



October 4, 2017

VIA ELECTRONIC CORRESPONDENCE

The Honorable Elaine C. Duke
Acting Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Acting Secretary Duke:

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 Baton Rouge and New Orleans, Louisiana; Boise and Coeur d'Alene, Idaho; Cincinnati, Cadiz, and Cleveland, Ohio; Lexington, Kentucky; St. Louis, Missouri; and Overland Park, Kansas. 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)

- **Deferred Action for Childhood Arrivals**

Roundtable participants expressed concern about the status of small business owners and employees that were participants of the Deferred Action for Childhood Arrivals (DACA) program. On September 5, 2017, the Department of Homeland Security initiated the orderly phase out of this program.

- **Form I-9- Employment Verification Process**

Small businesses commented about the complexity of the Form I-9 employment verification process. A small business representative was concerned about the redundancy with Form I-9 and employers participating in the E-Verify program. Another small business representative stated that E-Verify is problematic because it does not determine identify fraud, and suggested other options such as the use of biometric tools.

- **H-2A Visa Program**

One small dairy business recommended that the dairy industry be allowed to utilize the H-2A visa program for temporary agricultural foreign workers, as this industry is struggling to obtain the necessary workforce for their operation. Advocacy realizes that this would require a statutory change.

- **H-2B Visa Program**

Small businesses have commented on the importance of this program to obtain temporary non-agricultural 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. Some small businesses cited concern with recent Executive Orders that have specifically targeted this program for reform and potential cuts.

- **International Entrepreneur Rule**

Small businesses in the technology industry cited concern with USCIS' decision to delay the International Entrepreneur Rule until March 2018 in order to collect public comments on a proposal to rescind the rule entirely, and cited support for this program which would have allowed foreign entrepreneurs to utilize a parole program to stay temporarily in the United States to grow their start-up businesses and create U.S. jobs. Advocacy has written a comment letter on this issue.²

² Comment Letter from Daryl DePriest, Chief Counsel for Advocacy and Janis C. Reyes, Assistant Chief Counsel, SBA Office of Advocacy to the Honorable Leon Rodriguez, Director, United States Citizenship and Immigration

United States Coast Guard (USCG)

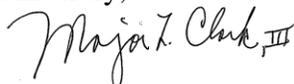
- **Vessel Safety and Security Plans**

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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