performance of work, and documentation submission.

For more information [visit the All Small Mentor Protege program web page](#).

- (3) 8(a) BD Mentor-Protégé Joint Ventures. A joint venture between an 8(a) protégé and its SBA-approved mentor is considered small if the protégé is small for the size standard, and if:
- (i) For 8(a) BD Program Procurements. The joint venture agreement has been approved prior to contract award in accordance with [13 C.F.R. § 124.513](#) and if for an 8(a) BD sole source award, the participant has not reached the dollar limit set forth in [13 C.F.R. § 124.519](#).
  - (ii) For non-8(a) BD Program Procurements. SBA does not need to approve the joint venture prior to award; however, if size is protested, the provisions of [13 C.F.R. § 124.513\(c\) and \(d\)](#) will apply.

For more information [visit the 8\(a\) Business Development Program web page](#).

#### General Affiliation of Parties to a Joint Venture

Three Awards in Two Years. Generally, the parties to a joint venture will be affiliated with each other for all purposes if that specific joint venture receives more than three contract awards over a two-year period. The two-year period begins on the date of award of the first contract or contract novation received by the joint venture. The same parties may create different, specific joint ventures that can again qualify to receive three contract awards over a two-year period; however, eventually such a longstanding relationship may lead to a finding of general affiliation between the parties where one of the joint venture partners is generally reliant on the other for a significant portion of its contracts.

*Example 1:* Joint venture AB receives its first contract award on August 17, 2015. AB receives its second award on June 1, 2016. AB then submits offers on April 4, 2017, June 14, 2017, and July 5, 2017. On August 31, 2017, AB learns that it is the apparent successful offeror for all three offers that it submitted in April, June, and July 2017. AB may perform all five contract awards without a finding of affiliation for purposes of those contracts or in general based solely on the number of awards received over a two-year period because AB submitted its offers within the two-year period from August 17, 2015, through August 17, 2017, and it had received two or fewer awards during the two-year period preceding the date of its initial offers including price for all three offers made in April, June, and July 2017. The number of offers submitted during the two-year period does not count against the three awards that may be received.

*Example 2:* Joint venture AB received three contract awards during the two-year period from August 17, 2015 through August 17, 2017. The same joint venture partners of AB then created joint venture CD on August 31, 2017. Joint venture CD may receive up to three contract awards during the two-year period from August 31, 2017 through August 31, 2019; however, the continuing relationship between the same joint venture partners may eventually lead to a finding of general affiliation for all purposes (e.g., one company to a joint venture partner submits an offer for a solicitation itself, it may be deemed affiliated with the other companies in the joint venture for purposes of that solicitation/contract).

This basis for affiliation does not apply to the Business Loan, Disaster Loan, and Surety Bond programs.

**8. When may SBA find affiliation between a prime contractor and a subcontractor ([13 C.F.R. § 121.103\(h\)\(4\)](#))?**

A prime contractor and a subcontractor may be found affiliated if the subcontractor is determined to be an ostensible subcontractor and is not a similarly situated entity. In that case, SBA will treat the prime and subcontractor as joint venturers, which requires that the entities be affiliated.

SBA will find that a subcontractor is an ostensible subcontractor when the subcontractor is not a similarly situated entity and:

- (1) the subcontractor performs the primary and vital requirements of a contract, or of an order under a multiple award schedule contract; or
- (2) the prime contractor is unusually reliant on the subcontractor.

A “similarly situated entity” is defined in [13 C.F.R. § 125.1](#) as a subcontractor that has the same small business program status as the prime contractor. This means that for a HUBZone requirement, a subcontractor that is a qualified HUBZone small business concern; for a small business set-aside, partial set-aside, or reserve, a subcontractor that is a small business concern; for a SDVOSB requirement, a subcontractor that is a self-certified SDVOSB; for an 8(a) requirement, a subcontractor that is an 8(a) certified Program Participant; and for a WOSB or EDWOSB contract, a subcontractor that has complied with the requirements of [13 C.F.R. part 127](#). In addition to sharing the same small business program status as the prime contractor, a similarly situated entity must also be small for the NAICS code that the prime contractor assigned to the subcontract that the subcontractor will perform.

All aspects of the relationship between the prime and subcontractor are considered, including the terms of the proposal, agreements between the prime and subcontractor, and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

Example 1: Company A and Company B form Team AB, which submits an offer for a small business set-aside contract. Company A is the prime contractor and Company B is the subcontractor that is not a small business. The teaming agreement does not provide a detailed description of the tasks and the percentage of work to be performed by Company A or Company B but states that Company A will perform the majority of the work. Company A is located at the same address as Company B. Company A employs 10 individuals who will perform administrative duties and some of the primary requirements associated with the contract. Company B employs 50 individuals who will manage the contract and also perform the primary requirements associated with the contract. Company B wrote the Team's proposal and is supporting Company A financially for this contract so that Company A may qualify to receive bonding to perform this contract. Company B is Company A's ostensible subcontractor based on the totality of the circumstances and thus Company A and Company B are affiliated.

Example 2: Company C and Company D form Team CD, which submits an offer for an 8(a) BD competitive set-aside contract to provide building maintenance services. The primary and vital tasks of the procurement are electrical maintenance and mechanical maintenance services. Other, non-primary tasks associated with the contract include elevator maintenance. Company C is the prime contractor and Company D is the subcontractor. Company D is not an 8(a) Participant. The teaming agreement states that Company C will perform at least 51% of the work associated with this contract. Team CD's proposal states that 100% of the labor expenses associated with elevator maintenance and management services, and 30% of the labor expenses associated with mechanical and electrical engineering services will be spent on Company C's personnel. The proposal states that the remaining 70% of the labor expenses associated with the primary and vital requirements of mechanical and electrical maintenance will be spent on Company D's personnel. Although Company C is spending at least 51% of the overall labor expenses on its own employees, it is spending 70% of the labor expenses associated with the primary and vital requirements on Company D's employees. As a result, Company D is Company C's ostensible subcontractor because it is performing the majority of the primary and vital

requirements, and Company D is not a similarly situated entity. Therefore, Company C and Company D are affiliated.

Example 3: Company E submits an offer for a small business set-aside contract to provide software development services. Company F is not a small business and is Company E's subcontractor. The estimated value of the procurement is \$10 million. The solicitation requires that all offerors demonstrate that the prime or one of its subcontractors has experience performing at least three (3) contracts of similar size and scope in the past five (5) years. Company E has no experience in the computer software industry but can demonstrate management and consulting experience for contracts with values below \$1 million. Company E's proposal highlights Company F's experience as a prime contractor on at least three (3) contracts of similar size and scope during the past three (3) years. This past performance submission does not violate the requirements of the solicitation but it demonstrates that Company E is unusually reliant on Company F and would not qualify to receive this contract without Company F's past performance. Company F is not a similarly situated entity. As a result, Company F is Company E's ostensible subcontractor and the two firms are affiliated.

This basis for affiliation does not apply to the Business Loan, Disaster Loan, and Surety Bond programs.

## **9. When may SBA find affiliation as a result of a franchise or license agreement ([13 C.F.R. § 121.103\(i\)](#))?**

SBA generally will not consider the restrictions imposed by a license or franchise agreement as they relate to standardized quality, advertising, accounting format or similar provisions, when determining whether the franchisor or licensor is affiliated with the franchisee or licensee, if the franchisee or licensee has the right to profit and bears the risk of loss associated with ownership. Even if SBA does not find affiliation as a result of the franchise or license agreement, it may find affiliation through other tests such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

SBA maintains an [SBA Franchise Directory](#) that lists franchise brands that SBA has reviewed for affiliation and eligibility in SBA loan programs. The Franchise Directory indicates whether the brand meets the Federal Trade Commission (FTC) definition of franchise, [16 C.F.R. part 436](#), and whether SBA requires an

addendum to the brand's franchise agreement for a franchisee to be eligible for SBA financial assistance. For more information on the SBA Franchise Directory, see [SOP 50 10.5\(K\)](#).

**10. What is affiliation based on the totality of circumstances ([13 C.F.R. § 121.103\(a\)\(5\)](#))?**

Affiliation may be found under the totality of the circumstances, even if the evidence is insufficient to show affiliation for a single independent factor listed above. In order to make such a finding, affiliation may be found when the ties between the businesses are so suggestive of reliance as to render the businesses affiliates.

**11. Are there any exceptions to the rules on affiliation ([13 C.F.R. § 121.103\(b\)](#))?**

SBA has provided ten exceptions to the general rules on affiliation. The following list is not complete but lists the most commonly applied exceptions. Under these exceptions, SBA will not find affiliation in of the following circumstances:

- (1) A business that is wholly or substantially owned by investment companies or development companies that are licensed or qualified under the Small Business Investment Act of 1958 (SBIA), are not considered affiliates of those investment companies or development companies.

*Example:* Company A is 51% owned by Company B, a Small Business Investment Company (SBIC) that is licensed under the SBIA. Company A is not affiliated with Company B.

- (2) An applicant for financial, management, or technical assistance in the Small Business Investment Company Program, the 504 Loan Program, or the Surety Bond Program is not affiliated with the following investors:
  - (a) Venture capital operating companies, as defined in the U.S. Department of Labor regulations found at [29 C.F.R. § 2510.3-101\(d\)](#);
  - (b) Employee benefit or pension plans established and maintained by the Federal government or any state, or their political subdivisions, or any agency or instrumentality thereof, for the benefit of employees;
  - (c) Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended;

- (d) Charitable trusts, foundations, endowments, or similar organizations exempt from Federal income taxation under section 501(c) of the Internal Revenue Code of 1986, as amended;
  - (e) Investment companies registered under the Investment Company Act of 1940 (Act of 1940), as amended; and
  - (f) Investment companies as defined under the Act of 1940, which are not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.
- (3) A business that is owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), or Community Development Corporations (CDCs), or which is owned and controlled by an entity that is wholly owned by an Indian Tribe, ANC, NHO or CDC, is not considered an affiliate of such business concerns or entities.

Example 1: Company A is 51% owned and controlled by an ANC. Company A is not affiliated with its 51% ANC owner.

Example 2: Company A is 51% owned by Company B. Company B is 100% owned by an Indian Tribe. Company A is not affiliated with Company B based upon ownership.

- (4) A business that is owned and controlled by Indian Tribes, ANCs, NHOs, or CDCs, or which is owned and controlled by an entity that is wholly owned by an Indian Tribe, ANC, NHO or CDC will not be found affiliated with other concerns owned by these Indian Tribes, ANCs, NHOs, and CDCs based on common ownership and common management. In addition, SBA will not find affiliation based upon the performance of common administrative services (e.g., bookkeeping and payroll) so long as there is adequate payment for those services. Affiliation may be found for other reasons.

Example 1: Company A is 51% owned and controlled by an ANC. Company B is also 51% owned and controlled by the same ANC. Company A and Company B share the same ownership and management team however these firms are excluded from affiliation.

Example 2: Company A is 51% owned by Company B. Company B is 100% owned by an Indian Tribe. Company B also owns Company C. Company A

and Company C are not affiliated despite the fact they share the same ownership and management.

- (5) A business that leases employees from a business primarily engaged in leasing employees to other businesses or which enters into a co-employer arrangement with a Professional Employer Organization (PEO) is not affiliated with the leasing company or PEO solely because it leases or co-employs employees. Affiliation may be found for other reasons.

*Example:* Company A leases 80% of its employees from a company that primarily leases individuals to other companies. Company A is not affiliated with the leasing company solely because of the leasing relationship.

- (6) A business that has an SBA-approved mentor-protégé agreement under the 8(a) Mentor Protégé Program or the All-Small Mentor-Protégé Program is not affiliated with a mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Affiliation may be found for other reasons.



# SUMMARY OF AFFILIATION

<i>Category</i>	<i>Affiliation may be found if...</i>
<i>Ownership</i>	<ul style="list-style-type: none"> <li>• An individual, concern, or entity owns or has the power to control more than 50% of voting equity</li> <li>• An individual, concern, or entity owns or has the power to control a block of stock that is large compared to others</li> <li>• If two or more persons own, control, or have the power to control less than 50% of voting shares and such holdings are equal or about equal in size and are large compared to other holdings, SBA presumes that each controls or has the power to control</li> <li>• If voting equity is widely held and no block is large as compared to all others, then Board and CEO/President will be deemed to control</li> </ul>
Options, convertible securities, agreements to merge (given present effect)	<ul style="list-style-type: none"> <li>• SBA treats stock options, convertible securities, and agreements to merge (including agreements in principle) as though the rights granted have been exercised; however, agreements to open or merely continue negotiations about a possible merger or stock sale are not given present effect</li> </ul>
Common management	<ul style="list-style-type: none"> <li>• Officers, managing members, partners who control the management of the concern also control the management of another concern</li> <li>• Individuals or entities that control the board of directors of the concern also control the board or management of another concern</li> </ul>
Identity of interest	<p>SBA may presume an identity of interest (and thus affiliation) among two or more persons/entities, if they are:</p> <ul style="list-style-type: none"> <li>(a) family members or if individuals or firms have common investments showing identical or substantially identical business or economic interests.</li> <li>(b) economically dependent on another firm</li> </ul>
Newly organized concern	<ul style="list-style-type: none"> <li>• The firm's officers, directors, principal stockholders, managing members, general partners, or key employees organize another concern in the same or related industry and serve in such capacity for the new concern and the one furnishes the other with contracts or other assistance. The firm can rebut the presumption of affiliation by showing that a clear line of fracture exists</li> </ul>

Joint ventures	<ul style="list-style-type: none"> <li>• Parties to a joint venture that submit an offer for a particular procurement or property sale are affiliated with each other for performance of that particular contract, unless one of the exceptions to affiliation listed apply, such as both partners being small</li> <li>• Generally, the parties to a joint venture will be affiliated with each other for all purposes if that specific joint venture receives more than three contract awards over a two-year period. The two-year period begins on the date of award of the first contract received by the joint venture</li> <li>• The same parties may create different joint ventures that can qualify to receive three contract awards over a two-year period; however, a long-standing relationship may lead to a finding of general affiliation between the parties</li> <li>• Some exceptions to affiliation exist for joint ventures</li> </ul>
Ostensible subcontractor	<ul style="list-style-type: none"> <li>• The firm is a non-similarly situated subcontractor (a) that performs or will perform primary and vital requirements of a contract or (b) upon which the prime contractor is unusually reliant</li> </ul>
Franchise and license agreements	<ul style="list-style-type: none"> <li>• As long as the franchisee or licensee has the right to profit and bears the risk of loss associated with ownership, affiliation is not likely to be found</li> </ul>
Totality of the circumstances	<ul style="list-style-type: none"> <li>• Based upon the totality of circumstances, SBA determines that affiliation exists</li> </ul>

## **CALCULATING SIZE – RECEIPTS**

### **1. How does a firm know if it is small for a receipts-based size standard?**

If the size standard is receipts-based, the small business will need to calculate its total receipts for its five most recently completed fiscal years and divide the total by five.

Therefore, if the concern’s annual receipts were \$3 million for 2015, \$10 million for 2016 \$2 million for 2017, \$4 million for 2018, and \$6 million for 2019, and it had no affiliates, its size would be \$5 million (*i.e.*,  $\$25/5 = \$5$ ).

If the concern has been in business five or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the four full fiscal years divided by the total number of weeks in the short year and the four full fiscal years, multiplied by 52.

**IMPORTANT NOTE:** Applicants/borrowers with the Business Loan or Disaster Loan Programs, as well as the Surety Bond and SBIC Programs may elect to calculate annual receipts and the receipts of affiliates using **either** the total receipts of the concern (and its affiliates) over its most recently completed 5 fiscal years divided by 5, or the total receipts of the concern (and its affiliates) over its most recently completed 3 fiscal years divided by 3.

**2. What if the company has been in business for less than five years?**

If the company has been in business for less than five complete fiscal years, then the total receipts for the period the company has been in business is divided by the number of weeks in business, and then multiplied by 52.

**3. Are receipts of affiliates included?**

Yes. The average annual receipts of a business concern that has affiliates is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate.

**4. What if an affiliate is recently acquired?**

If the firm acquired an affiliate or has been acquired as an affiliate during the applicable period of measurement or before the date on which the firm certified itself as small, the annual receipts calculation must include the receipts of the acquired or acquiring concern. This aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

**5. What if the affiliate has been in business for less than five years?**

If the affiliate has been in business for a period of less than five years, the receipts for the fiscal year with less than a 12-month period are annualized. In other words, take the total receipts for the period the concern has been in business, divide that by the number of weeks in business, and then multiply the result by 52.

**6. What if the business is no longer my affiliate?**

Do not include the annual receipts of a former affiliate if the affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

## **7. What does SBA mean by the term “receipts”?**

“Receipts” means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships).

## **8. What items are excluded from the definition of “receipts”?**

Do not include any of the following in the calculation of receipts:

- (i) net capital gains or losses;
- (ii) taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees;
- (iii) proceeds from transactions between a concern and its domestic or foreign affiliates; and
- (iv) amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

For size determination purposes, these are the only exclusions from receipts. All other items, including subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, must be included in receipts.

## **9. What document(s) are used to determine a firm's “receipts”?**

The law requires that receipts be calculated using the Federal income tax returns (together with any amendments) that the firm filed with the IRS on or before the date of self-certification to determine size status. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

## **10. What if a tax return has not yet been filed for a fiscal year?**

If the firm did not file a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement, SBA will calculate the concern's annual receipts for that year using any other available information, such as the concern's audited financial statements, regular books of account, or information contained in an affidavit by a person with personal knowledge of the facts.

### **11. What is a “completed fiscal year”?**

A “completed fiscal year” means a taxable year including any short year. “Taxable year” and “short year” have the meanings attributed to them by the IRS.

### **12. Where is the regulation governing a firm’s annual receipts?**

This regulation is located at [13 C.F.R. § 121.104](#).

## **CALCULATING SIZE – EMPLOYEES**

### **1. How does a firm know if it is small for an employee-based size standard?**

The average number of employees of a concern (including the employees of all domestic and foreign affiliates) is the average of the number of employees for each of the pay periods for the preceding completed 24 calendar months.

### **2. Who is considered an employee?**

SBA counts all individuals employed on a full-time, part-time, temporary, permanent, or other basis. This includes employees obtained from a temporary employee agency, professional employer organization, or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Independent contractors are not considered to be employees for purposes of calculating a firm's number of employees.

### **3. Are volunteers considered employees?**

Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

### **4. Are part-time and temporary employees counted the same as full-time employees?**

Yes. Part-time and temporary employees are counted the same as full-time employees.

### **5. What if the firm has been in business for less than two years?**

If the firm has been in business for less than 24 months, it must use the average number of employees for all of the pay periods during the time it has been in business.

### **6. How is the average number of employees calculated, including affiliates?**

To calculate a firm average number of employees for size purposes, add the average number of employees for every affiliate to the average number of employees for the subject business. If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

**7. Must the employees of a former affiliate be included in the calculation?**

Do not include the employees of a former affiliate if the affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

**8. Where is the regulation governing a firm's number of employees?**

This regulation is located at [13 C.F.R. § 121.106](#).

# FURTHER INFORMATION AND CONTACTS

This Guide is an overview of some basic principles of size and affiliation as set forth in SBA's regulations and decisions from [SBA's Office of Hearings and Appeals](#). A firm should review all applicable regulations carefully before certifying a business's size status.

For further information or questions, please contact the SBA Size Specialist who is responsible for the area in which the company is located. See below or refer to the [SBA Government Contracting Area Directory](#). There are six Area Offices in SBA's Office of Government Contracting, listed below. Each has someone designated as a Size Specialist.

## **Area 1**

Office of Government Contracting  
Boston Area Office  
Small Business Administration  
10 Causeway Street, Room 265  
Boston, MA 02222  
Tel: (617) 565-5622 or (212) 264-3231

## **Area 2**

Office of Government Contracting  
Philadelphia Area Office  
Small Business Administration  
660 American Avenue, Suite 301  
King of Prussia, PA 19406  
Tel: (484) 868-3263

## **Area 3**

Office of Government Contracting  
Atlanta Area Office  
Small Business Administration  
233 Peachtree Street, NE, Suite 225  
Atlanta, GA 30303  
Tel: (404) 331-0139

## **Area 4**

Office of Government Contracting  
Chicago Area Office

Small Business Administration  
500 West Madison Street, Suite 1150  
Chicago, IL 60661-2511  
Tel: (312) 353-7674

**Area 5**

Office Government Contracting  
Dallas/Fort Worth Area Office  
Small Business Administration  
150 Westpark Way, Suite 245 (Mailbox 8)  
Euless, TX 76040  
Tel: (817) 684-5302

**Area 6**

Office of Government Contracting  
San Francisco Area Office  
Small Business Administration  
455 Market Street, Suite 600  
San Francisco, CA 94105  
Tel: (415) 744-4242

**THERE ARE TWO OFFICES THAT MAY BE CONTACTED IN WASHINGTON, DC**

**Office of Size Standards**

U.S. Small Business Administration  
409 3rd Street, S.W.  
Washington, DC 20416  
Tel: (202) 205-6618

**Office of Government Contracting**

U.S. Small Business Administration  
409 3rd Street, S.W.  
Washington, DC 20416  
Tel: (202) 205-6460