

Small Business Notes

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U.S. Small Business Administration (SBA) Releases Two New Proposed Rules Intended to Facilitate Small Business Federal Contracting

On July 6, 2022, the SBA proposed a new, government wide certification program for veteran owned small businesses (VOSBs) and service-disabled veteran owned small businesses (SDVOSBs). Under present rules a VOSB or SDVOSB seeking to contract with the U.S. Department of Veterans Affairs only is required to have a status certification from that agency's Center for Verification and Evaluation. For contracting with all other federal agencies a VOSB or SDVOSB could self-certify its status with the awarding agency and have that agency's contracting officer determine eligibility.

Under the proposed rule, the Veterans' Affairs Center for Verification and Evaluation would cease to exist and be replaced with a U.S. Small Business Administration government-wide certification applicable to all federal agencies. The intent, according to the proposed rule, is to reduce "... ambiguity and uncertainty for contracting officers in the process of making federal contract awards..." by eliminating self-certification and replacing it with the proposed rule. Once obtained, the new certification would need to be renewed every three years.

The proposed rule appeared at 87 FR 40141, and comments closed on August 5, 2022. The SBA expects to have a final rule and transition details by January 1, 2023.

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Inflation Reduction Act Doubles Payroll Tax Credit Available for Start-ups

Section 280C of the Internal Revenue Code is the Credit for Increasing Research Activities. Significantly, the credit is available to offset the employer's portion of federal social enables start-ups and new businesses which do not yet have substantial sales revenues to reduce their "burn rate" of capital.

The Inflation Reduction Act doubled the amount of the credit available from a maximum of \$250,000 to a maximum of \$500,000 for "qualified research activities." Those activities are defined as:

- Research whose expenses are in the course of the taxpayer's regular trade or business under section 174 of the Internal Revenue Code;
- Research undertaken for discovering information that is technological in nature and whose application is intended for use in developing a new or improved business component of the taxpayer;
- Research all of whose elements involve a process of experimentation relating to new or improved function, performance, reliability, or quality;
- Research conducted only in the United States.

It is important to note that many activities considered research by a business are not eligible, qualified research activities (e.g., research after beginning of commercial production, research to adapt a product to a particular customer's need, surveys or studies, research related to internal-use computer software).

The credit is available for a "qualified small business" which is defined as a corporation (including an S corporation) or a partnership with gross receipts of less than \$5 million for the tax year and no gross receipts for any tax year before the 5 year tax year period ending with the tax year.

The credit is elected by filing IRS Form 6765 Credit for Increasing Research Activities and then claimed thereafter on the taxpayer's employment tax return. Note that Form 6765 is complicated as to computations and content with many references to other Code sections and requirements for parallel or subsequent filings of other forms. Small businesses are advised to have a CPA or other competent tax professional complete the form to determine eligibility and to ensure that complete and correct filings are made.

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State Attorneys General Comment in Support of Federal Trade Commission (FTC) Proposed Changes to the Telemarketing Sale Rule

On August 2, 2022, forty-three state attorneys general (including the Minnesota Attorney General) wrote an extensive letter in support of the FTC's proposed changes to the [Telemarketing Sales Rule](#) as proposed at 87 FR 33677 (June 3, 2022).

In proposing the new rulemaking, the FTC indicated the current recordkeeping requirements imposed on telemarketers "no longer adequately meet the needs of law enforcement officials charged with protecting consumers" and so the FTC proposed rule would require sellers and telemarketers to retain seven types of information:

- A copy of each unique pre-recorded message;
- Call detail records of telemarketing campaigns;
- Records sufficient to show that a seller has an established business relationship with a consumer;
- Records sufficient to show that a consumer is a previous donor to a particular charitable organization;
- Records of the service providers that a telemarketer uses to deliver outbound calls;
- Records of a seller or charitable organization's entry specific do-not-call registries; and
- Records of the FTC's do-not-call registry that were used to ensure compliance with the Telemarketing Sale Rule.

A proposed new section of the rule would require the retention of records of call details "that help identify the nature and purpose of each call, including:

- The identity of the telemarketer who placed or received each call;
- The seller or charitable organization for which the telemarketing call was placed or received;
- The good, service, or charitable purpose that is the subject of the call;
- Whether the call is to a consumer or business, utilizes robocalls, or is an outbound call; and, if applicable, the pre-recorded message used in the call.
- The telemarketing scripts used in conduct of the call.

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The letter concluded that the Attorneys General were “hopeful such amendments will enable efficient and effective investigations by both the Commission and State agencies who are on the front lines in combatting consumer harms caused by abusive and/or deceptive telemarketers and sellers.”

National Labor Relations Board Proposes Changes to Joint Employer Rule

On September 7, 2022, the National Labor Relations Board, (NLRB) published a notice of proposed rulemaking that, if adopted as anticipated, will significantly expand the number of businesses presumed to be “joint employers” for purposes of the National Labor Relations Act.

Any such final rule will greatly expand the potential for labor litigation for employers that have relationships with staffing agencies, are part of a franchise model, or even use outside organizations to handle certain aspects of their employee’s working conditions, such as payroll companies.

Published in the Federal Register, 87 FR 54641, the Federal Register indicates that this proposed rule “would revise the standard for determining whether two employers, as defined in section 2(2) of the National Labor Relations Act, are joint employers of particular employees within the meaning of section 2(3) of the Act. The proposed changes are designed to explicitly ground the joint-employer standard in common-law agency principles and provide relevant guidance to parties covered by the Act regarding their rights and responsibilities when more than one statutory employer possesses the authority to control or exercises the power to control particular employees’ essential terms and conditions of employment”.

Comments regarding this proposed rule must be received by the NLRB on or before November 7, 2022. Electronic comments may be submitted through [Regulations.gov](https://www.regulations.gov). Additional guidance is available for comment submission.

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Past issues of Small Business Notes are available on the Department of Employment and Economic Development website at [Small Business Notes](#)

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