



October 18, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

As a result of President Trump's executive orders, 13771 and 13777, the Office of Advocacy (Advocacy) began an effort to hear first-hand from small businesses across the country about specific federal regulatory burdens facing their businesses. As you know, under the Regulatory Flexibility Act (RFA), agencies are required to consider the impact of their regulations on small entities when promulgating federal regulations.¹ We maintain that the RFA and consideration of small business economic impacts is a good place to start when an agency is selecting rules that are being reviewed for reform or elimination.

In my letter to you dated October 3, 2017, I informed you that Advocacy hosted roundtables throughout the country and communicated the specific concerns and regulations that we heard about from small businesses. I would now like to follow up on the regulatory concerns raised by small businesses.

¹ Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. 5 U.S.C. § 601 *et seq.*

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so. Small Business Jobs Act of 2010 (PL 111-240) § 1601.



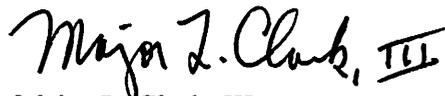
Two important regulations that small business owners brought to our attention were Gainful Employment and Borrower Defenses to Repayment. The Department of Education (The Department) established rulemaking committees to rework both regulations and proposed regulations were published over the summer. The Gainful Employment proposed regulation is undergoing review and Advocacy looks forward to working with the Department to address the concerns of small businesses.

With respect to the Borrower Defenses to Repayment (Institutional Accountability) proposed rulemaking, Advocacy filed a public comment on August 30, 2018 explaining that the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) unless the agency can certify that the rulemaking will not have a significant economic impact on a substantial number of small entities. The Department certified that the proposed rule would not have a significant economic impact on a substantial number of small businesses. Advocacy questioned the Department's factual basis underlying the certification of this proposed rule and ultimately recommended that Department publish for public comment either a supplemental certification with a valid factual basis or an IRFA before proceeding with this rulemaking.

The Office of Advocacy looks forward to continuing our work with your agency to reduce the burden of federal regulations on behalf of the small businesses that have asked us to be their voice in this regulatory reform process. Advocacy would be happy to meet with you or your representative so that we may detail the concerns and help suggest less burdensome alternatives for small business as rules are being considered for revision. I have provided the contact information for Assistant Chief Counsel Rosalyn Steward below.

Thank you for considering small business impacts as a vital part of your regulatory reform efforts and for including the Office of Advocacy as an important part of the process.

Sincerely,



Major L. Clark, III
Acting Chief Counsel for Advocacy

Assistant Chief Counsel Rosalyn Steward
rosalyn.steward@sba.gov
202.205.7013

Copies to:

Elizabeth McFadden
Deputy General Counsel & Regulatory Reform Officer
U.S. Department of Education