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MEMORANDUM

To: Clients and Friends

From: Pamela J. Mazza

Date: October 7, 2010

Re: **SBA Revises Its Size Standards and Issues Its Final Rule Implementing the Women Owned Small Business Programs**

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As we indicated in our earlier communications, we want to alert you to the following Final Rules that were recently published in the Federal Register.

First, on October 6th, the U.S. Small Business Administration ("SBA") issued three final rules, increasing its small business size standards for a number of different industries in North American Industry Classification System ("NAICS") Sectors 44-45 – Retail Trade, Sector 72 – Accommodations and Food Services, and Sector 81 – Other Services. Small Business Size Standards; Other Services, 75 Fed. Reg. 61591 (Oct. 6, 2010); Small Business Size Standards; Retail Trade, 75 Fed. Reg. 61597 (Oct. 6, 2010); Small Business Size Standards, Accommodation and Food Services Industries, 75 Fed. Reg. 61604 (Oct. 6, 2010).

These final rules increase the applicable size standards dramatically, and in some instances, change the size standards from revenue-based size standards to employee-based size standards. For example, in Sectors 44-45, the size standard for NAICS code 441110, New Car Dealers changed from $29 million to 200 employees; the size standard for NAICS code 441210, Recreational Vehicle Dealers, increased from $7 million to $30 million; and the size standard for NAICS code 444120, Paint and Wallpaper Stores, increased from $7 million to $25.5 million. In Sector 81, the size standards for 18 out of the 48 industries were changed. For example, the size standard for NAICS code 813920, Professional Organizations, was increased from $7 million to $14 million; the size standard for NAICS code 811213, Communication Equipment Repair and Maintenance, was changed from $7 million to $10 million; and the size

standard for 812332, Industrial Launderers, was changed from $14 million to $35.5 million. In Sector 72, the size standard for NAICS code 722310, Food Service Contractors, was increased from $20.5 million to 35.5 million; and the size standard for NAICS code 722212, Cafeterias, was increased from $7 million to $25.5 million.

According to the SBA press release, these changes will broaden small business eligibility, thereby helping more small businesses gain access to SBA's financial assistance, contracting and other programs. The SBA estimates that as many as 17,000 additional firms will become eligible for SBA programs as a result of the revised size standards. Each final rule becomes effective November 5, 2010.

Our understanding is that Sector 54 is next on SBA's list for revision, although it could be more than a year before we see more proposed size standard changes.

Second, this morning, the SBA issued its final rule to implement federal procurement programs for women-owned small businesses ("WOSBs") and Economically Disadvantaged Women-Owned Small Businesses ("EDWOSB"). Women-Owned Small Business Federal Contract Program, 75 Fed. Reg. 62258 (Oct. 7, 2010). The Rule identifies 83 industries in which WOSBs are underrepresented in the federal contract marketplace, 38 of which the SBA has deemed WOSBs to be "substantially underrepresented." According to the SBA, the Rule aims to open up more opportunities for WOSBs operating in these industries.

The final Rule contains several eligibility requirements that we wanted to make you aware of. With respect to the WOSB Program, a concern must be a small business and not less than 51% unconditionally and directly owned and controlled by one or more women who are U.S. Citizens. The same requirements apply to the EDWOSB, except that the regulations add that, to qualify as an EDWOSB, the woman owner must be economically disadvantaged.

In determining whether a woman is economically disadvantaged for purposes of the EDWOSB Program, the SBA will review her income, personal net worth, and the fair market value of her total assets. To this end, the rule makes clear that a woman will generally not be considered economically disadvantaged if her adjusted gross yearly income, averaged over the three years preceding the certification, exceeds $350,000, her personal net worth exceeds $750,000 and the fair market value of all of her assets exceeds $6 million. Note that the rule waives the economic disadvantage requirement, however, for the 38 industries in which the SBA has determined that women are "substantially underrepresented."

With respect to the "control" requirement for both the WOSB Program and the EDWOSB Program, the rule provides that the woman must control the management and daily business operations of the concern, hold the highest officer position in the concern, and manage the concern on a full-time basis and devote full-time to the business concern during the normal working hours of business concerns in the same or similar line of business. Further, the rule specifies that, with certain exceptions the woman who holds the highest officer position may not engage in outside employment.

In the preamble to the Rule, the SBA noted that although the Rule is considered final, it is not effective immediately, since there are additional measures that the SBA

must take to fully implement the program. As such, the SBA made clear that the Rule is effective February 4, 2011. As we noted in our previous client alert on this subject, the SBA estimates that federal agencies will be able to start setting aside contracts for WOSBs in the first quarter of 2011.

In sum, if you would like our assistance in understanding any of these final rules, or are interested in learning whether you qualify for the WOSB or the EDWOSB programs, or how to become certified for these programs, please do not hesitate to contact us at 202-857-1000.