



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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July 24, 2009

The Honorable Karen G. Mills
Administrator
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416

Dear Administrator Mills:

I am writing on behalf of 1.1 million members of the National Association of REALTORS® (NAR) to ask the Small Business Administration to make real estate agents, who typically work as independent contractors, eligible for various SBA loan programs or clarify that they already are eligible. NAR has received anecdotal evidence that some real estate agents, attempting to take advantage of recent modifications to SBA loan programs under the American Recovery and Reinvestment Act of 2009¹ (ARRA) are told that they are not eligible for SBA loans. In addition, in a meeting, emails and phone conversations with various SBA staff, the SBA has not been able to provide NAR with specific citations to regulations or other official SBA determinations that resolve the question.

In an effort to clear up this important issue for our members, NAR specifically requests:

1. An explanation of SBA's current regulations that are relevant to a determination whether real estate agents, as independent contractors, are eligible for various SBA loan programs; and
2. If necessary, amendments to remove any restrictions on their eligibility.

NAR believes its 1.1 million members should be eligible for SBA loans for the following reasons:

- 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.
- 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,

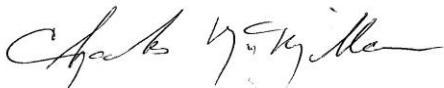
¹ Specifically, the Act is expected to: "increase access to affordable credit for small businesses through the Agency's 7(a) and 504 loan guarantee programs, unfreeze the secondary market for SBA guaranteed loans, help small businesses struggling with existing debt, and allow greater investment in high-growth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

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.

- To the extent the SBA may view affiliation” and “control” guidelines as barring real estate agents from eligibility because their “affiliation” with brokers and the “control” brokers exert on agents, NAR believes this relationship should not be the basis for making them ineligible. There is little difference between franchisees, who are eligible for SBA loans, and real estate agents. It is interesting to note the parallels between franchise agreements, signed between the franchisor and the franchisee, and contracts negotiated between real estate agents and real estate brokers. When an agent signs up with a broker, s/he 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 ownership². 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. If affiliation and control issues are preventing real estate agents from SBA eligibility, NAR believes that the SBA should not exclude one class of entrepreneur while including another, similar entrepreneur³.
- NAR’s 1.1 million members are promoting economic recovery and are being relied upon to help lead the country out of economic recession. Many real estate brokers and agents are small businesses that struggle to find capital for day to day operating expenses, debt service, capital expenditures and funding for expansion. Real estate agents require capital to finance their business expenses and investments including advertising tools, office and other technology, and other items of value to selling homes and commercial residences. Access to SBA loan programs will give them the capital they need to succeed.

For the foregoing reasons, NAR respectfully requests answers to the important questions raised in this letter. We look forward to contributing to the goals of the ARRA and to continuing our traditional close working relationship with the SBA.

Sincerely,



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

² 13 CFR Section 121.103(i)

³ <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.