

September 26, 2005

Hector V. Barreto
Administrator
U.S. Small Business Administration
409 3rd Street, SW, MC2120
Washington, DC 20416-0005
Via Facsimile

RE: Amend 13 C.F.R. § 121.105, allowing certain charitable organizations to qualify as "small business concerns" for purposes of receiving economic disaster loans

Dear Mr. Barreto,

On behalf of the undersigned organizations, we are writing to request you revise Small Business Administration (SBA) regulations to allow certain charitable organizations to qualify as "small business concerns" for purposes of receiving economic injury disaster loans.

In emergencies like these, it becomes clear the value that we in the nonprofit sector provide to society. We are on the frontlines providing relief and support to the thousands of individuals and families affected by Hurricane Katrina, as well as relief workers. Society expects nonprofit human service organizations to step up during times of crisis, but disasters like Hurricane Katrina, severely affect our ability to serve. It is therefore, critical that we are given the tools to get back on our feet.

Under SBA regulations, physical disaster loans are available to nonprofit organizations, but economic injury disaster loans are not. (*See* 13 C.F.R. §§ 123.200, 123.300.) This position appears to be derived from SBA's definition of "small business concern."

The statute provides that the SBA may make such loans as it determines necessary to any "small business concern" located in an area affected by a disaster if the SBA determines that the concern has suffered a substantial economic injury as a result of the disaster. (*See* 15 U.S.C. § 636(b)(1)(B)(2).) The statute also expressly provides the SBA with authority to specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of aiding small businesses. (*See* 15 U.S.C. § 632(a)(1).)

In regulations, the SBA generally defines a "business concern" as any legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative. (*See* 13 C.F.R. § 121.105.) However, the SBA regulation (but not the statute) defines a "small business concern" as a business entity organized for profit, with a place

of business located in the United States, and which operates primarily in the United States or makes a significant contribution to the U.S. economy through the payment of taxes or use of American products, materials or labor. (See 13 C.F.R. § 121.105.)

As a result of the statute and the definition of small business concern, physical disaster loans are made available to any business concern (including nonprofit organizations), but as a result of your regulations, economic injury disaster loans are only available to entities organized for profit. However, because the statute provides the SBA with wide latitude in determining what businesses qualify as "small business concerns," **we believe the SBA should issue an interim rule that would allow certain charitable organizations to qualify as "small business concerns" for purposes of receiving economic disaster loans.**

One possibility for an interim rule would be to incorporate the statutory definition of a "private nonprofit facility". Paragraph (9) of 42 U.S.C. sec. 5122 states as follows:

"(9) Private nonprofit facility -- 'Private nonprofit facility' means private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President."

An interim rule should also require an applicant to have a ruling letter from the U.S. Internal Revenue Service or satisfactory evidence from the State it is a nonprofit organization doing business under State law.

We understand from the televised scenes of devastation, and hearing directly from our affiliates and organizations in the Gulf Coast region, that recovery is a long process. We also understand there is also urgency to providing assistance to nonprofits. Nonprofit organizations have been on the frontlines of disaster relief, and are now transitioning to the long-term recovery efforts as other emergency disaster relief organizations will begin to phase out their services. In the midst of this crisis we provide food, shelter, and other critical services to impacted citizens and relief workers, but like many of our colleagues in the for-profit sector, we also need to provide salaries and benefits to our employees and their families.

Complicating this task is our dependence on a strong base of charitable giving to sustain programs and services and the utter devastation of so many contributing communities. We willingly shoulder the responsibility of providing needed recovery services to our impacted citizens, but we also need to have equal opportunity to tap into operational and administrative resources from our government so that we too, can continue to provide these much needed services and supports in this extensive and long-term effort.

We would welcome an opportunity to discuss these suggestions or provide examples of our efforts with you and your staff at your earliest convenience. You may contact Kathleen Ferrier at katie.ferrier@ymca.net or 202-835-9043 for more information.

Sincerely,

American Cancer Society
American Humanics
America's Promise
Association of Jewish Family and Children's Agencies
Big Brothers Big Sisters of America
Camp Fire USA
Communities In Schools, Inc.
Community Partnerships with Youth
Family Support America
Girls Incorporated
Girl Scouts of the USA
HIPPI USA
"I Have a Dream"® Foundation
Joint Action in Community Service
MENTOR/National Mentoring Partnership
National Association for Parents of Children with Visual Impairments
National Mental Health Association
National Network for Youth
National Urban League
NeighborWorks America
Points of Light Foundation
Travelers Aid International
United Jewish Communities
United Way of America
Volunteers of America
Women in Community Service
YMCA of the USA
Youth Service America
YWCA USA

CC: Peter Sorum, Ombudsman
Stephen S. Galvan, Acting Deputy Administrator
Jim Towey, Director, White House Office of Faith-Based and Community Initiatives