



November 16, 2018

VIA ELECTRONIC CORRESPONDENCE

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Nielsen:

As a result of President Trump's Executive Orders, 13771 and 13777, the Office of Advocacy (Advocacy) has begun 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 believe 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.

We recently hosted roundtables in Virginia, New Hampshire; Massachusetts, Michigan, Wisconsin, Texas, Georgia, Modesto, California, Florida, Iowa, Wyoming, Colorado, New Jersey, Pennsylvania, and New York. Advocacy also invited small businesses who could not attend the roundtables to submit their comments on Advocacy's website. Advocacy would like to inform you of the specific concerns and regulations that we heard about from small businesses in these regions, and comments we received from our website as we hope they will be of help to your agency as you comply with the aforementioned executive orders.

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.

Summary of Concerns from Roundtables and Website

United States Citizenship and Immigration Services (USCIS)

- **H-1B visa Program**

The H-1B visa program allows U.S. companies to hire foreign workers in fields such as science, engineering, and information technology. Based on recent Executive Orders on immigration, small businesses are very concerned that H-1B visas will become harder to get. USCIS has planned on multiple upcoming rules on the H-1B visa in their Fall 2018 agenda. Advocacy will work with USCIS to ensure that these regulations accomplish administrative goals while minimizing the impact on small businesses.

- **H-2A Visa Program**

Small businesses expressed concern with the high costs and slow processing times of obtaining H-2A visas for temporary agricultural guest workers. These businesses recommend any changes to lower these costs and expedite this process.

- **H-2B Visa Program**

Small businesses expressed concern with the high costs and slow processing times of obtaining H-2B visas for temporary non-agricultural guest workers. Small businesses have commented on the importance of this program to obtain temporary foreign workers for their seasonal businesses; and recommend that the agency continue this program and approve any opportunities to increase the worker capacity under this program. At almost every Advocacy regional roundtable, small businesses have expressed concern with the statutory limit of 66,000 H-2B workers per year.

In 2018, both the DOL and DHS received more applications than the 33,000 visas allowed in the first half of the year; these agencies instituted a lottery process for these visas. In March 2018, President Trump signed into law a spending bill which included a provision that allows DHS in consultation with DOL to raise the number of H-2B visas. On April 14, 2018, Advocacy wrote a comment letter to DHS and DOL, recommending that the agencies authorize this increase. In May 2018, DHS, in consultation with DOL, published a final rule creating a one-time increase in the number of H-2B visas, adding 15,000 more visas and allowing more small businesses to take advantage of this program.

United States Coast Guard (USCG)

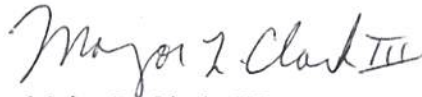
- **Vessel Safety and Security Plans**

Small business representatives have complained that various USCG safety and security plan rules for small towing and other marine sectors are “one-size-fits-all” requirements that are more suitable for large, complex companies. They would like USCG to revise these rules and provide greater flexibility and exemptions for small businesses based on the actual risk posed by the operation.

The Office of Advocacy looks forward to working 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. We hope that you will include these specific rules when you compile your list of rules to review. 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 Counsels **Janis Reyes** and **Bruce Lundegren** below.

As we continue to hear from small businesses across the country at our regional regulatory reform roundtables or through our outreach from our regulatory reform website, we will update you with additional summaries from those locations. 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,



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The Honorable Neomi Rao, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget