

July 25, 2014

Certified Mail 7012101000100349113

Administrator, Rural Business-Cooperative Service
1400 Independence Avenue
S.W. Stop 0742
Washington DC, 20250-0742

RE; Appeal of FOIA 2014-RD-04191-F

I appeal the fee determination and request the USDA immediately provide the requested records without charge.

Attached as "Exhibit A, 1-5" is my original FOIA. Attached as "Exhibit B, 1-2" is the USDA's denial to waive fees and a request that I pay \$690 to obtain records that are easy accessible on the USDA's GLS computer system. The fees should be waived because;

1. The records will be provided Gretchen Morgenson, a Pulitzer Prize winning journalist and Financial Editor at the *New York Times*. I have been the source and quoted in numerous articles for Ms. Morgenson including one about the USDA touting false jobs that appeared in the *Times* attached as "Exhibit C, 1-3". Ms. Morgenson told me she would like to write another story if I could provide records that showed USDA Secretary Visack overstated job creation in the USDA lending program in press releases by approximately 75,000 jobs. You can confirm this by calling Ms. Morgenson at (212) 556-1421 or by email to gretchen@nytimes.com . Indeed, Ms. Morgenson may want to question the caller about why the USDA is once again delaying the production of records that are easily accessible and making me jump through hoops and expense to get them.
2. The records are in the public interest and are likely to contribute significantly to the public correct understanding of the operation and activity of the USDA IRP Program as opposed to false information the USDA gives the public in press releases and to Congress in the USDA's Rural Development Audited Annual Reports. Indeed , the records will likely show the misrepresentations are whoppers even by DC standards and that the Inspector General knowing allows the USDA to tout phony job numbers as part of financial statements that the Inspector General audits. As an aside, the fee of \$690 makes no sense. The USDA said it would charge only \$ 360for providing almost identical records in a letter dated June 13, 2014.

Cordially,



Jim Brickman
3131 Harvard Avenue, Suite 103
Dallas, Texas 75205
214 986 3915

EXHIBIT A-1

Jim Brickman

From: Jim Brickman
Sent: Wednesday, June 25, 2014 10:17 AM
To: Ellis, Lolita - RD, Washington, DC (Lolita.Ellis@wdc.usda.gov); Shunk, Joseph - RD, Washington, DC (joseph.shunk@wdc.usda.gov)
Cc: PHYLLIS.FONG@oig.usda.gov; Claire Brickman (cbrickman.law@gmail.com)
Subject: June 25, 2014 FOIA Request From Jim Brickman
Attachments: 2014.06.25 USDA FOIA Request.docx

June 25, 2014

Lolita Ellis sent by email to Lolita.Ellis@wdc.usda.gov
USDA FOIA Officer

Joseph Shunk sent by email to joseph.shunk@wdc.usda.gov.
USDA FOIA Liaison

Dear Ms. Ellis and Mr. Shunk,

Please terminate FOIA Request 2104-RD-03601-F.

This request is a broader request made under the Freedom of Information Act.

Attached or below, "Exhibit A", is an August 6, 2013 Press Release where Agriculture Secretary Tom Vilsack touted that;

" Intermediary Relending Program funds are awarded to community-based development or regional planning groups that then re-lend the money at a low interest rate to local businesses. The loans must be used to create or retain jobs by starting or expanding businesses. Since President Obama took office, this program has created or saved approximately 40,000 jobs."

Attached or below, "Exhibit B" is a May 22, 2014 Press Release where Agriculture Secretary Tom Vilsack touted that;

"Since President Obama took office, the IRP program has created or saved an estimated 92,000 jobs."

Based on these two press releases, between August 6, 2013 and May 22, 2014, 52,000 jobs were supposedly created or saved under the IPR Lending program.

Please provide records that show that 92,000 jobs were created since President Obama took office and that 52,000 jobs were created and saved between August 6, 2013 and May 22, 2014.

More specifically, for any IRP loan made under the Obama Administration, please provide records (in Excel) of the; borrowers name and address, amount of loan obligated, date of loan, interest rate, outstanding balance, transfer and assumption loans, charge off loans and jobs created or saved. These requested records

EXHIBIT A2

are required to be maintained on the USDA's Guaranteed Loan System (GLS) and are easily converted into Excel files.

Please waive any fees. This FOIA will contribute to the public's CORRECT understanding of the operation of government as to opposed what I think are totally fabricated and phony jobs numbers that have been touted in press releases by Secretary Vilsack.

Indeed, I think the CORRECT records will show that the job numbers touted by the Secretary of the USDA to get funding from the taxpayer and Congress misrepresented that over 75,000 jobs have been created that were never created and never existed. If I am correct, this is a big lie even by Washington DC's standards.

Please produce the records within the required statutory time period. I have now successfully sued the USDA twice to get records like these where the USDA paid my legal fees. It is silly to have the taxpayer fund my legal fees just because the USDA wants to make it as difficult as possible for a taxpayer to find the truth of how our government really operates.

I am copying USDA Inspector General Ms. Fong because the USDA OIG has been aware the USDA has been getting taxpayer funding by touting totally phony job creation numbers in its Annual Report to Congress and the taxpayer for years -yet does nothing to stop it.

If a taxpayer, raised money from investors based on similar misreporting he would end up in prison. Just ask Madoff.

I have also copied various member in Congress that have responsibility for the oversight of the USDA and IRP lending program because I think they have no idea how wildly misleading the USDA's touted jobs figures really are and how ineffective the IRP really is in creating jobs. Plus they can see firsthand how difficult the Obama Administration and the USDA makes it for a taxpayer to obtain records that exposes the truth.

Cordially,



Jim Brickman
3131 Harvard Avenue, #103
Dallas, Texas
75205
Officejrb3@aol.com
214 986 3915

Copies to:

Congressman Frank Lucas

by Certified Mail 7013 2250 0000 0996 5973

EXHIBIT A-3

Chairman
House Committee on Agriculture
2311 Rayburn HOB
Washington, DC 20515

Congressman Collin Peterson by Certified Mail 7013 2250 0000 0996 5980
Ranking Member
House Committee on Agriculture
2109 Rayburn HOB
Washington, DC 20515

Senator Debbie Stabenow by Certified Mail 7013 2250 0000 0996 5997
Chairwoman
Senate Committee on Agriculture
133 Hart Senate Office Building
Washington, DC 20510

Senator Thad Cochran by Certified Mail 7013 2250 0000 0996 6000
Ranking Member
Senate Committee on Agriculture
113 Dirksen Senate Office Building
Washington, D.C. 20510-2402

Claire Brickman (my lawyer) by email to cbrickman.law@gmail.com

Exhibit A


EXHIBIT A-4


News Release

Release No. 0156.13

Contact:

Anne Todd (202) 720-1021

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USDA Announces Funding To Create Jobs, Aid Business and Boost the Economy in Rural Areas

ST. LOUIS, Mo., August 6, 2013 – Agriculture Secretary Tom Vilsack announced today that projects in 17 states and the Commonwealth of Puerto Rico will receive loan and grant assistance to create jobs and boost economic development in rural areas. The U.S. Department of Agriculture (USDA) remains focused on carrying out its mission, despite a time of significant budget uncertainty. Today's announcement is one part of the Department's efforts to strengthen the rural economy. Rural Business-Cooperative Service Administrator Lillian Salerno made the announcement on Vilsack's behalf while attending the National Veterans Small Business Conference in St. Louis.

"The Obama Administration is committed to building strong rural economies, and helping veterans find jobs that will support their families," Salerno said. "The funding we are announcing today reflects the Administration's commitment to provide economic opportunity for residents and businesses in rural communities, including those here in Missouri."

Today's announcement involves funding provided through three USDA economic development programs: the Intermediary Relending Program, the Rural Economic Development Loan and Grant Program, and the Rural Business Opportunity Grant Program.


Intermediary Relending Program funds are awarded to community-based development or regional planning groups that then re-lend the money at a low interest rate to local businesses. The loans must be used to create or retain jobs by starting or expanding businesses. Since President Obama took office, this program has created or saved approximately 40,000 jobs.


Exhibit B

EXHIBIT A-5

News Release

Release No. 0094.14
Contact:
Jay Fletcher (202) 690-0498

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USDA Announces Availability of Loans and Grants to Support Rural Economic Development

Revolving loans, micro-lending help create jobs, spark business expansion, increase rural manufacturing

WASHINGTON, May 20, 2014 – Agriculture Secretary Tom Vilsack today announced that the Department is accepting applications for loans and grants to support community development projects, business expansion and job creation.

"These USDA investments are part of the Obama Administration's ongoing efforts to create jobs and expand economic opportunities for rural entrepreneurs," Vilsack said. "Through them, USDA is working with local organizations to provide capital to help small business owners achieve their goals. These investments are helping rural residents take the next steps on the ladder to greater success and opportunity."

Assistance is being provided through two USDA Rural Development programs: the Intermediary Relending Program (IRP) and the Rural Microentrepreneur Assistance Program (RMAP). The 2014 Farm Bill reauthorized both programs through 2018. For Fiscal Year 2014, \$18.9 million in IRP loans are available, and \$25.4 million in RMAP loans and grants are available.

Under IRP, USDA lends money to economic development intermediaries (non-profits and public bodies) who re-lend it to rural businesses (ultimate recipients) that might not otherwise be able to obtain such financing. The program supports sustainable economic development and helps create or retain jobs in disadvantaged and remote communities. USDA encourages intermediaries to work with state and regional representatives and with other public and private organizations that can provide complementary resources. Since President Obama took office, the IRP program has created or saved an estimated 92,000 jobs.



United States Department of Agriculture

EXHIBIT B - 1

Rural Development

July 23, 2014

Operations and Management

Procurement and Administrative Services

Mr. Jim Brickman
3131 Harvard Avenue
Suite 103
Dallas, Texas 75205

1400 Independence Ave SW
Washington, DC 20250
Voice 202.690-5394
Fax 202.692.0034

Re: FOIA Case No. 2014-RD-04191-F

Dear Mr. Brickman:

This letter is in reference to your Freedom of Information Act (FOIA) request dated and received in this office on June 25, 2014. You requested *"records that show that 92,000 jobs were created since President Obama took office and that 52,000 jobs were created and saved between August 6, 2013 and May 22, 2014. More specifically, for any IRP loan made under the Obama Administration, please provide records (in Excel) of the; borrowers name and address, amount of loan obligated, date of loan, interest rate, outstanding balance, transfer and assumption loans, charge off loans and jobs created or saved."*

The 1986 FOIA amendment mandates reduced or waived fees if disclosure *"is in the public interest because it is likely to contribute significantly to public understanding of the operation and activities of the Government and is not primarily in the commercial interest of the requester."* 5 USC 552(a)(4)(A)(iii).

Requests for a fee waiver or fee reduction are considered on a case-by-case basis. The justification you provided does meet the standards to be considered in the Fee Waiver Factors, because it did not indicate any specifics as to how you intend to disseminate the information to the public, e.g. a website, blog, and/or newspaper.

The fee estimate for this agency to process your request is \$690.00. The program staff conducting the search and review for responsive records has indicated it will require 40 hours. However, there is no charge for the first two hours. Please see the enclosed DD Form 2086.

Since the fee amount is over \$690.00, we will need payment in advance. If you are still interested in receiving the responsive records, please send a check, money order or certified funds in the amount of \$690.00 within (30) thirty days made payable to the **United States Treasury** and mail to:

Lolita Ellis
Government Information Specialist
United States Department of Agriculture
Rural Development
1400 Independence Avenue, SW, Mail Stop 0706
Washington, DC 20250-0706

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

EXHIBIT B-1

Mr. Jim Brickman
FOIA Case No. 2014-RD-04191-F

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You may administratively appeal the denial of your fee waiver request. Any appeal must be made in writing to:

Deputy Administrator
U. S. Department of Agriculture
Rural Development
Operations and Management
1400 Independence Avenue, SW, Stop 0720
Washington, DC 20250-0720

The term "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

Sincerely,



Lolita Ellis
Government Information Specialist

Enclosures

EXHIBIT C-1

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FAIR GAME

New Jobs! If Only It Were True

By GRETCHEN MORGENSON
Published: August 24, 2013

CREATING jobs is an essential goal today, given our high unemployment rate. But when job programs rely on taxpayer backing, their success or failure should be clearly disclosed.

Fair Game

Gretchen Morgenson writes the Fair Game column for the Sunday Business section.

Author Bio »
Fair Game Columns »



For example, the United States Department of Agriculture has called its \$1.6 billion business and industry loan program a rousing success. Not surprisingly, the department often trumpets the number of jobs that are expected to result from these loans — figures that it gets from the borrowers

themselves. Whether these jobs are actually created, however, is another story.

The loan guarantee program is overseen by the Rural Development unit of the Agriculture Department and is part of the American Recovery and Reinvestment Act of 2009. Rural Development provides loan guarantees of as much as 90 percent to banks or other approved lenders that finance the improvement or development of businesses in rural and high-unemployment areas.

How many jobs were added or saved through the loans is also a crucial measure of the program's success or failure.

A current success story on the agency's Web site is that of Carolina AAC, a company that received \$10.4 million in late 2010 to build a concrete manufacturing plant in Bennettsville, S.C.

"This project will create approximately 197 new jobs in Marlboro County," the Agriculture Department's Web site says. Such a figure would make Carolina AAC the program's third-largest borrower in terms of jobs created.

But Carolina AAC said in a January 2011 news release that only 36 jobs would be created at the project. And even that has not come to pass. Currently, 10 people work at the company, according to Charles Paterno, its managing member. Troubling for taxpayers is that the government backs 90 percent of the loans and they are in liquidation.

The manufacturing facility is behind schedule, Mr. Paterno said, because a contractor in charge of building it died midway through the project. "We're three months from producing but we're still on target to create 36 jobs and will ramp up to 50," Mr. Paterno said in an interview. Asked about the 197 job number, he said he was unfamiliar with it.

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Nelson Peltz's Efforts to Shake Up Pepsi Get Backing of Calstrs



9. DEALBOOK
The 'Death Blow' to Herbalife Promised by William Ackman Falls Short of Its Billing



10. DEALBOOK
Senate Inquiry Faults Hedge Funds' Tax Strategy

EXHIBIT 2

The figure might reflect indirect job creation, he said, such as workers at a local sand quarry or crews that would install the cement once it's manufactured.

Singleteary Food Solutions is another borrower under the program. Its \$4.36 million in U.S.D.A.-guaranteed loans was expected to create 220 jobs in Wells, Minn., population 2,300. Singleteary was expected to be the second-largest job creator in the program; it also received a Small Business Administration loan for about \$4 million.

But the Wells plant never opened. The Agriculture Department loans are in default, and the bank that wrote the guaranteed loan and sold it to investors took back the property in May.

Singleteary Food Solutions, a food processor, employed 30 people at most, according to a news report in The Faribault County Register.

Stephen B. Singleteary, a lawyer from Chicago, is the president of the company. In an interview on Friday, he said he was seeking an additional \$5 million in capital so he could restructure the debt and start up production. He said the facility needed far more renovation than he had anticipated.

"Once we got in, we found the infrastructure would not accommodate our process and we had to replace most of the basic things," Mr. Singleteary said. "In a 100,000-square-foot facility, it adds up pretty quick."

He has until November to come up with the money so he can get the property back, and he remains hopeful. "When we're fully operational it will exceed 200 jobs," he said.

The company that was expected to be the largest job creator under the program was the Peninsula Plywood Group of Port Angeles, Wash. The roughly \$2 million loan for its lumber mill was guaranteed by the Agriculture Department in January 2010 and expected to create 334 jobs. The facility opened for production later that year but ran into financial trouble and closed in late 2011. Local news reports said it employed 130 people at most.

The loan has been liquidated and the Agriculture Department paid a loss claim of \$958,000.

It's not uncommon for small businesses to fail, and capital nowadays is hard to come by. So some defaults are to be expected.

Asked about the rosy job-creation figures, Lillian Salerno, the administrator in charge of the program, provided this statement: "Since 2009, the U.S.D.A. Business and Industry Loan Guarantee program has supported more than 3,500 small businesses that have helped bolster the rural economy in communities across the country. The program's success rate is the highest it has been since 2000, and it continues to improve. U.S.D.A., through 47 state offices, continuously works with approved lenders to ensure that each small business has every opportunity to succeed."

THE agency also provided five success stories where companies tapping into the program created more jobs than anticipated. One is Salm Partners, a food manufacturer in Denmark, Wis. The company received a \$16 million loan guarantee to expand its facility and projected in 2010 that it would save 147 jobs and add 25 new ones. Today, the company employs 300 full-time workers and has paid back its loan.

Agency documents indicate that others are concerned with its job-creation numbers. A letter on Jan. 18 from the agency to business program directors of the Rural Development unit noted that the Office of Management and Budget wanted agency performance measures to be rigorously evaluated to improve programs' efficiencies. It is essential that the jobs data reported by the Agriculture Department "is accurate, consistent, and verifiable," the letter said.

The Agriculture Department's office of the inspector general recently questioned the accuracy of the agency's job figures. In a March audit, it identified one borrower that had estimated its loan would create and save 400 jobs. After visiting the borrower,

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EXHIBIT 2-3

investigators found that the borrower saved two jobs. "The agency's success in meeting its established performance goals may be overstated," the report said.

Jim Brickman, a real estate investor in Dallas and a whistle-blower on problematic S.B.A. loans said, "The willingness of the U.S.D.A. to tout false job numbers to Congress and the public is absurd and a case study of why the public has lost confidence in government."

The Agriculture Department's program is certainly well-intentioned, and accentuating its positives is only natural. But with taxpayers backing this \$1.6 billion effort, reliable job counts would be preferable.

A version of this article appears in print on August 25, 2013, on page BU1 of the New York edition with the headline: New Jobs! If Only It Were True.

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