



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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July 8, 2009

Mr. Grady Hedgespeth
Director, Office of Financial Assistance
Office of Financial Assistance
Small Business Administration
409 Third Street, S.W., 8th Floor, Suite 8300
Washington, DC 20416

Submitted electronically via www.regulations.gov

Re: Docket Number SBA – 2009 – 0001 Business Loan Program Temporary Eliminations/Reductions in Fees, Notice and request for comments.

Dear Mr. Hedgespeth:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR), I am pleased to provide comments on the Small Business Administration's notice and request for comments concerning the Business Loan Program and Temporary Eliminations/Reductions in Fees under the American Recovery and Reinvestment Act of 2009 (ARRA).

The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

The SBA's temporary fee reduction program should be adequately funded and extended beyond its current terms as demand warrants.

ARRA addresses the need to promote economic recovery by preserving and creating jobs, and to assist those most affected by the severe economic conditions facing the nation.¹ Included in this targeted constituency are real estate agents and real estate brokers, representing the very industry identified by the Obama Administration as crucial to leading the country out of the economic recession. Many brokers and agents are small businesses that struggle to find capital for day to day operating expenses, debt service, capital

1 Specifically, the Act is expected to: "...increase access to affordable credit for small businesses through the Agency's 7(a) and 504 loan guarantee programs, unfreeze the secondary market for SBA guaranteed loans, help small businesses struggling with existing debt, and allow greater investment in high-growth small businesses." (Fed. Reg. 6-8-09, p. 27197)

expenditures, and funding for expansion. NAR urges the SBA to seek ongoing funding from Congress to meet demand by small businesses for 7(a) and 504 loans. More specifically:

- The SBA should seek authority to eliminate SBA's ¼ point guaranty fee for loans with maturities of 12 months or less where the total loan amount is no more than \$150,000. NAR believes that Congress and the SBA should employ all reasonable measures to achieve the objectives of the Act. For 7(a) loans this would include eliminating SBA's ¼ point guaranty fee. A quarter percent on a \$150,000 loan equals \$375 and, to the extent that a \$375 fee might affect the SBA's decision to make a loan, this fee should be eliminated.
- Section 7(a)(23)(A) lender fees should be eliminated as permitted under ARRA. The SBA cites three reasons for not eliminating section 7(a)(23)(A) lender fees in the program:
 - *Priority for borrower relief:* NAR believes that if the purpose of the Act is to eliminate fees that impede loan applications and ultimately the loans themselves, it does not matter on which side of the transaction the fees occur if they serve as a barrier to achieving the Act's purposes. Giving priority to eliminating borrower fees to the exclusion of lender fees will be ineffective if lender fees cause the loan to be denied.
 - *Appropriations:* Adequate funding for the program is critical to its success and, to the extent permissible, the SBA should request periodic funding levels for 7(a) loans that match demand from small businesses.
 - *Operational challenges caused by periodic allocation methodology.* It is unclear what is meant by "...there was no periodic allocation methodology between the 7(a) fees that could be implemented without significant operational challenges..." but NAR urges the SBA to investigate means to achieve the Act's objectives despite these operational challenges.
- NAR supports SBA's decision to eliminate two fees in the 504 loan program: 1. Third-Party Participation Fees, and 2. CDC Processing Fees.

Real estate agents are independent contractors and entrepreneurs who should be eligible for Small Business Administration loans.

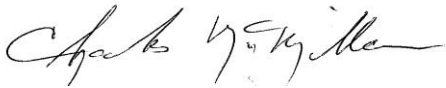
The Obama Administration and leading economists have identified the recovery of the housing as market as one of the critical sectors for broader economic recovery. NAR's members include approximately one million independent contractor real estate agents, who serve as the vanguard of the housing recovery. Unfortunately, real estate agents are not currently eligible for SBA loans, a position that is incompatible with SBA's guiding principles.² Real estate agents require capital to finance their home offices, automobiles and cell phones. They also purchase copier machines, scanners, faxes and other equipment, as well as invest in marketing materials. Like any small businessman or woman, real estate agents may be affected by the lack of capital in the current economy. Whether they are able to obtain loans may determine a real estate agent's ability to be more efficient and effective, successful or ultimately, remain in business. The SBA has historically determined, however, that real estate agents, as "independent contractors", are not eligible for SBA loans.

² <http://www.sba.gov/aboutsba/principles/index.html>: Principles include developing and supporting entrepreneurs; taking leadership in building a productive partnership between the American people and its government; delivering results; empowering the spirit of entrepreneurship; and facilitating an environment so small businesses can succeed.

NAR asks that SBA reassess the reasons underlying the broad prohibition of independent contractors for SBA loan eligibility. First and foremost, real estate agents are entrepreneurs who conduct business as independent contractors and, for purposes of eligibility for SBA loans, should not be viewed as significantly different from entrepreneurs that operate as sole proprietorships or franchisees. The SBA, however, currently views the “affiliation” and “control” guidelines as barring real estate agents from eligibility for SBA loans because of their “affiliation” with brokers and the “control” brokers exert on agents.

Real estate agents, like sole proprietors, run their own businesses, are free to associate or disassociate with any broker they choose, and negotiate terms of their affiliation with brokers, including commission splits and other significant terms. In effect, they are like sole proprietors able to run their own businesses subject to the terms of contracts freely entered into at arm’s length. The SBA might also find interesting parallels between franchise agreements, signed between the franchisor and the franchisee, and the contracts negotiated between real estate agents and real estate brokers. When agents sign up with brokers, they may agree to certain broker conditions, including quality, advertising and other provisions. But the SBA, importantly, states that when considering eligibility of a franchisee for a SBA loan, it generally does not consider these factors in determining whether a franchisor is “affiliated” with the franchisee, provided the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.³ In the case of real estate agents, as is the case with franchisees, agents have the right to profit from their efforts while bearing the risk of loss commensurate with their failure to close transactions. NAR believes that the SBA’s affiliation and control guidelines should not be applied so broadly as to exclude one class of entrepreneur while including another, similar entrepreneur, without a thorough understanding of the excluded business and careful review of its eligibility under SBA principles and regulations.⁴

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles McMillan".

Charles McMillan, CIPS, GRI
2009 President, National Association of REALTORS®

3 13 CFR section 121.103(i)

4 13 CFR section 121(a)(5)