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Submitted through www.regulations.gov

Re: Comments of ACT on Small Business Size Standards, 91 Fed. Reg. 53741 (August 20, 2026), Docket No. SBA-2026-0199, RIN 3245-AI67, and on Small Business Size Standards: Revised Size Standards Methodology, 91 Fed. Reg. 54096 (August 20, 2026), Docket No. SBA-2026-0265

The Association for Competitive Technology (ACT) appreciates the opportunity to comment on the two proposed rules on small business size standards published by the U.S. Small Business Administration (SBA) on August 20, 2026, one revising the standards themselves and one revising the methodology SBA uses to set them.¹

I. Introduction and Statement of Interest

ACT is a not-for-profit trade association representing the global small business technology developer community. Our members are entrepreneurs, independent developers, and small firms that build software, connected devices, and data-driven services across nearly every sector of the economy. They are classified under the information and professional services codes these proposals consolidate, including software publishing, computing infrastructure and data processing, and computer systems design and related services.

Our members are affected by these standards both because they determine eligibility for SBA's contracting and lending programs and because, under section 3(a)(2)(C) of the Small Business Act, federal agencies must use SBA's size standards to define a small business unless a statute authorizes them to do otherwise.² Further, an agency may develop a

¹Small Business Size Standards, 91 Fed. Reg. 53741 (proposed Aug. 20, 2026) (to be codified at 13 C.F.R. pt. 121), Docket No. SBA-2026-0199, RIN 3245-AI67. These comments also address Small Business Size Standards: Revised Size Standards Methodology, 91 Fed. Reg. 54096 (proposed Aug. 20, 2026), Docket No. SBA-2026-0265.

²15 U.S.C. 632(a)(2)(C).

different standard for its own programs with the approval of the Administrator.³ The practical result is that the standards SBA sets in this rulemaking become the working definition of a small business across federal regulatory practice, including the analysis agencies perform under the Regulatory Flexibility Act. ACT and its members interact with the federal government through rulemakings at a wide range of agencies, and the definition of a small business set here determines how an agency has to account for them.

II. ACT's Specific Comments on the Proposed Rules

1. ACT supports moving software publishing to an employee-based standard and adjusting standards for productivity growth

Receipts-based standards measure a firm by its revenue, and in industries with high revenue relative to the number of employees that measure overstates how large the firm actually is. Software revenue also carries amounts that pass through to licensors, cloud providers, and hardware suppliers, so a developer can reach a receipts threshold while its organization, its access to capital, and its capacity to absorb a compliance obligation remain modest. Because receipts are already averaged over five years, the defect is not a single strong year but the mismatch between revenue and firm size in these industries. We therefore support the proposal to move software publishing at NAICS 5132 from a \$47 million receipts standard to an employee-based standard, although a standard set at 3,600 employees describes few of the independent developers classified in that code.⁴ We also support adding an adjustment for general productivity growth alongside the existing inflation adjustment, as the revised methodology proposes, since standards adjusted only for inflation can fall in real terms against the growth of the industries they describe. That support does not extend to computer systems design and related services, where SBA proposes to keep a receipts measure and to raise the ceiling to \$531 million, which we address below.

2. Standards calibrated for contracting and lending should not become the definition of a small entity under the Regulatory Flexibility Act without the step Congress provided

The Regulatory Flexibility Act requires an agency issuing a rule to analyze the effect of the rule on small entities and to consider alternatives that reduce the burden on them, and the population that analysis describes is drawn from the size standards SBA sets. SBA explains that it proposes not to reduce any industry size standard, including in the 45 industries where, in SBA's words, analytics may propose a

³13 C.F.R. 121.903(a).

⁴Proposed revision of the table "Small Business Size Standards by NAICS Industry," 13 C.F.R. 121.201, 91 Fed. Reg. at 53776-84 (NAICS 5132, software publishers, from \$47 million in average annual receipts to an employee-based standard of 3,600 employees).

decrease, because a reduction would cost firms access to federal contracts and SBA-backed loans and would remove an incentive to grow.⁵ Access to those programs is a legitimate reason for SBA to decline to cut a standard for the purposes of the programs SBA administers. It has no bearing on whether a firm can absorb the cost of a new reporting obligation imposed by another agency, and it should not carry over into the definition an agency applies under the Regulatory Flexibility Act.

The proposal would combine the computer systems design and related services industries into a single standard at NAICS 5415 and set that standard at \$531 million in average annual receipts, against current standards in the group of roughly \$34 million to \$37 million. It would also eliminate the information technology value added reseller exception at NAICS 541519, which is set at 150 employees today.⁶ A firm at the new ceiling and an independent developer would both be small under that standard. An agency preparing an initial regulatory flexibility analysis that counts small entities under NAICS 5415 would produce a number that is accurate and that says little about what its rule costs the smallest firms in the code. The proposal would add roughly 114,541 firms to the small business population, which widens that distance across every industry it touches.⁷

Congress provided for this in the Regulatory Flexibility Act itself, which gives the term small business the meaning it carries under section 3 of the Small Business Act unless an agency, after consultation with the Office of Advocacy and after an opportunity for public comment, establishes one or more definitions appropriate to the activities of the agency and publishes them in the Federal Register.⁸ SBA's own regulations already implement that provision, because under 13 C.F.R. 121.903(c) an agency may establish a size standard different from SBA's where a different standard is more appropriate for regulatory flexibility analysis, after consultation with the Office of Advocacy and without the Administrator approval that 13 C.F.R. 121.903(a) requires for an agency's own programs. The authority has seen limited use, in part because SBA's standards have until now stayed close enough to the regulated population to serve.

SBA recognized in its initial regulatory flexibility analysis that the Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy.⁹ We ask SBA to carry that

⁵91 Fed. Reg. at 53743.

⁶Proposed revision of the table "Small Business Size Standards by NAICS Industry," 13 C.F.R. 121.201, 91 Fed. Reg. at 53776-84 (NAICS 5415 and the industries consolidated into it).

⁷91 Fed. Reg. at 53770.

⁸5 U.S.C. 601(3).

⁹91 Fed. Reg. at 53775.

recognition into the general preamble of the final rule, to state there that these standards are established for the purposes of the programs SBA administers under the Small Business Act, to identify 13 C.F.R. 121.903(c) as the route an agency uses for regulatory flexibility analysis, and to state that an analysis which counts every firm beneath a consolidated ceiling has not yet considered the effect of a rule on the smallest firms within that code. An alternative definition adopted under that provision should be used to bring the smallest firms into view, not to narrow the population of firms that receive relief under the Regulatory Flexibility Act. ACT is sending the same request to the Office of Advocacy, which is the office agencies consult under section 601(3) and the office best placed to describe what a workable alternative definition looks like.

3. Consolidation at the four- and five-digit level leaves no way to identify the smallest firms inside a code

The proposal replaces roughly 1,000 standards set at the six-digit level with 338 standards set at the four- and five-digit level and removes the exceptions that sit beneath them. Those six-digit codes and exceptions are the only place in the system where the classification separates firms that do different work at different scales. Today the information technology value added reseller exception measures a reseller against a 150-employee standard, while a custom software developer in the same group is measured against receipts. Once NAICS 541519 is folded into NAICS 5415, both would be measured against the same receipts figure, so a reseller capped at 150 employees today would remain small at hundreds of millions of dollars in largely pass-through receipts, and a custom development shop would meet that reseller on the same footing. A single ceiling for the whole of NAICS 5415 also does not ask the question the statute asks, since section 3(a)(1) of the Small Business Act defines a small business concern as one that is independently owned and operated and not dominant in its field of operation, and a firm can sit well inside a \$531 million receipts ceiling while dominating custom development, cloud resale, or facilities management.¹⁰

For firms that compete for set-aside work, a developer that has been bidding against firms of similar size would now bid against firms several times larger, with longer past performance records and staff devoted to winning federal contracts. SBA estimates that 37,002 firms holding roughly 105,655 federal contracts worth about \$71 billion in fiscal year 2025 obligations would be treated as small under the proposed standards, and those firms would compete for the same set-asides.¹¹ For firms that never bid on federal work, the effect is the one described above, because

¹⁰15 U.S.C. 632(a)(1).

¹¹91 Fed. Reg. at 53771.

the classification system would no longer carry any marker separating them from the largest firm in their code.

We ask SBA to publish with the final rule, as an appendix to the table of size standards, the distribution of firms within each consolidated standard by receipts and by employment, drawn from the data SBA already used to set the standards. A published distribution would let an agency preparing a regulatory flexibility analysis identify the smallest tier within a code without running its own study, and would give the Office of Advocacy something concrete to point to. We also ask SBA to retain a secondary marker within the consolidated codes for firms well below the standard, which it can do by keeping the six-digit NAICS codes in the published table for information even where the legal standard sits at the four- or five-digit level. For NAICS 5415 we ask SBA to go further, either by converting the group to an employee-based standard, consistent with its treatment of software publishing, or by setting a receipts ceiling well below \$531 million and retaining both an employee cap at NAICS 541519 and a lower tier at the current receipts levels. An increase over the current \$34 million is warranted, but \$531 million in average annual receipts does not describe a small custom software firm either for set-aside purposes or for regulatory flexibility analysis.

4. SBA's proposed methodology should account for decreases in industry size

The revised methodology proposed in Docket No. SBA-2026-0265 raises standards through the combined inflation and productivity adjustments and forecloses reductions, since SBA proposes not to reduce any industry size standard even in the 45 industries where its analytics may propose a decrease. Because each five-year review would therefore move the standards the same way, a standard would drift further, across several reviews, from the population of firms it was meant to describe, and that drift compounds in the regulatory flexibility setting described above.

We ask SBA to state in the final rule how it will treat an industry whose analytics continue to support a lower standard across successive reviews, and to publish the analytic result alongside each retained standard. Publishing the result would keep the record clear about where a standard departs from the methodology and by how much, which is information an agency conducting a regulatory flexibility analysis can use even where SBA decides the standard itself should not move.

III. **Conclusion**

ACT appreciates the opportunity to provide comments to SBA, and welcomes the opportunity to discuss our views and recommendations.

Sincerely,



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