

February 26, 2026

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

Re: File No. S7-2026-01 — Amendments to the “Small Business” and “Small Organization” Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act

Dear Ms. Countryman:

I write to comment on the Commission’s proposal to amend the rules that define “small business” and “small organization” for investment companies and investment advisers under the Regulatory Flexibility Act (RFA). The proposal would (i) raise the investment adviser “small” threshold from \$25 million to \$1 billion in regulatory assets under management (RAUM) (with a conforming control test) and (ii) raise the investment company “small” threshold from \$50 million to \$10 billion in net assets, while updating the aggregation concept to a “family of investment companies,” and add decennial inflation adjustments.

While I appreciate the Commission’s goal of modernizing thresholds, the magnitude of the proposed increases would newly classify a very large share of the market as “small,” diluting the RFA’s focus on truly resource-constrained entities. Public analyses indicate that, under the proposal, roughly 75% of SEC-registered investment advisers would qualify as small (up from ~3% today), and approximately 80% of fund families (representing ~23% of individual funds but only ~2% of industry assets) would be deemed small. By contrast, current incidence stands near 0.6% for individual funds and 3% for advisers.

In addition to these internal inconsistencies with the RFA’s intent, the proposal risks **policy incoherence with ongoing federal efforts to curb large institutional purchases of single-family homes**. On January 20, 2026, the White House issued an **Executive Order titled “Stopping Wall Street from Competing with Main Street Homebuyers,”** directing agencies and GSEs to avoid facilitating acquisitions of single-family homes by large institutional investors and to prioritize sales to individual owner-occupants, with Treasury charged to define “large institutional investor” for implementation. **Congress is also considering bipartisan legislation that would ban or otherwise deter large investors from buying single-family homes (e.g., the Homes for American Families Act).**

Against this backdrop, reclassifying billion-dollar advisers and multi-billion-dollar fund families as “small” for securities rulemaking works at cross-purposes with housing policy that targets those same actors as large in the residential market. **The conflict risks undermining the credibility of both.** Compounding this, the nationwide FinCEN Residential Real Estate Reporting Rule (effective March 1, 2026) will impose new reporting duties on entity/trust purchasers in cash or non-traditional transactions across all states, increasing cross-jurisdictional compliance complexity. By sweeping thousands of mid-sized firms into “small” status, the proposal would elevate expectations of scaled treatment under the RFA while those same firms face expanding, uneven real-estate-related obligations—a recipe for piecemeal and inefficient compliance rather than relief.

Request: Replace fixed asset ceilings with a quintile-based definition of “small.” I respectfully urge the Commission to withdraw the proposed fixed thresholds and instead define “small entity” as the bottom quintile (lowest 20%) of the distribution, computed annually from existing regulatory filings:

- Investment Advisers (RIAs): Use Form ADV data to rank all SEC-registered advisers by RAUM; define “small” as the 20th percentile (or lower). Apply the control test to the same percentile (i.e., an adviser is not small if it controls/is controlled by an entity above the 20th-percentile RAUM). Publish the numeric cutoff each year for use in RFA analyses.
- Investment Companies (Fund Families): Using Form N-CEN, rank families of investment companies by aggregate family net assets; define “small” as the 20th percentile (or lower). Publish the annual numeric cutoff and methodology. This aligns with the proposal’s shift to the “family” construct.

Why this approach is superior:

- Targeting & integrity: The RFA’s purpose is to evaluate impacts on entities with limited capacity to absorb regulatory costs. A percentile-based standard ensures that “small” reflects true relative smallness in today’s market and cannot drift into including billion-dollar firms.
- Policy coherence: Quintiles avoid labeling market-dominant actors “small” while federal policy simultaneously characterizes them as large for housing acquisition restrictions.
- Automatic updating: Percentiles recomputed annually from ADV/N-CEN are inherently current, more responsive than decennial inflation adjustments, and transparent if paired with a published methodology.
- Administrative clarity: The Commission can post the cutoff figures and a grace-period protocol (e.g., 12 months) to prevent whipsaw effects when firms hover near the line.

Comparative impacts: Under the status quo, approximately 0.6% of individual funds and 3% of RIAs are “small.” Under the proposal, about 23% of individual funds (~80% of fund families) and ~75% of RIAs would be “small.” A quintile standard fixes the incidence at 20% by construction, ensuring narrow, predictable RFA tailoring focused on genuinely smaller entities.

Illustrative (non-binding) 2026 cutoffs to show how a quintile rule functions:

- RIAs (RAUM) — Illustrative 20th-percentile cutoff: \$200–\$300 million RAUM. Rationale: Public reports indicate ~75% of RIAs are below \$1B under the proposal; the bottom quintile will be materially below that figure. The SEC should publish the exact percentile value derived from 2025–2026 Form ADV. (Illustrative, synthetic)
- Fund families (aggregate net assets) — Illustrative 20th-percentile cutoff: \$1.5–\$3.0 billion. Rationale: Analyses indicate ~80% of families are below \$10B; thus the 20th-percentile family size should be well under \$10B. The SEC should publish the exact percentile from 2025–2026 Form N-CEN. (Illustrative, synthetic)

Specific edits requested to the rule text:

1. Withdraw the proposed \$1B RAUM and \$10B net assets thresholds and the associated fixed control/aggregation tests predicated on those levels.
2. Amend Rule 0-7 (Advisers Act) to define “small business or small organization” as an adviser at or below the 20th percentile of RAUM among SEC-registered advisers, with the control relationship test keyed to the same percentile. Require annual publication (by order) of the numeric cutoff and methodology.
3. Amend Rule 0-10 (Investment Company Act) to define “small business or small organization” as a family of investment companies at or below the 20th percentile of aggregate family net assets (per Form N-CEN), with annual publication of the numeric cutoff and methodology.
4. Replace the proposed 10-year inflation adjustments with annual percentile updates; permit a 12-month grace period for entities crossing the threshold mid-cycle.

Conclusion: The Commission’s modernization initiative is welcome—but the scale of the proposed thresholds would re-label much of the market as “small,” blunting the RFA’s purpose and conflicting with simultaneous federal efforts to constrain large institutional activity in residential real estate. A quintile-based definition preserves the RFA’s intent, updates automatically, and keeps scarce compliance relief focused where it belongs—on truly small firms—while maintaining coherence with broader federal housing policy.

Respectfully submitted,

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Homeowner
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