

MEMORANDUM

To: Clients and Friends

From: Pamela J. Mazza
Antonio R. Franco
Devon E. Hewitt
Jonathan T. Williams

Date: March 16, 2011

Re: SBA Issues Proposed Changes to the Size Standards for Sector 54

On March 16, 2011, the U.S. Small Business Administration (“SBA”) issued proposed changes to the small business size standards for several industries under Sectors 54 and 81 of the North American Industry Classification System (“NAICS”). See 76 Fed. Reg. 14323 (Mar. 16, 2011). The SBA analyzed 45 industries and three sub-industries in Sector 54, Professional, Scientific, and Technical Services, as well as one industry in Sector 81, Other Services. As a result of the SBA’s review, the SBA has proposed increases to 35 industries and one sub-industry in Sector 54, plus the one industry in Sector 81. A list of the proposed size standard increases for the affected industries is attached to this Client Alert.

The proposed changes to the revenue thresholds for Sectors 54 and 81 are the next step in a process that began in October 2009 when the SBA proposed increases to the size standards for Sectors 44-45, 72, and 81. The SBA moved on to Sector 54 once the size standard increases for Sectors 44-45, 72, and 81 were finalized in October 2010.¹ The SBA is reviewing size standards in accordance with the Small Business Jobs Act of 2010, which requires the SBA to conduct a detailed review of at least one-third of all size standards every 18 months. Once the proposed increases for Sector 54 and 81 are finalized, perhaps as soon as Fall 2011, the SBA will move on to another group of industries.

The SBA’s analysis of Sectors 54 and 81 is notable in several respects. First, the SBA proposed to limit the universe of possible size standards to eight “levels.” The SBA’s goal is to simplify size standards and make them more consistent. Thus, when the SBA assigns a size standard for an industry, it would choose one of the eight levels. The eight potential size standard levels are \$5 million, \$7 million, \$10 million, \$14 million, \$19 million, \$25.5 million, \$30 million, and \$35.5 million.

Additionally, the SBA has proposed to group related industries under one common size standard, as opposed to having different size standards for each industry. For example, the SBA

¹ For more information regarding the changes to Sectors 44-45, 72, and 81, please refer to our Client Alerts from October 28, 2009, and October 7, 2010, which are available at www.pilieromazza.com/client-alerts.

would group the Computer Systems Design and Related Services industries, represented by NAICS codes 541511, 541512, 541513, 541519, and 811212, and assign a common size standard of \$25.5 million. Notably, the SBA's analysis for NAICS code 541513, Computer Facilities Management Services, found that this code, on its own, warranted a size standard at the \$35.5 million level. Therefore, by grouping NAICS code 541513 with the related industries under a common size standard of \$25.5 million, the size standard for NAICS code 541513 is substantially lower than it otherwise would have been. A list showing the differences between the industry-specific and common size standards is attached to this Client Alert.

The SBA used federal contracting data to determine the size standard increases. Depending on the ratio of small business contracting in a particular industry, as compared to total industry receipts, the SBA increased the corresponding size standard either one or two levels. The SBA did not propose an increase greater than two levels above the current size standard, although the agency indicated that it would consider larger adjustments in limited situations based on a more extensive examination of federal contracting and consideration of "significant and unique aspects of small business competitiveness in the Federal contract market."

Based on this analysis, the SBA determined that the size standards for some of the industries in Sector 54 should actually decrease. However, given the difficult economic conditions, the SBA decided that it will not decrease any size standards. Accordingly, while the size standards increased for many Sector 54 industries, some of the industry size standards stayed the same. The industries for which size standards stayed the same include NAICS code 541930, Translation and Interpretation Services, and NAICS code 541990, All Other Professional, Scientific and Technical Services. Note that although the size standards for NAICS codes 541711 and 541712 will stay the same for now, the SBA intends to review the employee-based thresholds for these industries when it reviews Sectors 31-33.

The SBA is seeking feedback on a wide range of issues related to the proposed size standard changes for Sectors 54 and 81. Among the topics for public comment are the size standard methodology, the eight levels of size standards, the use of common size standards for related industries, the decision not to decrease any size standards, and whether the size standards are appropriate for each industry. Comments are due by **May 16, 2011**, and may be submitted electronically via www.regulations.gov or by mail to the SBA.

If you operate in industries that fall under Sectors 54 and 81, we strongly encourage you to submit comments regarding the increase (or lack thereof) for your industry(s). In particular, we recommend commenting if the SBA's proposal to use common size standards for a group of industries will result in a lower size standard for your primary industry than it would have received on its own.

Please do not hesitate to contact us if you would like our assistance in understanding the impact of the proposed changes, including how the use of common size standards will impact your industry, or if you would like our help to prepare comments. We may be reached at 202-857-1000.

Proposed Size Standard Increases for Sectors 54 and 81

<u>NAICS Code</u>	<u>NAICS Industry Title</u>	<u>Proposed Size Standard</u>	<u>Current Size Standard</u>
541110	Offices of Lawyers	\$10 million	\$7 million
541191	Title Abstract and Settlement Offices	\$10 million	\$7 million
541199	All Other Legal Services	\$10 million	\$7 million
541211	Offices of Certified Public Accountants	\$14 million	\$8.5 million
541213	Tax Preparation Services	\$14 million	\$7 million
541214	Payroll Services	\$14 million	\$8.5 million
541219	Other Accounting Services	\$14 million	\$8.5 million
541310	Architectural Services	\$19 million	\$4.5 million
541320	Landscape Architectural Services	\$19 million	\$7 million
541330	Engineering Services	\$19 million	\$4.5 million
	Except Marine Engineering and Naval Architecture	\$25.5 million	\$18.5 million
541340	Drafting Services	\$19 million	\$7 million
541350	Building Inspection Services	\$19 million	\$7 million
541360	Geophysical Surveying and Mapping Services	\$19 million	\$4.5 million
541370	Surveying and Mapping (except Geophysical) Services	\$19 million	\$4.5 million
541380	Testing Laboratories	\$19 million	\$12 million
541511	Custom Computer Programming Services	\$25.5 million	\$25 million
541512	Computer Systems Design Services	\$25.5 million	\$25 million
541513	Computer Facilities Management Services	\$25.5 million	\$25 million
541519	Other Computer Related Services	\$25.5 million	\$25 million
541611	Administrative Management and General Management Consulting Services	\$14 million	\$7 million
541612	Human Resources Consulting Services	\$14 million	\$7 million
541613	Marketing Consulting Services	\$14 million	\$7 million
541614	Process, Physical Distribution and Logistics Consulting Services	\$14 million	\$7 million
541618	Other Management Consulting Services	\$14 million	\$7 million
541620	Environmental Consulting Services	\$14 million	\$7 million
541690	Other Scientific and Technical Consulting Services	\$14 million	\$7 million
541720	Research and Development in the Social Sciences and Humanities	\$19 million	\$7 million
541810	Advertising Agencies	\$14 million	\$7 million
541820	Public Relations Agencies	\$14 million	\$7 million
541830	Media Buying Agencies	\$14 million	\$7 million
541840	Media Representatives	\$14 million	\$7 million
541850	Display Advertising	\$14 million	\$7 million
541860	Direct Mail Advertising	\$14 million	\$7 million
541870	Advertising Material Distribution Services	\$14 million	\$7 million
541890	Other Services Related to Advertising	\$14 million	\$7 million
811212	Computer and Office Repair and Maintenance	\$25.5 million	\$25 million

Comparison of Industry-Specific and Common Size Standards

According to the SBA’s proposed changes to the size standards for Sectors 54 and 81, the SBA is considering using one size standard for a group of related industries. Under this scenario, multiple NAICS codes will share the same “Common Size Standard.” The SBA also analyzed each individual industry and determined the proposed size standard that would apply if Common Size Standards are not used. The chart below compares the individual size standard and the applicable Common Size Standard for each industry.

<u>NAICS Code</u>	<u>NAICS Industry Title</u>	<u>Industry-Specific Size Standard</u>	<u>Common Size Standard</u>
541110	Offices of Lawyers	\$10 million	\$10 million
541191	Title Abstract and Settlement Offices	\$5 million	\$10 million
541199	All Other Legal Services	\$7 million	\$10 million
541211	Offices of Certified Public Accountants	\$14 million	\$14 million
541213	Tax Preparation Services	\$14 million	\$14 million
541214	Payroll Services	\$35.5 million	\$14 million
541219	Other Accounting Services	\$7 million	\$14 million
541310	Architectural Services	\$7 million	\$19 million
541320	Landscape Architectural Services	\$5 million	\$19 million
541330	Engineering Services	\$25.5 million	\$19 million
	Except Military and Aerospace Equipment and Military Weapons	\$25.5 million
	Except Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	N/A
	Except Marine Engineering and Naval Architecture	\$25.5 million
541340	Drafting Services	\$14 million	\$19 million
	Except Map Drafting	N/A
541350	Building Inspection Services	\$7 million	\$19 million
541360	Geophysical Surveying and Mapping Services	\$25.5 million	\$19 million
541370	Surveying and Mapping (except Geophysical) Services	\$5 million	\$19 million
541380	Testing Laboratories	\$10 million	\$19 million
541410	Interior Design Services	\$5 million	\$7 million
541420	Industrial Design Services	\$5 million	\$7 million
541430	Graphic Design Services	\$5 million	\$7 million
541490	Other Specialized Design Services	\$5 million	\$7 million
541511	Custom Computer Programming Services	\$14 million	\$25.5 million
541512	Computer Systems Design Services	\$25.5 million	\$25.5 million
541513	Computer Facilities Management Services	\$35.5 million	\$25.5 million
541519	Other Computer Related Services	\$19 million	\$25.5 million
	Except Information Technology Value Added Resellers	N/A
541611	Administrative Management and General Management Consulting Services	\$14 million	\$14 million
541612	Human Resources Consulting Services	\$14 million	\$14 million
541613	Marketing Consulting Services	\$7 million	\$14 million
541614	Process, Physical Distribution and Logistics Consulting Services	\$19 million	\$14 million

<u>NAICS Code</u>	<u>NAICS Industry Title</u>	<u>Industry-Specific Size Standard</u>	<u>Common Size Standard</u>
541618	Other Management Consulting Services	\$7 million	\$14 million
541620	Environmental Consulting Services	\$5 million	\$14 million
541690	Other Scientific and Technical Consulting Services	\$10 million	\$14 million
541720	Research and Development in the Social Sciences and Humanities	\$19 million
541810	Advertising Agencies	\$14 million	\$14 million
541820	Public Relations Agencies	\$7 million	\$14 million
541830	Media Buying Agencies	\$25.5 million	\$14 million
541840	Media Representatives	\$7 million	\$14 million
541850	Display Advertising	\$25.5 million	\$14 million
541860	Direct Mail Advertising	\$19 million	\$14 million
541870	Advertising Material Distribution Services	\$19 million	\$14 million
541890	Other Services Related to Advertising	\$7 million	\$14 million
541910	Marketing Research and Public Opinion Polling	\$19 million	\$7 million
541921	Photography Studios, Portrait	\$7 million	\$7 million
541922	Commercial Photography	\$5 million	\$7 million
541930	Translation and Interpretation Services	\$7 million	\$7 million
541940	Veterinary Services	\$5 million	\$7 million
541990	All Other Professional, Scientific and Technical Services	\$7 million	\$7 million
811212	Computer and Office Repair and Maintenance	\$19 million	\$25.5 million