United States Senate
WASHINGTON, DC 20510

September 23, 2008

The Honorable Sandy Baruah
Acting Administrator
U.S. Small Business Administration
409 Third Street, SW
Washington, D.C. 20416

Dear Acting Administrator Baruah:

It has recently come to our attention that on October 1, 2007, the Small Business Administration (SBA) altered the test to determine "credit elsewhere". As you know, this test determines whether or not a loan applicant is able to secure a disaster loan at a reasonable rate through the private market. If a borrower is able to secure credit elsewhere, SBA will charge that borrower a higher rate of interest for an SBA loan. We are writing you today out of concern that the SBA has altered its process for determining eligibility for the lowest interest SBA disaster loans without consulting Congress. As a result, in certain disasters, there has been a 15 fold rise in the number of disaster victims SBA deems ineligible to receive the lower interest loans.

We understand that each disaster presents the Agency with unique challenges when determining which victims are able to obtain credit elsewhere. However, during the Gulf Coast Hurricanes of 2005, only two percent of victims were offered the higher interest rate loans. Subsequently, reports coming from the Midwest disasters indicate a dramatic increase in the percentage of people determined to have credit elsewhere, which means that SBA is offering a greater number of victims more expensive loans.

While we appreciate that SBA has the responsibility to interpret the statute "for credit elsewhere" and apply it in a manner it deems reasonable, we must also remind you that the Agency's goal and legislative mandate is to facilitate economic recovery. Offering disaster victims loans at a higher interest rate, with a shorter repayment period, may not foster an optimal level of economic recovery and could bankrupt countless businesses and create impossible choices for homeowners trying to rebuild their lives.

In 2003, the SBA Inspector General issued a report criticizing SBA for making low interest loans to individuals who were eligible for credit elsewhere. In response, the SBA stated, "that the audit results did not consider the overall financial condition of the disaster loan applicants and/or their ability to alleviate the economic injury from their own resources, without undue hardship." We find it interesting that that the SBA has seemingly changed its position, and look to you for clarification.

Because of the high number of borrowers that are now being determined to have credit elsewhere, we urge SBA to review the new standards for credit elsewhere and ensure that the requirements are reasonable and unlikely to cause undue financial hardship for the small businesses and homeowners who seek these loans to help rebuild their lives. The federal government should serve as a resource to help disaster victims and aid recovery, and the SBA should not use the strictest possible interpretation of credit elsewhere. The SBA must find a proper balance between the need to help disaster victims with reasonable interest rates and operating the disaster loan program in a fiscally responsible manner. A situation where disaster victims lack access to affordable assistance may actually end up costing taxpayers more in lost tax revenue, lost jobs, and even increased public assistance if businesses shut down or families leave the area or lose their homes. We must address this problem not only to ensure that the new standard is not hampering the recovery efforts in the Midwest, but also to make sure a program is in place that will truly assist in disaster recovery for the victims of future disasters.

We look forward to working together with you on this issue, and appreciate your urgent response to our concerns. Attached are a series of questions, that we and members of the Senate Committee on Small Business and Entrepreneurship would like answered no later then October 1, 2008.

Sincerely,

John F. Kerry
U.S. Senator

Olympia J. Snowe
U.S. Senator

Tom Harkin
U.S. Senator

Chuck Grassley
U.S. Senator

Questions

- What prompted the change in the standard for credit elsewhere?
- What was the Office of Management and Budgets role in changing the standard?
- Why didn't the Administration consult with the Congress or give the public a chance to comment when making this change to an interpretation of a statutory requirement?
- Please provide a series of examples as to what percentage of homeowners or business owners received loans at the market rate and below-market rate for several disasters both before and after the change in the rule?
- There have been reports that individuals have found lower interest loans from the private sector. If SBA is supposed to offer a rate of eight percent or the market rate, whichever is lower, why are individuals finding superior rates in the private sector?
- The real help on the ground does not come until the money is in the hands of people so they can begin to rebuild. There have also been reports of extensive delays in the Midwest in disbursing payments for approved loans. While SBA has worked to improve the time period for processing and approving loans, can you share any information about the time delays between approval and disbursement? Also, how do these delays compare to delays after previous disasters of similar magnitude?
- Some loan applicants have reported that SBA is directing them as to how to rebuild their businesses. Why is this necessary? Does the SBA make disaster assistance contingent upon these recommendations?