SEC Proposes Expanded "Small Entity" Definitions for Purposes of the Regulatory Flexibility Act

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On January 7, 2026, the Securities and Exchange Commission (the "SEC") proposed updates to the definition of "small entity" for purposes of the Regulatory Flexibility Act (the "RFA"). Although the proposed changes, if adopted, would not directly affect the regulatory burden of any entity, over the long term, they could have a substantial impact on the rules the SEC adopts and the manner in which it implements any changes in policy.

Background

Congress enacted the RFA in 1980 in response to concerns that federal regulations often impose disproportionate burdens on small businesses and other small entities that have more limited resources and operational flexibility. When a federal agency proposes or adopts a rule that will have a "significant economic impact" on a "substantial number of small entities," the RFA requires the agency to consider the economic impact of the rule on such small entities, and to comply with certain additional requirements designed to minimize such economic impact. Neither term is defined in the RFA, however, and federal agencies have discretion to determine how they apply in the context of the agency's rulemaking. Under the current definitions used by the SEC, a registered investment adviser is a small entity if it has assets under management of less than $25 million and a registered investment company is a small entity if it has less than $50 million in net assets. In each case, this threshold is set so low that nearly no entity eligible for registration with the Commission actually benefits from the statutorily mandated flexibility.[1]

While the RFA does not mandate any specific regulatory outcome, it is intended to ensure that agencies consider the economic consequences of their rules on small entities.[2] In practice, when the SEC adopts a new rule, it has often provided small entities with additional time to come into compliance. This is important because small entities frequently do not have the resources to develop internal tools to comply with certain SEC rules, and instead must contract with outside vendors, which requires additional time to locate and hire such a vendor. Even when the rule only requires additional procedures and an entity does not need to hire an outside vendor the additional time to come into compliance can still be helpful. Small entities may have relatively small legal and operational departments and personnel in such departments can have a large number of responsibilities, meaning additional time can be important to allow them to develop and implement the appropriate processes.

The Proposal

If adopted, the asset-based thresholds used by the SEC to determine small entity status would be raised substantially and would also be made subject to inflation adjustments so that it is less likely that they become outdated in the future. For registered investment advisers, the proposal would increase the “small entity” threshold from $25 million to $1 billion in assets under management. For registered investment companies, the proposal would increase the net assets threshold from $50 million to $10 billion and update how the assets of related funds are aggregated when determining the small entity status of a registered investment fund complex. The proposal would also provide for inflation adjustments to the asset thresholds every 10 years which could be accomplished by order of the SEC rather than through formal rulemaking.

Changing the thresholds will make it easier for the SEC to more accurately capture firms that are truly “small” in the scope of its RFA analysis. This in turn may make it easier for the SEC to recognize the disparate impact of its rules on certain categories of firms and make it more likely that it will consider the costs of reporting, recordkeeping and compliance requirements associated with such rules, as well as significant alternatives that could accomplish its stated objectives while providing for a lesser impact on such entities.

The SEC is accepting public comments on the proposal through March 2026. There is no stated timeline for adoption, but under normal circumstances, it would occur at least a year after the close of the comment period.

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[1] The SEC has previously noted that most advisers meeting the definition of small entity "are prohibited from registering with the Commission," meaning it would be impossible for them to benefit from the flexibility Congress mandated the agency afford to such entities. (Emphasis added.)

[2] In addition to requiring agencies to consider rules' impact at proposal and adoption, the RFA requires that rules be re-evaluated 10 years after adoption to consider whether any modifications are necessary.

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