

## **Advocacy Comments on the Department of Education’s “General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program”**

On August 30, 2018, the Office of Advocacy filed public comments in response to the Department of Education’s (Department) July 31, 2018 notice of proposed rulemaking on “General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program.” The proposed rule would specify which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Advocacy is concerned that the Department has certified that the proposed rule will not have a significant economic impact on a substantial number of small entities without providing a factual basis for the certification as is required by the Regulatory Flexibility Act.

Additionally, small entities and their representatives expressed to Advocacy their concerns about the absence of:

- An early claim resolution process that could defray potential costs to small entities of litigating borrower defense claims.
- Allowing affirmative claims to three years after the date of graduation and applying the clear and convincing standard for burden of proof.
- Clarity on the length of time an institution must maintain student data if a borrower can initiate a suit at any time throughout repayment of the loan, and the associated costs of maintaining those records.

The above concerns indicate that there could potentially be significant costs to small institutions as a result of these proposed regulations, therefore these costs should be acknowledged and analyzed by the Department.

In its comments, Advocacy recommended that the Department publish for public comment either a supplemental certification with a valid factual basis or an IRFA before proceeding with this rulemaking. By publishing for comment a supplemental certification or an IRFA, the Department will satisfy the requirements of the RFA.

For more information, visit Advocacy’s webpage at <https://www.sba.gov/advocacy>, or contact Assistant Chief Counsel Rosalyn Steward at 202-205-7013, or [rosalyn.steward@sba.gov](mailto:rosalyn.steward@sba.gov).