

Preparing For Treasury's Small Biz Certification Audits

By **Alexander Hastings, Justin Weitz and Moshe Klein** (November 19, 2025, 3:19 PM EST)

The U.S. Department of the Treasury announced on Nov. 6 that it would audit all contract and task orders awarded under preference-based contracting programs.

Although the audit is currently limited to the Treasury, this action could encourage other agencies to conduct similar audits — especially considering the U.S. administration's priorities of cutting costs and terminating contracts that appear connected to diversity, equity and inclusion efforts.

The audit is expected to address approximately \$9 billion of contract value across the department and its bureaus.

The Treasury's announcement comes on the heels of the U.S. Small Business Administration's investigation and Oct. 30 suspension of ATI Government Solutions LLC. The SBA alleged that the company, which certified as a Section 8(a) small business owned by a Native American tribe, did not perform on the government work it was awarded but instead outsourced its work to other contractors in excess of regulatory limits.

The Treasury alleges that the company's conduct related to over \$253 million in previously issued contract awards. In other contexts, contracts awarded based on misclassifications have led to civil and criminal investigations by the U.S. Department of Justice into violations of the False Claims Act, resulting in significant settlements.

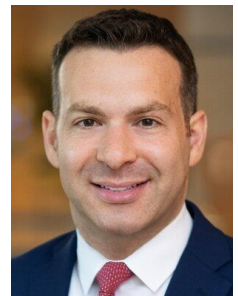
The federal government offers several programs that provide small and disadvantaged businesses preferences in obtaining federal contracts, including contracts set aside for such businesses and evaluation preferences for these entities.

Based on comments from Treasury Secretary Scott Bessent and SBA Administrator Kelly Loeffler, the audit is expected to focus on small business and Section 8(a) program misclassifications.

However, the audit may also assess businesses that have asserted that they qualify for preferences under other SBA classifications, such as women-owned, service-disabled veteran-owned and HUBZone small businesses.



Alexander Hastings



Justin Weitz



Moshe Klein

These classifications and potential misclassifications are relevant not only to the small and disadvantaged contractors themselves, but to competitors that may protest awards granted to misclassified businesses and buyers of small businesses that could inherit the liability of misclassification.

To qualify as a Section 8(a) small business, a company must be majority-owned and controlled by socially and economically disadvantaged individuals, and meet other factors, such as demonstrating that the owner falls under certain net worth and income criteria.

To qualify as a small business under other SBA categories, companies must typically fall within certain employee counts or revenue thresholds tied to their North American Industry Classification System codes. In general, small businesses must calculate their total number of employees and annual receipts over certain periods of time.

However, in practice, a company that chooses to certify as a small or disadvantaged concern faces complicated rules.

For instance, often companies do not realize that when they certify to their number of employees or annual receipts, they must consider not only themselves but their affiliates.

As a result, a company under common ownership with other entities or a subsidiary operating separately within a broader corporate structure must assess its small business size status within the context of shared ownership and control.

Assessing this shared ownership and control can often be difficult, as it is based on a variety of factors, including overlapping management, identity of interest, shared resources, and other elements affecting the independence of a company.

Additionally, for companies that outgrow their small business size status, whether through organic growth or an acquisition, continuing to receive the benefits of this status can lead to potential issues.

Companies must ensure they update their size status once they no longer qualify as small businesses. They also may need to recertify under existing contracts.

This challenge will be compounded by the changes to the SBA regulations taking effect Jan. 17, 2026, which will end companies' ability to continue pursuing work under multiple-award contracts reserved for small businesses after they undergo a transaction that renders them no longer a small business.

Historically, companies have not been required to decertify following transactions with a larger company or an owner with affiliates that render them no longer small.

However, the SBA's new rules will require recertification under multiple-award contracts set aside for small businesses, and prevent formerly small businesses from continuing to benefit as small businesses going forward.

The complexity that surrounds small business contracting suggests that companies responding to audits by the Treasury — and potentially other federal agencies — may be surprised to learn that they did not, in fact, qualify for the small business preferences they received.

Key Takeaways

Companies that certify as small or disadvantaged should assess their ability to qualify for such status, including by confirming that the representations that they make on SAM.gov, in their contracts and to higher-tier contractors remain accurate.

Although the recent announcement was limited to the Treasury, contractors and grantees for other government agencies should prepare for the likelihood of audits and investigations. Companies with potentially inaccurate small or disadvantaged business representations may consider taking a proactive approach to disclosure in light of the forthcoming audits.

Small and disadvantaged businesses that hold a current or recent contract with the Treasury should prepare for the upcoming audit by assessing records that may be necessary to support their prior certifications of small or disadvantaged status — particularly because the total number of employees or annual receipts could span several years.

The number of employees is generally calculated by averaging the total number of employees over pay periods during the prior 24 months. Annual receipts are calculated by averaging gross income, plus cost of goods sold over a five-year period.

Firms that are contemplating the acquisition of a small business should consider a deeper assessment of current and prior small-businesses representations that have been made by the target to ensure it has been properly certifying its status.

This review may often involve considering whether the target falls within the employee or revenue-based size standards under which it has asserted its small business status, while taking into account whether there are any other entities under common ownership or control, i.e., affiliates.

Alexander Hastings is a partner at Morgan Lewis & Bockius LLP.

Justin Weitz is a partner at the firm. He previously served as the principal assistant chief of the Fraud Section's Market Integrity and Major Frauds Unit at the U.S. Department of Justice's Criminal Division.

Moshe Klein is an associate at Morgan Lewis.

Morgan Lewis partner Casey Weaver contributed to this article.

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