



October 4, 2017

The Honorable Ben Carson  
Secretary  
U.S. Department of the Housing and Urban Development  
451 Seventh Street SW  
Washington, D.C. 20410

Dear Dr. Carson:

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.<sup>1</sup> 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, New Orleans, Lexington, Cincinnati, Cleveland, St. Louis, and Kansas City. We would like to inform you of the specific concerns and regulations that we heard about from small businesses in those regions. In Kansas, a participant stated that HUD's 2016 rules concerning criminal background checks are problematic. It is difficult for small businesses to ascertain the type of background check that can be performed to qualify for the safe harbor. Even if the small business qualifies for a safe harbor, the small

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<sup>1</sup> 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.

business may be subjected to tort liability for not performing an adequate background check if someone is harmed by a tenant with a criminal background.

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 Counsel Jennifer A. Smith 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,

*/s/ Major L. Clark, III*

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