

United States Senate

WASHINGTON, DC 20510

April 06, 2011

Dr. Winslow Sargeant
Chief Counsel
U.S. Small Business Administration
409 Third Street, SW
Washington, D.C. 20416

Dear Dr. Sargeant:

Small businesses all over the country are reeling from the effects of the gradual implementation of the Patient Protection and Affordable Care Act (PPACA), which passed in March of 2010. Since passage, the Administration has worked to promulgate scores of new federal regulations – a recent analysis had the number of pages in the Federal Register containing notices and regulations pertaining to PPACA at 6,578. While the most dramatic aspects of the legislation will not be implemented until 2014 and beyond, countless new rules and regulations have already been implemented, and small businesses are experiencing a great deal of adverse impacts.

Perhaps one of the best examples of the challenges of this process, on June 14th of 2010 the Department of Health and Human Services, Department of Labor, and Internal Revenue Service released their Interim Final Rule (IFR) on grandfathering. Grandfathering rules were meant to embody the promise, made repeatedly by the Administration during the health reform debate, that if you liked your health plan, you could keep it. In the June 14th IFR, the Administration estimated that the complicated regulatory scheme for grandfathering which they had invented would result in between 49 and 80 percent of small employer plans losing grandfathered status. Once an IFR is published in the Federal Register, a 60-day comment period commences.

For the grandfathering IFR and a significant number of other regulations that constitute the more than 6,000 pages of PPACA rules, the Administration determined that these regulations were exempt from the Administrative Procedures Act (APA), primarily because of the statutory implementation dates. Accordingly, the Administration also declared itself exempt from the Regulatory Flexibility Act (RFA), which generally gives time for consideration and requires analysis of specifically small business concerns about regulation, because RFA is a part of APA. The Administration repeatedly used this tactic to avoid doing analyses required under RFA, analyses which would have helped protect small businesses from the adverse impacts of the PPACA regulations. According to a report by the Congressional Research Service on December 10th of 2010, at least 18 final rules stemming from PPACA were issued by December 7th of that year.

With this flood of regulation, and the seeming willingness of the Administration to bypass important small business protections like RFA analyses, it is more important than ever for the Small Business Administration (SBA) Office of Advocacy to advocate on behalf of small businesses. Therefore, please report the following information:

- What regulatory comments has SBA Office of Advocacy submitted relating to IFRs, proposed rules, notices of proposed rulemaking, requests for comments, or other regulatory actions relating to PPACA?
- What meetings, conversations, or correspondences have you or other leadership at SBA had with the regulatory agencies to ensure that continued promulgation of PPACA regulations is not overly harmful to small businesses?
- What feedback has SBA solicited from businesses relating to hardship imposed by current, pending, or possible regulations under PPACA?
- Is the SBA now, or has it been, involved in the internal drafting processes for any of the regulations stemming from PPACA? Has the SBA taken any actions aimed at getting involved in this process?
- How many SBA staff are working on issues relating to PPACA implementation? Is this staff sufficient, or does SBA require more resources? If SBA requires more resources, how do you propose using them?

As the Ranking Members of the U.S. Senate committees responsible for oversight of the SBA and the implementation of the new health care law, we are committed to holding the federal government accountable and making sure the concerns of small businesses are considered in this process. Going forward, we will take such actions as are necessary to make sure that SBA is adequately advocating on behalf of America's small businesses, especially as they prepare to confront numerous new rules, regulations, mandates, and requirements stemming from the new health care law.

Sincerely,



Olympia J. Snowe
Ranking Member
U.S. Senate Committee
on Small Business and
Entrepreneurship



Orrin G. Hatch
Ranking Member
U.S. Senate Committee
on Finance



Michael B. Enzi
Ranking Member
U.S. Senate Committee
on Health, Education,
Labor & Pensions