

U.S. SMALL BUSINESS ADMINISTRATION

Statement of Regulatory Priorities

Overview

The mission of the U.S. Small Business Administration (SBA) is to maintain and strengthen the nation's economy by helping Americans start, grow, and build resilient businesses and recover after disasters. In accomplishing this mission, SBA strives to improve the economic environment for small businesses, including those in rural areas, those in areas that have significantly higher unemployment and lower income levels than the nation's averages, and those in traditionally underserved markets.

SBA has several financial, procurement, and technical assistance programs that provide a crucial foundation for Americans starting or growing a small business. For example, the Agency serves as a guarantor of SBA program loans to small businesses and licenses Small Business Investment Companies that make equity and debt investments in qualifying small businesses using a combination of privately raised capital and SBA guaranteed leverage. SBA also helps small businesses, including those owned by women, service-disabled veterans, minorities, and other historically underrepresented groups, gain access to federal government contracting opportunities. In addition, the Agency funds various small business training and mentoring programs and provides management and technical assistance to existing or potential small business owners through grants, cooperative agreements, and contracts. Finally, as an essential part of its purpose, SBA provides direct financial assistance to homeowners, renters, and businesses to repair or replace their property in the aftermath of a disaster. Beyond providing a crucial foundation for business-owners, SBA's assistance to small businesses, including access

to capital, generates new jobs to help create a strong, innovative, and sustainable American economy.

Reducing Burden on Small Businesses

SBA's regulatory policy reflects a commitment to developing regulations that reduce or eliminate the burden on the public, particularly the Agency's core constituents—small businesses. SBA's regulatory process generally includes an assessment of the costs and benefits of the regulations as required by Executive Order No. 12866, 1993, "Regulatory Planning and Review"; Executive Order No. 13563, 2011, "Improving Regulation and Regulatory Review"; and the Regulatory Flexibility Act. SBA's program offices are particularly invested in finding ways to reduce the burden imposed on the public by the Agency's core activities in its loan, grant, innovation, and procurement programs.

Openness and Transparency

SBA promotes transparency, collaboration, and public participation in its rulemaking process. To that end, SBA makes a conscious effort to engage those members of the public eligible for SBA programs or affected by SBA regulations beyond the standard notice-and-comment process. For example, SBA engages in tribal consultations when proposing changes to its government contracting regulations and often receives input on access and burdens associated with SBA program regulations and policies. SBA scheduled five tribal consultations or listening sessions about proposed changes to SBA's size, 8(a) Business Development (BD), Historically Underutilized Business Zones (HUBZone), Woman-Owned Small Business (WOSB), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs (RIN 3245-AH68). Testimony provided becomes part of the administrative record for SBA's consideration when the Agency deliberates on approaches to changes in program regulations. Similarly, SBA held a

series of listening sessions with Surety professionals for input about their experiences using the Surety Bond Guarantee (SBG) program as part of its ongoing responsibility to ensure that the rules the Agency issues align with surety industry practices and do not have an adverse economic impact on those affected by those rules. Findings of the listening sessions and additional impact studies resulted in the decision to change and clarify several current procedures and regulations in RIN 3245-AI06 to improve customer experience and better enable modernization efforts within the SBG program.

Beyond listening session and consultations, SBA engages the public in other ways, as well. The Agency continues to coordinate a road tour around the country for its Small Business Innovation Research (SBIR) program, providing small businesses with information about the application process and upcoming SBIR topics for grant or contract awards. The HUBZone program office regularly engages prospective program participants through webinars and “office hours,” during which firms are encouraged to inquire about the certification process and provide feedback. Representatives from SBA’s Office of Government Contracting & Business Development (GCBD) attend annual trade association conferences concerning its programs, including conferences hosted by the National 8(a) Association and HUBZone Council. And SBA’s 8(a) (BD) program continues to use its monthly call to help firms navigate the certification process, including by providing information on program benefits and eligibility requirements for 8(a) certification.

In addition to its program-specific efforts, SBA regularly seeks feedback from customers in the form of information collections under the Paperwork Reduction Act (PRA). SBA maintains generic PRA clearances that allow the Agency to rapidly engage the public: One clearance allows SBA to collect customer feedback on service delivery for SBA programs, and

another allows SBA to collect information for evaluation, research, and evidence building to improve the Agency's programs.

Regulatory Framework

SBA's Strategic Plan for fiscal years 2022 through 2026 provides a framework for strengthening, streamlining, and simplifying SBA programs and leverages collaborative relationships with other agencies and the private sector to provide small businesses with the tools they need to drive innovation and strengthen the economy through business revenue and job growth. The Strategic Plan serves as the foundation for the regulations that the Agency will develop during the next twelve to twenty-four months.

SBA developed the Strategic Plan in consultation with multiple stakeholder groups through its *Strategic Plan Working Group*, which comprised members at all levels of SBA and across numerous Agency programs, allowing the themes revealed during the stakeholder engagement process to be incorporated throughout the Agency. SBA also partnered with the General Services Administration (GSA) to solicit input and feedback from federal employees whose roles support the implementation of SBA programs across the government or who work with other small business development programs. In addition, the Agency conducted community outreach across the country, including by conducting listening sessions with community development organizations in eight cities across the country, which provided SBA with input from entrepreneurs of all kinds and highlighted place-based and sector-specific issues. Finally, SBA solicited feedback through the Federal Register, SBA.gov posting, an SBA daily newsletter, a social media campaign, and outreach to key stakeholder organizations.

The Strategic Plan sets out three strategic goals: (1) ensure equitable and customer-centric design and delivery of programs to support small businesses and innovative startups; (2)

build resilient businesses and a sustainable economy; and (3) implement strong stewardship of resources for greater impact. In addition, based on the input received during this stakeholder engagement process, SBA identified the following imperatives and continues to integrate them into the Agency's strategies where appropriate: (i) increase collaboration with resource partners and stakeholders to amplify SBA's reach and better communicate the Agency's products and services, and (ii) improve SBA's data transparency so that researchers, resource partners, community organizations, and the public can better understand how the SBA supports the small business and entrepreneurial ecosystem.

The regulations reported in SBA's semi-annual Regulatory Agenda and Plan are intended to facilitate achievement of SBA's strategic goals while meeting the needs of the members of the public eligible for our programs or affected by our regulations. SBA continues to take regulatory action as necessary to adjust and adapt requirements for its programs to better support the country's economy.

Administration's Priorities

To the extent possible and consistent with the Agency's statutory purpose, SBA will take action to support the Administration's priorities highlighted in the Fall 2024 Data Call for the *Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions* (08/27/2024), namely: (1) tackling the climate change emergency; (2) advancing equity and supporting underserved, vulnerable, and marginalized communities; (3) creating and sustaining good jobs with a free and fair choice to join a union, lowering the costs of products and services, and promoting healthy competition in the marketplace and economic resilience in general; and (4) improving service delivery and customer experience and reducing administrative burdens. In fact, many of the Agency's rulemakings cut across multiple priorities. Highlighted below are

some of SBA's most important regulatory actions, including actions SBA has completed since the Spring 2024 Unified Agenda and actions that SBA plans to take in the upcoming 12 to 24 months.

SBA Regulatory Highlights

1. HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs (3245-AH68)

Statement of Need:

In 2019, SBA published a comprehensive revision to the HUBZone Program regulations, which implemented changes intended to make the HUBZone Program more efficient and effective. This proposed rulemaking is intended to clarify and improve policies surrounding some of those changes. In particular, the rule would require any certified HUBZone small business to be eligible as of the date of offer for any HUBZone contract. SBA also proposed several changes to SBA's size and 8(a) Business Development (BD) regulations, as well as some technical changes to the Women-Owned Small Business (WOSB) and Veteran Small Business Certification (VetCert) programs. Of note, the NPRM proposed to delete the program specific recertification requirements contained separately in SBA's size, 8(a) BD, HUBZone, WOSB, and VetCert programs and move them to a new section that would cover all size and status recertification requirements. This should ensure that the size and status requirements will be uniformly applied.

This rule is expected to advance equity and support underserved, vulnerable, and marginalized communities by improving experiences for women-owned small business applicants and enabling greater access to certifications for underserved small business owners. Further, this rule would harmonize regulations and requirements across certification programs

through a streamlined single application. Paired with MySBA improvements, this rule would enable better service delivery and customer experience, lessens the burden in applying for certifications, and create a more consistent experience for customers.

Costs and Benefits:

The rule would benefit program participants by reducing burdens and increasing consistency with other contracting programs while changing or adding some compliance requirements that strengthen the program's impact and reduce the potential for business policies and practices that are contrary to the goals of the HUBZone program. The burden reductions include the decrease in the time of proof of residence for employees, removal of the 90-day wait period for reapplication after decertification, revisions to the part of the rule that addresses Governor-designated covered areas, a change in the negative-control rule in SBA's affiliation rule, deletion of program-specific requirements for certification, and triennial instead of annual recertification. Additionally, the proposed rule adds a telework provision. Proposed compliance requirements include limits on the number of Legacy Employees, revised requirements for the use of the "attempt to maintain" statutory language, possible minimum thresholds for number of hours worked, and proof of eligibility at the time of offer of a HUBZone contract. These proposed compliance measures are consistent with the program's goal of promotion of growth and impact of small businesses in historically underutilized areas, and SBA believes that they are not substantial burdens.

Alternatives:

SBA considered alternatives to each of the significant changes made by this rule. Instead of requiring HUBZone firms to recertify every three years and be eligible at the time of offer, SBA considered maintaining the current requirement where annual recertification allows a

concern to seek and be eligible for HUBZone contracts for a year. However, SBA has found that the annual recertification requirement does not fulfill the purposes of the HUBZone program as effectively as requiring firms to be eligible at the time of offer for HUBZone contracts.

Moreover, SBA believes that uniformity among its contracting programs is an important goal, and returning to triennial recertification and eligibility determinations based on the date of offer would bring the HUBZone program much more in line with SBA's other small business and socioeconomic contracting programs.

2. Small Business Contracting: Increasing Small Business Participation on Multiple Award Contract (3245-AH95)

Statement of Need:

In issuing this proposed rule, SBA intends to implement recommendations of the Office of Federal Procurement Policy (OFPP) in its memorandum titled “*Increasing Small Business Participation on Multiple-Award Contracts*,” dated January 25, 2024. This proposed rule plans to expand the use of the small-business Rule of Two in multiple-award contracting and make other regulatory revisions to encourage the use of small businesses when creating new multiple-award contracts. This rule is anticipated to advance equity and support underserved, vulnerable, and marginalized communities by reducing concentration in government contracting, allowing more competition and greater participation for a more diverse range of small businesses, including those owned by disadvantaged populations. Through these goals, this rule is also anticipated to support creating and sustaining good jobs with a free and fair choice to join a union, lowering the costs of products and services, and promoting healthy competition in the marketplace and economic resilience in general.

Costs and Benefits:

Based on SBA's analysis of FY 2019 to FY 2023 data, this change could add up to \$6 billion per year in small business contract spending. SBA performed an analysis of the dollar gap between small-business spending on non-set-aside multiple-award task and delivery order contracts, and that same spending governmentwide when the governmentwide numbers are adjusted to use the same NAICS-code distribution present in the non-set-aside multiple-award task-order contracts.

SBA presumes that applying the Rule of Two to task and delivery orders would close the dollar gap between small-business spending on non-set-aside multiple-award contracts and small-business spending, governmentwide, as adjusted. Based on SBA's analysis, the action could add up to \$6 billion to small-business contract spending. With contract spending exceeding \$600 billion annually, this equates to less than 1 percent of all Federal contract spending.

This rule would impose costs to the acquisition workforce to comply with the market-research, documentation, and coordination requirements when the Rule of Two is not applied, as specified in the rule. Although some agencies currently apply the Rule of Two when ordering under a multiple-award contract vehicle and may have documentation and coordination procedures, SBA will assume for the purpose of calculating the potential cost that no agencies currently require the application of the Rule of Two.

In FY23, agencies awarded 130,246 orders to other-than-small businesses off multiple-award contracts, not including the Federal Supply Schedule. Many of those orders went repeatedly from the same agency to the same other-than-small contractors. The proposed rule would allow agencies to use market research conducted within the past 18 months, so if an agency were ordering to the same other-than-small contractor repeatedly under the same multiple-award contract, the agency would, most likely, reuse market research from prior

awards. After eliminating orders that went to the same other-than-small contractor on a single vehicle from the same agency, only 5,513 orders remain that would require new small-business market research annually. The actual number of affected orders is likely less because the 5,513 orders presume annual market research (i.e., every 12 months), but the proposed rule would allow for market research to be used from up to 18 months prior.

Contracting officers must base a decision on sufficient facts, considering market research, to demonstrate a reasonable assessment of the availability of small businesses on the selected multiple-award contract. Market research may include but is not limited to a review of procurement history, search of databases such as SBA's Dynamic Small Business Search (DSBS), consultation with SBA Procurement Center, or internet searches. Because of the variety of market research methods, SBA estimates that the time required for justification of a decision ranges from a half-hour to search relevant databases to several hours for more extensive open-market research, with the distribution of methods skewed toward database searches rather than intensive market research. SBA therefore estimates that the mean time required for justification is 60 minutes for an estimated annual number of 5,500 affected contracts, resulting in an estimated annual burden to the government for market research of \$683,870.

Additionally, agency small-business specialists would review documentation for orders not set-aside above the micropurchase threshold. FAR section 7.104(d) currently requires such a review for orders not set-aside above the substantial bundling threshold. The number of additional orders to be reviewed annually (excluding those going from the same agency to the same contractor for the reasons explained in the last paragraph) is 3,700. SBA estimates that the time required for a small-business specialist to review this order documentation is 60 minutes.

This considers that the orders are relatively low-dollar. SBA therefore estimates the annual burden to the government for small-business specialist review to be \$460,000.

Summary of Legal Basis:

Section 15(a)(1)(C) of the Small Business Act, 15 U.S.C § 644(a)(1)(C), provides that the Small Business Administration (SBA) shall “assur[e] that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category . . . are awarded to small business concerns.”

3. Disaster Assistance Loan Program Changes to Unsecured Loan Amounts and Credit Elsewhere Criteria (3245-AI08)

Statement of Need:

SBA's Disaster Loan Program provides direct assistance to homeowners, renters, businesses, and nonprofits, which is critical to rebuilding communities after a disaster. Under section 7(b) of the Small Business Act, SBA can make direct loans to homeowners, renters, businesses, and non-profit organizations that have been adversely affected by a disaster. The Act authorizes SBA to increase its size limits on unsecured disaster loans for physical damages in major disasters and for Economic Injury Disaster Loans (EIDLs) for all disaster declarations except Military Reservist Economic Injury Disaster Loans and to set a low-interest rate for individuals and businesses that SBA determines are unable to obtain credit elsewhere.

With natural disasters increasing in severity and frequency across the United States and its territories, SBA issued this direct final rule to (1) increase the maximum unsecured loan limits from \$25,000 to \$50,000 for home and business loans declared for major disasters and for EIDLs for all disaster declaration types and (2) revise the method used to determine whether an applicant has credit elsewhere, called the Credit Elsewhere Test (CET). The increase in the

threshold for the collateral requirement is based on the increased severity of financial consequences from disasters and evidence that suggests that the collateral requirement is an impediment to access of financial resources for disaster recovery. Additionally, SBA expects that lending shortfalls will become greater with increased severity of financial consequences from disasters. The revision to the CET allows the use of credit score modeling, which will streamline disaster loan processing, including interest rate determination. This change also makes SBA's processes more consistent with lending sector practices. SBA believes these changes are necessary to account for inflationary increases, improve efficiency in the administration and delivery of the program, increase the percentage of borrowers utilizing the SBA mitigation program (which is designed to prevent future disaster damages and reduce future disaster economic impacts), and reduce the burden of collateral and improve access to credit in underserved communities, which often have limited access to other sources of capital and historically have experienced higher rates of disasters and lower economic survival rates.

Costs and Benefits:

Consistent with the Administration's priorities, the adjustments to the CET and collateral threshold will increase economic resilience, especially in underserved communities, by enabling disaster survivors to receive more loan funds more quickly and with less burden, enabling them to more quickly recover and resume business. The increase in the collateral threshold will increase the availability of the benefits of SBA's disaster lending: Home loans generally make up 80 percent of disaster loan applicants, and SBA believes that its prior collateral requirements were an impediment to increasingly expensive rebuilding efforts. The increase also addresses a reluctance to enter into a loan agreement with SBA that would involve a lien on property. Furthermore, the increased collateral threshold will shorten the loan cycle time for approved

loans. Loans without collateral requirements are generally fully funded in a single disbursement, while secured loans have usually required multiple disbursements. SBA anticipates increasing the unsecured threshold will allow SBA to disburse the majority of approved disaster loans within seven days of approval. A faster disbursement of the loans further enhances the restorative work of these loans to homes and businesses.

The revised CET will streamline disaster lending, clarify evaluation for loan eligibility and interest rate determination, increase program efficiency, and reduce uncertainty in the lending process. By permitting the use of credit score modeling, SBA does not restrict itself to performing a time-consuming cash flow analysis for each loan, which will decrease loan application process times. In addition, because the revised CET is integrated within SBA's Unified Lending Platform (ULP), the rule will reduce the hiring of temporary personnel for each separate disaster lending period. SBA accordingly expects the government to benefit from the cost savings enabled by a reduced need for temporary lending personnel.

These adjustments to the collateral threshold and the CET also decrease the burden on borrowers to provide documentation that SBA must verify, resulting in savings in disaster staffing and training. SBA expects that with the higher collateral threshold, the number of loans requiring collateral at original approval will decrease from 46.4 percent to 31.0 percent of approved disaster loans. SBA estimates the decrease in loan processing costs with the increased collateral threshold is \$20.33 per loan, generating \$203,300 in savings to the Agency for every 10,000 approved loans. Another example of cost savings is the reduction in property and vesting reports and other information for recording of liens, for which SBA currently contracts with a third-party vendor. A vesting report costs about \$25 per property, so a decrease from 46.4

percent to 31.0 percent of loans requiring this report reduces this particular expense by \$38,500 for every 10,000 approved loans.

Although there will be costs to borrowers and SBA associated with learning the program changes, SBA expects that the reduction in application processing and portfolio management costs will outweigh costs of familiarization with the new system plus any costs of developing and revising internal policies, procedures, and training. The largest source of potential costs for SBA may result from the increase in loans without collateral following the increase in the collateral threshold. Based on its experience with loans after Hurricane Ian, SBA estimates that 70.98 percent of home loans would be unsecured, an increase from the current unsecured home loan portfolio from Hurricane Ian of 55.3 percent. This would increase the unsecured portion of home disaster loans in the \$7.2 billion-dollar active home loan portfolio by \$81,466,615. At an estimated subsidy rate of 19bps and a five-year average loan amount of \$39,300 for loans impacted by the collateral change, the estimated effect on the subsidy for each increase of 10,000 unsecured loans is \$746,700. An estimated 3.6% increase in dollar figure of unsecured business loans in the current active portfolio would equate to \$67,696,547 of the current \$1,880,459,649 disaster business loan portfolio.

SBA expects that the cost savings from the new CET will offset at least some of this cost and with the additional cost savings from the ULP, therefore expects a decrease in the overall costs of the disaster loan program. In the event of default, SBA does expect an impact on the recovery rates from reduced collections from collateral liquidations, but this is in part limited even under current regulations because these disaster loans have been and will continue to be subordinated to existing mortgages.

Overall, SBA expects the rule's changes to enhance the efficiency of the administration and delivery of the Disaster Loan program and enhance access to the program in underserved communities while having a minimal impact on the program's overall cost.

4. Regulatory Reform Initiative: Streamlining and Modernizing the Surety Bond Guarantee Program (3245-AI06)

Statement of Need:

In its Surety Bond Guarantee (SBG) program, SBA guarantees bid, payment, and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. In an effort to minimize the burden on program participants and maintain alignment with surety industry practices, SBA has proposed to change and clarify several SBG program procedures and regulations.

Costs and Benefits:

The proposed revisions would advance the Administration's priorities by reducing administrative burdens, improving service delivery and customer experience, promoting economic competition and resilience, and expanding access to the SBG program.

A primary goal of the proposed rule is to reduce administrative burdens. SBA quantified the impact of two revisions in the notice of proposed rulemaking that SBA estimates would, if implemented, reduce the application time burden on program participants. For the Prior Approval Program, in which the Surety must obtain SBA's approval before a guaranteed bond can be issued, SBA has proposed that the Prior Approval Agreement will contain a master certification for all the applications to follow. This removes the need for each application to be individually certified. These proposed changes are estimated to reduce the application time burden on program participants by 557 hours. Second, SBA proposes shifting how small

business contractors remit fees to SBA from the small businesses itself to being remitted by the Surety Partners. This would enable the industry to align their SBA contractor fee collection procedures with industry fee collection practices and reduce the amount of uncollectible fees with small businesses. These changes are estimated to reduce application time burden on program participants by 568 hours. The revised fee remittance process would also enable the industry to align its SBA contractor fee collection procedures with standard industry fee collection practices by having the surety partner collect the SBA fee on its behalf, eliminating the need for the small businesses contractor to remit a fee directly to SBA. Beyond the application process, the rulemaking would reduce burden and improve the experience of program participants in other ways, including by adapting obsolete contract completion reporting requirements to industry practices and eliminating conflicting regulatory language.

This SBG rulemaking also aims to increase bond opportunities for small businesses, making them more competitive. For example, the rule proposes to revise the policies for admission into the Preferred Surety Bond (PSB) program, which provides certain sureties with delegated authority to issue, monitor, and service SBA-guaranteed bonds without SBA's prior approval of the bond guarantee. The rule would provide greater flexibility to SBA to evaluate PSB application criteria, including the minimum underwriting limit and the limit on government-backed bonds as a proportion of premium income, as well as the requirement that the PSB surety receive approval for issuing bonds greater than \$2 million in its initial nine months of program participation. These revisions would provide SBA the ability to work more dynamically with the industry and to more readily adapt to economic change. Ultimately, the changes would increase the pool of PSB sureties, which will expand the SBA surety base and increase bond opportunities for small businesses.

Other proposed revisions that seek to expand the reach of the program were based on feedback received during listening sessions with surety professionals and SBG program participants. For example, the rule proposes to allow PSB sureties to use affiliate staff for underwriting and allow the use of partner-affiliated entities, which will allow surety partners to write more bonds with fewer resources and align SBA regulations with industry practice. Additionally, based on feedback from industry professionals that indicated SBA's Quick Bond program was lagging behind industry changes involving contract size, liquidated damages, and job duration, the rule proposes to provide SBA with greater flexibility to evaluate Quick Bond Agreements for contracts under \$500,000 and in other circumstances, allowing the program to reach industries whose standard practices do not align with current SBA regulations, which effectively serve to exclude entire industries. This would allow the program to ultimately reach more small businesses that are in need of assistance.

5. Small Business Size Standards: Monetary-Based Industry Size Standards (3245-AI12)

Statement of Need:

The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to, every five years, conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the third 5-year review of size standards under the Jobs Act, in this proposed rule, SBA would evaluate all industries with monetary-based size standards and make necessary adjustments to their size standards. Updating size standards broadens eligibility for small business contracting programs, increasing competition in government contracting and broadening the U.S. industrial base, which are critical to economic growth and job creation.

Costs and Benefits:

As the NPRM is still forthcoming, this rule's specific costs and benefits cannot be quantified at this time. The rule will ensure that size standards are reflective of current industry and market conditions, thereby ensuring that Federal small business assistance is more effectively targeted to intended small businesses, resulting in broadening of Federal contracting and financial assistance opportunities to small businesses and small business industrial base. The proposed action is not expected to result in significant costs to both Federal government and small entities as necessary administrative and operational mechanisms are already in place.

Summary of Legal Basis:

The Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions every five years.

**6. Business Loan Program Temporary Changes; Paycheck Protection Program –
Extension of Lender Records Retention Requirements (3245-AI17)**

Statement of Need:

On August 5, 2022, President Biden signed the PPP and Bank Fraud Enforcement Harmonization Act of 2022 (Harmonization Act) (Pub. L. 117-166). The Harmonization Act amended section 7(a) of the Small Business Act to provide, for both First Draw PPP Loans and Second Draw PPP Loans, that notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to a PPP loan guaranteed by SBA shall be filed not later than 10 years after the offense was committed. The Harmonization Act was necessitated by the unprecedented volume of PPP loans, law enforcement estimates of the amount of fraud associated with these loans, and the tremendous strain on law enforcement resources in dealing not only with PPP Program fraud, but fraud in the

other COVID-19 pandemic assistance programs administered by SBA and other federal agencies.

SBA, with support from the Department of Justice (DOJ) and SBA's Office of Inspector General, which are charged with investigating and prosecuting PPP fraud, is seeking to harmonize the records retention requirements applicable to PPP lenders by extending those requirements so that they are consistent with expanded statute of limitations in the Harmonization Act.

Costs and Benefits:

This rule is necessary to prevent the loss of PPP loan records during the expanded statute of limitations period under the Harmonization Act. SBA anticipates that this rule will result in substantial benefits to law enforcement. As discussed above, as of December 31, 2023, DOJ has prosecuted thousands of cases of pandemic-related criminal fraud involving over a billion dollars in fraud loss. DOJ has a similar number of investigations that are open and yet to be charged. There have also been over a billion dollars in seizures and forfeitures issued in connection with stolen CARES Act funds. Further, the DOJ Civil Frauds Division has over 800 pending investigations for civil fraud enforcement actions related to the PPP Program, involving thousands of individuals and entities and billions of dollars in losses. DOJ believes that the numbers of these civil fraud investigations will continue to grow.

Extending the records retention requirements for PPP loan records will provide a substantial benefit to the government and the public by preserving records to allow law enforcement to continue to investigate and prosecute these criminal and civil fraud cases and recover taxpayer funds that were wrongfully obtained by these individuals and entities.