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U.S. House of Representatives
Committee on Small Business

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To: Members, House Small Business Committee
From: Barry Pineles, Chief Counsel, Committee on Small Business
Re: Full Committee Markup: "Budget Views and Estimates FY 2015 Budget"
Date: March 21, 2014

On Tuesday, March 25, 2014, at 1:00 pm in Room 2360 of the Rayburn House Office Building, the Committee on Small Business will markup its views and estimates of the President's FY 2015 budget for the Small Business Administration (SBA). The enclosed memorandum describes various SBA programs and their treatment in the FY 2015 budget. This document should be read in conjunction with the accompanying budget views and estimates that will be the subject of the Committee markup. Please direct any questions on this memorandum or the accompanying views and estimates to Barry Pineles, the Committee's Chief Counsel, at x55821.

The SBA's FY 2015 Budget Request continues to show a marked decline in request for funds, almost all of which stems from the continued reduction in the need for appropriations (a request of $64 million less than needed in FY 2014) to cover the cost of its capital access programs. However, the agency also is asking for an additional $39 million for SBA-initiated entrepreneurial outreach programs (efforts that duplicate existing resources) – an increase of $15 million over that appropriated in FY 2014. The total request for FY 2015 is $864.65 million.

Before addressing the issues in the budget in detail, a very brief overview of the SBA is useful to place the ensuing discussion in an appropriate framework. The agency was created in 1953 by President Eisenhower as a replacement for the Small Defense Plants Administration (an entity created to help maintain a robust small business industrial base for providing goods to the military) and the Reconstruction Finance Corporation (started during the Great Depression as a federal lender to businesses).[1] The mission of the SBA, as evinced in the Small Business Act, 15 U.S.C. §§ 631-57p, is to "aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns…." *Id.* at § 631(a).

[1] J. BEAN, BIG GOVERNMENT AND AFFIRMATIVE ACTION 8-9 (2001).

The SBA meets its statutory obligation through three major components: 1) assisting small businesses in obtaining needed capital; 2) helping small businesses navigate the federal procurement marketplace; and 3) offering managerial counseling and assistance to small businesses. Each of these components is executed through multiple Congressionally-mandated programs, often in conjunction with non-federal "partners."[2] Most of the services provided to small businesses, either by the SBA directly or through its partners, are delivered through one of the 68 district offices established throughout the United States.[3]

Salaries and Expenses, Office of Advocacy, and Inspector General

The single largest component of the SBA's budget is salaries and expenses to run their various credit, contracting, and counseling programs. Overall employment for FY 2015 remains steady at FY 2014 levels of 2,136 employees. The President has requested $256.9 million for salaries and expenses. This represents an increase of $6.9 million from FY 2014 but a reduction of $161 million from the amounts appropriated in FY 2013 levels. However, this understates the salaries and expenses since the budget has separate account for administration of the business loan programs and another separate account for administration of the disaster loan program. If expenses for those two programs are added to the $256.9 million, the total for salaries and expenses is $426.2 million, which represents an increase of about $3 million from FY 2014.

Two separate offices within the SBA are headed by individuals nominated by the President and confirmed by the Senate but who do not report to the Administrator. The Chief Counsel for Advocacy oversees the Office of the Chief Counsel for Advocacy and is primarily responsible for representing the interests of small businesses in federal rulemaking proceedings through oversight of agency compliance with the Regulatory Flexibility Act. The Inspector General conducts audits and investigations of SBA programs in order to eliminate waste, fraud and abuse. The budget requests for both of these offices (again entailing almost entirely salaries and expenses) remain steady from FY 2014 levels.

The other primary budgetary drivers for the SBA are: funds needed to cover the costs of the lending programs as required by the Federal Credit Reform Act; funding of disaster assistance (primarily loans to small businesses and homeowners); and the grants provided to the SBA's partners who provide training and assistance to small businesses. Each of these components will be addressed in this memorandum.

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[2] This is the SBA's terminology and covers both for-profit, non-profit, and state governmental entities that help the SBA carry out its mission of assistance to small businesses.

[3] Each state and territory has at least one district office. In larger states, there are multiple district offices, including smaller so-called branch offices. This distinguishes the SBA from most other federal agencies that provide services locally through one of ten federal regional headquarters. In addition to these district offices, the SBA also has regional offices located in each one of the ten federal regions.

Capital Access Programs

The 7(a) Loan Guarantee Program

The 7(a) Loan Guarantee Program (named after § 7(a) of the Small Business Act, 15 U.S.C. § 636(a)) serves as the SBA's primary mechanism to offer needed debt capital to small businesses when they may not be able to obtain sufficient credit from normal lending channels.[4] Loans are not made directly by the SBA; rather the SBA issues guarantees of repayment of loans made by commercial lenders. The size of the guarantee is related to the size of the loan with guarantees of 85 percent for smaller loans (those under $150,000) and 75 percent for loans in excess of $150,000. In 2009, the American Recovery and Reinvestment Act (ARRA) temporarily authorized, but did not mandate, the SBA to increase the guarantee for all loans to 90 percent.[5] Maximum loan size used to be set at $2 million dollars but that upper-level cap was permanently increased in Title I of the Small Business Jobs Act of 2010, Pub. L. No. 111-240, to $5 million.[6] Interest rates vary depending on the size of the loan with the largest loans having the lowest interest rates (usually 2.25 or 2.75 percent above prime depending on the maturity date of the loan).

The SBA is authorized to charge an up-front guarantee fee which will vary depending on the size of the loan with a maximum cap of 3.75 percent of the amount guaranteed. 15 U.S.C. § 636(a)(18(A). For example, a borrower having a gross loan amount of $3 million with a 75 percent guarantee (a SBA-guarantee amount of $2.25 million) would pay $84,375 as the guarantee fee (.0375 * 2.25 million).[7] In addition to this up-front guarantee fee, there also is an ongoing guarantee fee paid by the lender to the SBA and amounts to 0.55 percent (or 55 basis points where each basis point is equal to .01 percent) of the unpaid balance of the guaranteed portion of the loan. *Id.* at § 636(a)(23).

In response to the financial crisis in 2008 and the reduction of lending to small businesses, these fees were reduced on a temporary basis. Since the authority for those fee reductions ceased at the end of calendar year 2010, the President has not sought funds to reduce these fees. Although the President has not requested appropriated funds for fee reduction in the 7(a) Loan Guarantee Program, the SBA, in FY 2014, charged the maximum statutory rate for the ongoing guarantee fee which obtained more funds than

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[4] K. MARKS, L. ROBBINS, G. FERNANDEZ & J. FUNKHOUSER, THE HANDBOOK OF FINANCING GROWTH 146 (2005).

[5] The Small Business Jobs Act of 2010, Pub. L. No. 111-240, extended the authority to grant 90 percent guarantees through December 31, 2010. Since that authority terminated, the President has not sought additional authority to grant guarantees of 90 percent.

[6] With a maximum gross loan amount of $5 million and a guarantee percentage of 75 percent, the SBA will guarantee up to 3.75 million dollars for a small business loan under the 7(a) loan program.

[7] By statute, the lender actually pays the fee but the lender is permitted to charge the cost of the fee to the borrower. 15 U.S.C. § 636(a)(18)(A). From the perspective of the borrower, this up-front guarantee fee is similar to points that would be paid on a residential mortgage but, unlike that case, the legal obligation to pay the fee rests with the lender.

necessary to cover the cost of the 7(a) Loan Guarantee Program and used the excess income to reduce fees for borrowers on certain smaller loans.[8]

Any lender is eligible, after receiving approval from the Administrator, to originate loans for which the SBA will issue a guarantee. A subset of these lenders, denoted "preferred lenders," has substantial expertise with the SBA lending programs and regulations. Preferred lenders are authorized to approve loans using documentation and loan forms developed by the SBA to issue guarantees without first submitting the loan packages to the agency for approval.

In addition, preferred lenders may utilize the Express Loan program, *id.* at § 636(a)(31), in which the preferred lender may use their own forms and documentation but only will be eligible for a 50 percent guarantee of loans up to $350,000[9] from the SBA rather than the normal 75 or 85 percent. Even though the guarantee percentage of a loan is lower, the government runs a substantial risk from the Express Loan program because the quality of loan documentation is not as substantial as in the normal 7(a) loan program.

Before leaving the discussion of the 7(a) loan program, it is necessary to discuss another new lending program – floor plan financing. Using inventory that is sold to consumers as collateral for a loan to enable a business to purchase inventory is a common financing technique used by car, boat, recreational vehicle, furniture, and appliance dealers, among others. This is called floor-plan financing because the businesses are purchasing inventory that will placed on their showroom floor. Historically, the SBA did not permit the use of loan proceeds to purchase inventory, even if the inventory is used as collateral for the loan. *See* 13 C.F.R. § 120.130(c) (2008). In 2009, the SBA created a pilot program (essentially repealing its regulatory prohibition without comment from the public) to permit floor plan financing for products that receive titles from states, such as automobiles, boats, manufactured homes, and motorcycles. The Small Business Jobs Act of 2010 created a specific (albeit unnecessary given the fact that the prohibition was regulatory not legislative) statutory authorization for the program and limited it to automobiles, recreational vehicles, boats, and manufactured homes.

The Certified Development Company Program

The Certified Development Company (CDC) Program provides long-term fixed-rate financing to small businesses to acquire real estate or machinery or equipment for

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[8] The SBA did not need legislative action to implement these fee reductions. The authorization in the Small Business Act permits the SBA to charge up to the 55 basis points but the agency may charge less. *Id.* at § 636(a)(23)(A).

[9] In the Small Business Jobs Act of 2010, loan limits for the Express Loan program were raised for one year to a maximum of $1 million. The rationale for the Express Loan program (somewhat defeated by increasing the loan size) is that the processes and documentation to approve a normal SBA loan are sufficiently time consuming that banks cannot make a profit on such small loans. Another advantage to the banks is that the ongoing cost of Express Loans are lower since the outstanding guarantee amount for a loan will be less (0.55 percent of a 50 percent guarantee will be less than 0.55 percent of the same size loan with an 85 percent guarantee). A significant component of SBA lending is done by large preferred lenders through the Express Loan program.

expansion or modernization as long as the loans[10] meet certain policy and job creation standards. The program was created by Congress in Title V of the Small Business Investment Act of 1958, 15 U.S.C. §§ 695-97g, and is referred to colloquially (and incorrectly) as the "504 Loan Program."[11] This loan program is set up in which the small business contributes 10 percent of the value of the project, a commercial bank contributes 50 percent,[12] and a certified development company or CDC contributes 40 percent through the issuance of a debenture whose repayment is guaranteed by the federal government. The maximum size of the debenture that can be issued by a CDC will vary depending upon the purpose of the project and the type of borrower.[13] However, as a general rule, CDCs can finance significantly larger projects than those available under the 7(a) Loan Guarantee Program. Interest rates on CDC debentures are pegged to an increment above the interest rate for 5- and 10-year Treasury notes. As with 7(a) loans, there is a fee structure but it is a somewhat more complicated calculation of various fees paid by borrowers, first lien lenders, and the CDC. 15 U.S.C.§ 697(b)(7), (d).

Historically, CDC loans could not be used for purposes of refinancing existing debt.[14] The rationale behind the prohibition was that refinancing, while potentially beneficial to the business to reduce debt, was not a key component of economic development that led Congress to create the CDC program. The Small Business Jobs Act of 2010 created a two-year temporary authorization to permit CDCs (using the same basic lending structure outlined above) to refinance existing non-governmental debt, i.e., debt not issued by the SBA or any other federal agency. Unlike a normal CDC loan which requires that the loan create or save jobs, the CDC refinancing program authorized the SBA to impose, but did not require, job savings or retention requirements; the SBA opted not to impose any when it implemented the program. Although the refinancing authority lapsed, the budget requests that refinancing be reauthorized.

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[10] K. MARKS, L. ROBBINS, G. FERNANDEZ & J. FUNKHOUSER, THE HANDBOOK OF FINANCING GROWTH 147 (2005).

[11] Section 504 of the Small Business Investment Act of 1958, 15 U.S.C. § 697a, authorizes the SBA to securitize instruments issued by CDCs and sell them to private investors. The reference is a misnomer because the authority of CDCs to make loans and the purposes for which such loans can be made is found in § 502 of the Small Business Investment Act of 1958, 15 U.S.C. § 696. The incorrect nomenclature has been a longstanding complaint of the Committee under both Republican and Democratic Chairs because that title does not adequately reflect what the loan program does. However, the SBA remains resistant to modifying the nomenclature because it would require the agency to modify its website, alter materials in which it makes reference to this program, and require industry to change its verbiage. Of course, the argument is sophistical since the program used to be called the "502 Loan Program" and the "503 Loan Program." The putting forth of such sophistry simply represents SBA's overall aversion to change.

[12] If the borrower fails to pay and there is a bankruptcy proceeding, the commercial bank lender will be paid back before the federal government. The bank then is considered to hold a first lien on the property.

[13] The sizes of the debentures were $1.5 million if the project does not meet certain statutory goals, $2 million if it meets certain goals, and $4 million dollars for loans to small manufacturers. The Small Business Jobs Act of 2010 raised these limits to $5 million for most projects and $5.5 million for certain projects of small manufacturers. Thus, for a project with a $2 million dollar debenture, the project size is actually $5 million ($2 million debenture, $2.5 million from a commercial bank lender, and $500,000 from the borrower). With the typical forty percent guarantee, the largest project that can be financed in the CDC program is $13.75 million.

[14] For businesses seeking to refinance existing debt, they would have to utilize the 7(a) loan program.

The ARRA created a subsidiary program within the broader CDC program to boost lending in this program. It authorized the SBA to guarantee repayment on the first-lien loans made by commercial bankers that are part of the overall CDC loan package. The poolers of such loans are required to pay fees for the guarantee of the pools of the first liens sold to private investors.[15]

Unlike the 7(a) loan program, the vast majority of loan packages in the CDC must be approved by the SBA. Of the approximately 270 authorized CDCs in the United States, only a handful are designated as "Premier Certified Lenders" or PCLs[16] which are entitled to approve loan packages without first submitting the loans to the SBA.[17] These PCLs also have the authority to liquidate (just as preferred lenders do in the 7(a) loan program) loans that go into default without the assistance or approval of the SBA.

Microloan Program

When starting a business, the vast majority of these very small business owners do not actually utilize banks to take out commercial loans. Rather, they rely on loans, contributions from relatives, and revolving credit loans using their own credit cards. There are some potential entrepreneurs that cannot even rely on angels or revolving credit to find funds for their startups. The Microloan Program is designed to provide credit for those entrepreneurs that would not otherwise have any access to credit, even revolving credit.

The SBA jumped into the mix with a pilot program in 1991. Congress then created a statutory microloan program to assist low-income individuals who do not have the financial or technical resources needed to start and operate a small business. In the 1997 reauthorization, the Microloan Program became permanent. Since the introduction of microfinance programs in the United States, the number of organizations providing direct services to entrepreneurs as microdevelopment organizations or MDOs is about 550. Of these, only about 175 operate as intermediaries in the SBA program. Typically intermediaries make about 2,500 loans each year to borrowers with a total value of about $32 million. The default rate on loans by the SBA to intermediaries is close to zero. The

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[15] As with any securitization of any credit instruments, the primary purpose is to increase liquidity by removing the loans from the banks (so they do not have to retain capital to cover potential loan losses) in order to increase lending. T. KOCH & S. MACDONALD, BANK MANAGEMENT 41 (2006).

[16] Within the past year and a half, the SBA (for the first time in its history) revoked the charters of two PCLs for violating a panoply SBA regulations that implement the program.

[17] The primary rationale for the establishment of PCLs no longer exists. Historically, it took the SBA up to 3 months of review at a SBA district office to approve a CDC loan package. PCLs avoided these delays because they could approve loans without SBA review of each individual loan. However, the cost of this authority was a requirement that the PCL maintain larger loan loss reserves than other CDCs. The SBA, after intercession and complaints by the Committee on Small Business in 2003-04, centralized review of CDC loans in its Sacramento loan processing facility. The time frame for processing such loans has now dropped to anywhere from 2 to 5 business days. Without significant delay and no requirement for additional loan loss reserves, very few CDCs have sought the authority to be a PCL.

default rate for borrowers from intermediaries is quite low – although not as low as that on the 7(a) loan program.[18]

As with all SBA financial assistance programs (except disaster loans), the SBA does not make a microloan directly to a small business. Rather, it makes a loan to a non-profit called a microloan intermediary. These loans are made at interest rates 1.25 percent below the market rate for 5-year rate for United States Treasury notes. Intermediaries are prohibited from obtaining all of their loan funds from the federal government. At least 15 percent of funds made available for loans must come from sources other than the federal government.[19] 15 U.S.C. § 636(m)(3)(b). Unlike the 7(a) and CDC loan programs, appropriated funds cover the cost of subsidizing the interest rate differential in the Microloan Program.[20] The intermediary, in turn, makes loans of up to $50,000 to borrowers.[21] Loans in excess of $20,000 only can be made if the borrower can demonstrate that comparable credit is not elsewhere available. *Id.* at § 636(m)(3)(E). Borrowers then repay the intermediary which in turn repays the SBA. Unlike the banks operating in the 7(a) loan guarantee program, the SBA requires that the intermediaries provide education and training to its borrowers. The intermediaries can provide such training or contract for some other enterprise to provide training and counseling.[22] Funds for training and counseling are provided, in part, by appropriated funds made available to the intermediaries.

Small Business Investment Company Program

Small business investment companies (SBICs) are for-profit enterprises organized under state law as either a corporation or partnership or a variant thereof. SBICs receive a license to operate from the SBA pursuant to authority in Title III of the Small Business

[18] The SBA readily admits that it does not have good data on the default rate of loans made by intermediaries.

[19] In this regard, the Microloan Program is no different than the other SBA-sponsored financing programs. The 7(a) loan program requires that a bank put up anywhere from 15 to 50 percent of each individual loan depending on the size and duration of the loan. CDC loans require the borrowers to obtain financing from sources other than the debenture provided by the SBA. Small business investment companies must provide their own capital before obtaining leverage from the SBA.

[20] Intermediaries make loans at interest rates that exceed their cost of funds but lower than a commercial bank might charge for a customer with a similar credit history. The intermediaries then plow the excess income to reimburse their cost of operation and to supplement the funds borrowed from the federal government.

[21] Maximum loan size in the program was $35,000 before it was raised in the Small Business Jobs Act of 2010 to $50,000. In selecting intermediaries for the program, the SBA is to give preference to those intermediaries who will maintain an average loan size in its portfolio of $10,000. 15 U.S.C. § 636(m)(3)(A)(ii). The rationale behind this is twofold. First, it ensures that intermediaries actually focus on microloans rather than normal commercial loans. Second, an average loan limit size of $10,000 prevents intermediaries from competing with banks operating the 7(a) loan program using subsidized interest rates.

[22] The training and counseling requirement is direct adaptation of the model followed by Grameen Bank in making credit available to its borrowers. Dr. Yunus recognized that its borrowers needed significant advice on how to manage money in order to create a small business that could repay loans. However, in Bangladesh and other foreign countries that have duplicated the Grameen Bank model, the lender became the only available entity to provide such advice.

Investment Act of 1958. The SBA may not grant a license until it is satisfied that the licensee has: a) sufficient capital to operate soundly and profitably; and b) has qualified management. 15 U.S.C. § 681(c)(3)(A). If the SBA is satisfied with these aforementioned determinations, then the agency, prior to issuing a license, must consider whether: a) there is a need for investment in the area in which the applicant will operate; b) the reputation of the owners of the applicant; and c) the prospect that the ownership will manage the business in a profitable manner. Once the SBA is satisfied, it will then issue a license. Thus, the licensing process requires the SBA to consider the business plan of the SBIC before issuing a license. *See* 13 C.F.R. § 107.130.

Once licensed, the SBIC is able to "borrow" money from the federal government to invest in small businesses. These borrowed funds are denominated "leverage" (as in leveraging private dollars with federal funds) in tiers. For every dollar of private investment, an SBIC is entitled to draw up to three dollars in government funding (but is not required to draw that maximum amount). Rather than simply borrowing directly from the federal government, SBICs sell securities that are sold in the private market (essentially a loan by private investors to the SBIC) and the federal government guarantees that the "lenders" to the SBIC are repaid with interest. The SBICs must repay the federal government for the leverage. In essence, there are two separate "loan" transactions; a loan of leverage by the SBA to the SBIC and a loan of private funds by investors to the SBIC who receive either a debenture to the total value of funds provided by the private investors as "collateral." The SBA guarantees the repayment of the funds provided to the SBIC by the private investors who purchased the leverage. As with the 7(a) and CDC loan programs, there are fees paid upfront by the investment company (a fee up to 3 percent of the value of the leverage to purchase a commitment of leverage), 15 U.S.C. § 683(i), and an ongoing fee for the SBA's guarantee which is paid as additional interest charge on the amount owed to the government by the SBIC for the issuance of the leverage. *Id.* at § 683(b).

Title III of the Small Business Investment Act of 1958 authorizes two types of SBICs – debenture SBICs and participating security SBICs. The primary distinction between the two entails the schedule for repayment of the leverage which led SBICs to invest at different stages of a company's development.

Some of the most famous names in corporate America, including Nike, Dell Computer, Federal Express, Callaway Golf, and Outback Steakhouse, were recipients of debenture SBIC funding. These companies were established and utilized debenture SBIC funding for expansion because they had sufficient cash flow to repay the SBICs that in turn could repay their leverage borrowing from the SBA. In essence, the basic philosophy of the debenture SBIC is to invest in companies in which the return on the investment will be split between an increase in the value of the company and monetary payments back to the SBIC.

The structure of repayments in the participating SBIC program leads to a very different type of investment. Since the requirements of repayment are not as immediate in this program as in the debenture SBIC program, these SBICs may invest in firms that are startup firms, rather than established firms looking for expansion capital. In essence, participating security SBICs receive the bulk of their investment payback in the growth of the value of the companies in which they invest. One such successful investment by participating securities has been Build-a-Bear. It goes without saying that investments relying solely on an increase in the value of a company are going to be more volatile than investments in companies that can pay a "dividend" as a well as have some growth. Volatility, however, does not lead to consistent returns and that has created significant problems for the participating security firms leading to potential significant losses. As a result of these losses, the SBA has not issued any new participating securities since 2004. Given the fact that the participating security is a ten-year note, the last repayments will be due by December 31, 2014.[23]

The SBA also imposes significant oversight and control on the operations of SBICs primarily through its control on the issuance of leverage. The SBA only will issue leverage (even if the SBIC has purchased a commitment for leverage) when the SBIC demonstrates that it needs the leverage. *Id.* at § 107.1120(a). Nor will the agency issue leverage if it determines that the issuance of the leverage will unduly place the government at risk of loss. *Id.* at § 107.1120(c)(2)(ii). The SBA also conducts examinations of licensees to ensure they are in compliance with all applicable regulations and ensure that they are not placing the government at undue risk. *Id.* at § 107.690. SBICs are limited in the amount of funds that may be invested in any one company. *Id.* at § 107.740. Finally, the SBA can stop the SBIC from making investments if the investment losses are sufficiently severe to place the company in "capital impairment." *Id.* at § 107.1830-50.

Disaster Loan Program

The SBA provides the primary financial resource for those homeowners, small businesses, and small not-for-profit organizations[24] attempting to recover from a disaster. The vast majority of disaster loans are physical disaster loans (loans to replace buildings destroyed as a result of a disaster) provided to homeowners for losses not otherwise covered by either private insurance or that purchased pursuant to the National Flood Insurance Program. Small businesses also are eligible for physical disaster loans. In addition, small businesses (whether their place of business was destroyed or not) also are eligible for economic injury disaster loans (loans to cover the costs while the business and area recover).[25] A small business is limited to a maximum loan amount of $2.0

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[23] While the SBIC may continue to operate as a private investment fund, it will have no further monetary connection to the federal government unless it has not repaid its "leverage" in which case the government may force the SBIC into receivership and operate the SBIC in order to recoup the monies guaranteed to the private investors by the participating SBIC's sale of the participating security.

[24] Small not-for-profit organizations were added by § 12061 of the Food Conservation and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 1406 (2008) (hereinafter Farm Bill).

[25] Businesses can obtain so-called "business interruption" insurance. To the extent that a business has such insurance, the amount of an economic injury disaster loan would be reduced by the coverage afforded under the business interruption insurance policy.

million for a combination of physical and economic injury disaster loans.[26] Loans made under the disaster loan authority are made directly by the SBA[27] to borrowers so in this regard it is different than other SBA capital access programs.

Finally, small businesses are eligible for the Immediate Disaster Assistance program created by § 12084 of the 2008 Farm Bill. The program enables small businesses to receive loans under $25,000 from private banks with 85 percent of the loan guaranteed by the SBA. Businesses must otherwise be eligible to receive a disaster loan from the SBA and if the business ultimately receives a disaster loan from the SBA, it must use the proceeds to immediately pay back the immediate assistance loan. The idea of the program was to let eligible small businesses get some assistance from private banks that would be able to process loans more quickly than the SBA.[28]

Not all businesses located in a declared disaster are eligible for a SBA disaster loan. First, only businesses that do not exceed the threshold size standards set forth in the agency regulations, *id.* at § 121.201, are eligible to receive assistance from the SBA. Second, Congress prohibits the SBA from lending to people not legally in the country, people who have not filed tax returns (or owe the federal government back taxes), or are not current on child support payments. Finally, the disaster loan program is a loan program and the SBA is required by statute to reject any loan applicant who, in the agency's determination, is unlikely to have the resources to repay the loan.

The Federal Credit Reform Act and SBA Capital Access Programs

The Federal Credit Reform Act (FCRA), 2 U.S.C. § 661, requires government agencies to estimate the net present value cost to the government of any loan program that the agency operates. In the case of the SBA, the agency is required to comply with that standard for all of its capital access programs. Essentially, the FCRA requires that SBA receive in income (be it through an appropriation or from fees paid by lenders and borrowers or some combination of both) sufficient monies to cover any losses[29] in its capital access programs for any loan made in the fiscal year for which the net present value of the cost is calculated. For example, if the SBA plans on making $10 billion in its 7(a) loans for

[26] Until June 18, 2008, the amount of disaster assistance awarded to small businesses was limited to a total of $1.5 million. Section 12078 of the 2008 Farm Bill increased the overall disaster loan amount to $2.0 million. That same section of the Farm Bill authorized the SBA to waive the $2.0 million cap if circumstances determined such a waiver was necessary to help resuscitate the area affected by the disaster.
[27] There are exceptions to the SBA making direct loans. In case of disasters on the scope of Hurricane Katrina, the private banks may be authorized to make disaster loans at below commercial rates with the difference being paid by the federal government to the private lenders. 15 U.S.C. § 636(c). Since being authorized, the SBA has never used this authority because it has been able to process loans in a relatively timely manner, even after Superstorm Sandy. To be sure, there are anecdotes of individuals or businesses owners who have not received loans (it is worthwhile to remember that anecdotes do not constitute data) but, in general, changes made to the disaster program (both legislatively and administratively) have enabled the SBA to process disaster loans in an expeditious manner.
[28] It is important to recognize that the overwhelming number of loans made by the SBA after a disaster is physical injury loans made to homeowners whose property was destroyed – not to business owners.
[29] Losses are calculated by taking the net present value of defaults and subtracting out the net present value of recoveries, i.e., the value of collateral received by the government from defaulted loans.

FY 2012 and estimates that net present value of the cost to the government (loan defaults)[30] will cost the government $100 million, the agency must receive $100 million dollars in FY 2012 to cover that cost (this is the so-called subsidy rate).[31] Each separate capital access program has its own subsidy rate.

Capital Access Programs and FY 2015 Budget

The President's budget requests approximately $47.5 million to cover the costs of the finance programs for FY 2015. This is a reduction of $62 million from FY 2014 as a result of an improving economy and expected higher returns on collateral from loans that default in the CDC Loan Program. The requested amounts should support the following: $15.7 billion for the 7(a) Loan Guarantee Program; $7.5 billion for the CDC Loan Program; $4 billion for SBICs; and $25 million for microlender intermediaries.[32]

Until the financial crisis of 2008, the fees needed to operate the 7(a) Loan Guarantee, CDC Loan, and the Debenture SBIC programs were sufficient to cover the expected losses. Since they received no appropriated funds to cover their costs under the FCRA,[33] the programs were denominated as "zero-subsidy." If the subsidy rate is positive, that means the government needs to appropriate funds to cover the cost of the program and if the subsidy rate is negative, the government takes in more fee income than needed to run the program.

Appropriations Needed to Fund Lending Programs

From FY 2009 through FY2013, the statutorily-authorized fees required supplementation with appropriations in order to cover the costs of the 7(a) Loan Guarantee and CDC Loan programs.[34] A recovering economy led to predicted higher returns on collateral for the 7(a) Loan Guarantee Program thereby enabling it to operate at zero subsidy.[35] For FY 2015, the 7(a) Loan Guarantee Program will remain at zero subsidy. The $47 million in loan subsidies for FY 2015 are allocated entirely to covering the costs of the CDC Loan

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[30] It is important to note that it is not the loans that go into default in FY 2015. It is the loans that were made in FY 2015 that go into default at some point in the future that is the cost being estimated under the mandate of the FCRA.

[31] The subsidy rate goes down when the amount of income needed to cover losses goes down and the subsidy rate goes up when the amount of fee income needed to cover losses goes up.

[32] SBA, FY 2015 CONGRESSIONAL BUDGET JUSTIFICATION 24, Table 8 (2014 [hereinafter SBA Budget Justification].

[33] The SBA received appropriated funds to operate the programs (salaries and expenses) but those costs are not included in the calculus required by the FCRA.

[34] As a practical matter, Congress could have raised fees on borrowers to cover the expected losses but that would have raised costs on small businesses at a time when small businesses needed as much financial wherewithal to create necessary jobs in a recessionary economy. Therefore, Congress decided not to increase fees but to appropriate funds to cover losses in the two programs.

[35] As already noted, the subsidy rate for the 7(a) Loan Guarantee Program in FY 2014 was negative meaning that the program made money for the government. Rather than returning these funds to the Treasury, the SBA reduced fees on certain low-dollar loans.

Program. The reduction in subsidy costs for the CDC Loan Program stems entirely from a reduction in expected defaults and some increase in the value of recovered collateral.[36]

Even this request actually may underestimate the cost of the CDC Loan Program. As already mentioned, small businesses have been able to use the CDC loan program to refinance existing debt which would basically be existing commercial real estate mortgages. The value of such property, as evidenced by the subsidy rates for the CDC Loan Program is a highly troubled market with collateral recoveries still problematic. Although the program was authorized under the expectation of a zero subsidy rate (based on additional fees paid by businesses refinancing their loans), the Office of Management and Budget (OMB) belies that presumption. In addition to the Budget, OMB also prepares a credit supplement that includes reestimates of every loan program operated by the federal government. The OMB reestimates for refinancing found that the subsidy rates went from the original zero estimates to 3.19 percent for refinanced loans made in FY 2011 and 1.38 percent for loans made in FY 2012.[37] The SBA is requesting new statutory and budget authority to provide $7.5 billion in refinancing of commercial loans through the CDC program.[38] The SBA predicts that this will have no budgetary impact since the cost will have a zero subsidy rate – a claim almost farcical given the budgetary reestimates by OMB.

The Disaster Loan Program also has a subsidy rate, i.e., the SBA needs an appropriation to cover the costs of loans. However, there is no request for funds because the Disaster Loan Account at Treasury is a revolving fund that is replenished when loans are repaid. In addition, the account received an additional $520 million in response to Superstorm Sandy. Given the funds available in the account, the SBA requests no new funds to subsidize the disaster loan account because sufficient funds exists to cover the cost of disaster loans in a typical year. Large scale disasters, such as Hurricane Katrina or Superstorm Sandy, normally require a separate emergency appropriation.[39]

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[36] It is likely that the vast majority of reduction in the subsidy cost emanates from reductions in expected defaults. The United States Government Accountability Office (GAO), in a recent study of the CDC Loan Program, found that defaults in the program have continued to decline since the advent of the financial crisis. GAO, ACTIONS NEEDED TO ENSURE PLANNED IMPROVEMENTS ADDRESS KEY REQUIREMENTS OF THE DEVELOPMENT COMPANY (504) LOAN PROGRAM 19-21 (Mar. 2014) (GAO-14-233).

Expected recovery on collateral in the CDC Loan Program has ranged from about 20 cents to 25 cents on the dollar irrespective of current economic conditions. This low recovery rate (about half of the recovery rate in the 7(a) Loan Guarantee Program) has troubled the Committee since 2003, when the Committee voted on changes to the management of defaulted CDC loans in H.R. 2802, the Small Business Reauthorization and Manufacturing Revitalization Act of 2003. A subsequent effort to resolve collateral recovery rates in the CDC Loan Program occurred when the House passed H.R. 3854, the Small Business Financing and Investment Act of 2009. Both efforts would have transferred management of defaulted loans from the SBA to the CDCs whose knowledge of local commercial real estate markets significantly outpaces that of SBA personnel based in Herndon, VA who handle most of the defaults in the program.

[37] Based on the disbursements to date, the costs of the refinancing program is $7.2 million for FY 2011 loans and $27.5 million for FY 2012 loans. These costs could go up as more loans are disbursed (CDC loans are only disbursed after any construction has been completed).

[38] SBA Budget Justification, *supra* note 32, at 37. If reauthorized the SBA would expect CDCs to refinance about $7.5 billion in loans at a zero subsidy. *Id.* at 24, Table 8.

[39] While it might make sense to budget for such large scale disasters, it would be impossible to predict when such disasters occur or how much would be needed. For example, despite advances in seismology, it

There are two types of subsidies for the Microloan Program – appropriated funds so that intermediaries can provide counseling to borrowers and the funds needed to subsidize the interest rates at which loans are made to the intermediaries by the SBA. The size of the counseling request is about 9 times the size of the loan subsidy request in the FY 2015 budget.[40] Thus, the limitation on lending in the Microloan Program is a function of the funds available to counsel the small business borrower. Despite the benefits of the Microloan Program, neither the SBA nor microlending intermediaries have fully explained why the technical assistance could not be provided through other resource partners who provide entrepreneurial education and training.

Ways to Achieve Savings in Capital Access Portion of SBA FY 2015 Budget

As already noted, one of the key components of the subsidy rate calculation involves the amounts recovered on defaulted loans. The return on SBA's liquidation of CDC loans varies from about 20 to 25 cents on the dollar. This is not a good return and raises the subsidy rate for the program (as is evidenced by the SBA request for an appropriation to cover loan costs in the program). If the return on collateral could increase to that typically found in the 7(a) Loan Guarantee Program, it probably would wipe out the need for any appropriation of funds thereby saving the taxpayer $47 million. One solution that has been proffered in the past and, was overwhelmingly passed in a bipartisan manner by the House, has been to authorize CDCs to perform their own liquidations. Yet, the FY 2015 Budget Request remains entirely silent on the SBA's management of defaulted loans in the CDC Loan Program.[41]

In testimony before this Committee, the then Administrator, the Hon. Karen Mills, took "ownership" of improving the SBA's Loan Management Accounting System (LMAS). Nearly 20 years after Congress mandated a functional loan accounting database in the 1997 Small Business Reauthorization Act, SBA is no closer to having adequate information technology required to manage a $100 billion loan portfolio. The Committee's concerns were echoed by in an Inspector General's report noting that the inadequate LMAS was a significant vulnerability to the agency.[42] Despite these concerns from agency overseers, the SBA has not even taken the first step for improvement –

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still remains impossible to predict when an earthquake will occur in the United States or the severity of such earthquake. Maintaining large amounts of funds in an account in the Treasury for an event that may or may not occur in any given year would not be the most efficient use of scarce federal resources.

[40] The request for microloan subsidies is $2.5 million, SBA Budget Justification, *supra note* 32, at 24, Table 8, and the request for technical assistance is $20 million, *id.* at 21, Table 6.

[41] To be more specific, the SBA fails to mention any of its activities related to management of defaulted in any of its lending programs, although to be fair, the majority of defaulted loans in the 7(a) Loan Guarantee Program are not managed by the SBA, but rather by preferred lenders. Nevertheless, given the fact that the SBA's loan portfolio exceeds $100 billion, the absence of any mention of processes or procedures to improve recovery on defaulted loans is quite troubling.

[42] SBA OFFICE OF THE INSPECTOR GENERAL, SBA NEEDS TO IMPLEMENT A VIABLE SOLUTION TO ITS LOAN ACCOUNTING SYSTEM MIGRATION PROBLEM 1 (2005) (Audit Rep. No. 05-29).

migrating the system to a non-proprietary mainframe system using COBOL[43] which the SBA promised this Committee would occur no later than December 31, 2011. No additional funds for software updates or improved functionality have been requested in the FY 2015 budget despite the fact that one of the goals of the SBA for FY 2015 is to mitigate the risks to the taxpayer of its activities, including its capital access programs. Of course that objective is called into serious question by only one mention of improvements to the LMAS – completion of a quality assurance review of LMAS investment.[44]

The Standard Operating Procedures, or SOPs, that provide guidance to the lenders run to around 500 pages (this is a significant reduction from about 1,000 pages before a massive rewrite). According to the SBA's regulations, lenders must comply with the SOPs in closing loans. As a result, these SOPs then constitute regulations (an exegesis on the distinctions over the different type of regulations enumerated in the Administrative Procedure Act is beyond the scope of this memorandum) that limit the discretion of the SBA and its lending partners. Yet, the SOPs are not promulgated according to the procedures mandated by the Administrative Procedure Act for regulations as already discussed elsewhere in this memorandum. If that is the case, the SBA is regulating by guidance which violates both the Administrative Procedure Act, *see Appalachian Power Co. v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000), and the Agency's own regulations on public participation, which also constitutes a violation of the Administrative Procedure Act.[45] These ad hoc changes may impose significant costs on lenders as they need to change their processes and procedures. The SBA claims that one of its strategic objectives is to reduce regulatory burdens on small businesses.[46] While the agency lauded its efforts to ameliorate the impact of rules imposed by other agencies in its budget justification, one glaring omission was the SBA's failure to clean its own house by reducing unnecessary regulation on SBA lenders, borrowers, and applicants for SBIC licenses.[47] Not surprisingly, the agency made no request for funds to streamline or rationalize its own regulatory output.

The Small Business Act authorizes the SBA to create new lending initiatives not specifically authorized by statute. These are called pilot programs; the SBA establishes them by modifying a tome-like SOP and then placing a notice of the pilot program's creation in the Federal Register. The SBA claims it has the authority to conduct these programs pursuant to 13 C.F.R. § 120.3 (a regulation of the agency that permits it to

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[43] As already noted SBA has an aversion to change even to the point of contracting the use of mainframe computers and COBOL. The Committee has checked and no major SBA lender uses COBOL; nor does the SBA's fiscal transfer agent (Wells Fargo) use COBOL in providing contracted services to the SBA.
[44] SBA Budget Justification, *supra* note 32, at 105.
[45] It is an abecedarian principle of administrative law that an agency must follow its own regulations. *United States v. Nixon*, 418 U.S. 683, 695 (1974); *Cherokee Nation v. Babbitt*, 117 F.3d 1489, 1499 (D.C. Cir. 1997). If an agency fails to follow its regulations, that constitutes arbitrary and capricious agency action that can be overturned in court. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Neslon v. INS*, 232 F.3d 258, 262 (1st Cir. 2000).
[46] SBA Budget Justification, *supra* note 32, at 11.
[47] To date, the Committee is unaware of any new SOP that governs the SBIC licensing process. The SOP on licensing SBICs was created in 1984 and the processes laid out in that document have not been followed for nearly 20 years.

waive any regulation on a temporary basis). Nevertheless, the SBA uses this authority to implement major permanent regulatory changes using temporary regulatory authority, such as the Community Express Loan program that has been in existence since 1999 under this temporary authority. And these programs, such as Community Express and Patriot Express often add significantly to the subsidy cost of various loan programs even though there has been no input from Congress or the public about the design of these programs. The FY 2015 Budget Request has not provided any process for reducing the adverse budgetary impact of these ad hoc pilot programs.

Government Contracting Programs

The goal of the federal procurement system is: "to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives." 48 C.F.R. § 1.102(a). To achieve this objective, the basic premise is that open competition among the largest number of potential government contractors will be the best method for achieving the goal of the federal procurement system. 48 C.F.R. § 6.101.[48]

The starting point for federal procurement then is full and open competition. However, it is not the end point as well. Congress determined that it could accomplish other relevant public policy objectives through federal government procurement. Another objective is to promote the growth of small business by ensuring that they receive "fair proportion of the total purchases and contracts for property and services for the Government in each industry category...." 15 U.S.C. § 644(a).

To achieve this objective, Congress created a number of programs designed to increase opportunities for small businesses. The Small Business Reserve Program requires that contracts of value between $3,000 and $150,000 be set aside only for competition among small businesses if at least two small businesses can perform the contract at a fair market price. 48 C.F.R. §§ 19.203(b), 19.502-2(a). The other programs are targeted at specific classes of small businesses: 8(a) businesses; HUBZone businesses; service-disabled veteran-owned businesses; and women-owned businesses. The programs also enable contracting officers to limit competition to businesses within a specific category and in all cases, except small businesses owned by women, to award contracts on a sole source basis, i.e., without competition at all.

The 8(a) Program

This program assists socially and economically disadvantaged (generally minorities) small businesses and is colloquially referred to as the "8(a)" program after section 8(a) of

[48] The cited section of the Federal Acquisition Regulation implements § 2711 of the Competition in Contracting Act (colloquially known among the government contracting cognoscenti as CICA) which requires, except as otherwise provided by statute, full and open competition. 41 U.S.C. § 3301. CICA's use of the term "full and open" was designed to ensure that all government contractors (and not some limited subset selected by contracting officers) had the opportunity to bid on the provision of goods and services. 48 C.F.R. § 2.101; *accord* J. Chierichella & J. Aronie, MULTIPLE AWARD SCHEDULE CONTRACTING 68 (2006).

the Small Business Act, 15 U.S.C. § 637(a). The program is designed, not solely as a contracting program, but as a business development program. 13 C.F.R. § 124.1. The primary mechanism for providing business development is to obtain federal government contracts for program participants. Technical assistance is provided to program participants pursuant to § 7(j) of the Small Business Act, 15 U.S.C. § 636(j).

Section 8(a) authorizes the SBA to enter into contracts with other federal agencies to provide goods and services to the government. The SBA then enters into a contract with a firm that has been certified pursuant to the 8(a) program to provide the goods and services. In essence, the SBA becomes the prime contractor to the federal agency and the 8(a) firm becomes the subcontractor to the SBA. *Contract Management, Inc. v. Rumsfeld*, 434 F.3d 1145, 1147 (9th Cir. 2006).

Contracts under the 8(a) program may be awarded as a sole source contract or in a competition solely reserved for firms certified to participate in the program. It is important to note that the SBA delegated its authority to enter into contracts with firms in the program to other federal agencies. Thus, the agencies now enter into contracts directly with 8(a) participants rather than negotiating with the SBA as the prime contractor. This change was made during the Clinton Administration and contravenes the specific language of the Small Business Act requiring that the SBA and the federal agency enter into a prime contractor relationship.

SBA regulations define who is socially and economically disadvantaged. 13 C.F.R. §§ 124.103, .104. Participation is limited to nine years from the date of entry of the program. Participants may "graduate" if the firms have spent nine years in the program or have achieved the objectives set forth in the business plan that they file with the SBA when they enter the program.

Many graduates of the 8(a) program do not succeed when they graduate. The possible reasons for the lack of success may include overreliance on non-competitive government contracts or the absence of adequate technical assistance that ensures capacity to operate in normal commercial or federal contracting markets.

HUBZone Program

The Historically Underutilized Business Zone (HUBZone) Program was created in 1997 to provide federal government contracting opportunities to small businesses located in geographic areas where unemployment has been above the national average. *Metro Machine Corp. v. Small Business Administration*, 305 F. Supp. 2d 614, 616 (E.D. Va.), *aff'd per curiam*, 102 Fed. Appx. 352 (4th Cir. 2004). Small businesses located in HUBZones are given a ten-percent price preference when bidding against firms not located in a HUBZone. The theory behind the price preference is that, all else being equal,[49] the contracting agency would essentially favor the HUBZone firm. The HUBZone firm then would hire additional employees to service the contract, thereby enhancing economic development.

[49] Economists would refer to this condition as *ceteris paribus*.

There are additional requirements for maintenance of HUBZone status. The most significant is that a firm must have at least 35 percent of its employees residing in a HUBZone. *Id.* It is important to note that the employees need not live in the HUBZone in which the business is located but can be located in any HUBZone. Presumably, increasing the number of employees with incomes will improve the overall economic development an area even if the employee does not reside in the HUBZone in which the business is located. For many years, small businesses certified to the SBA and contracting officers that they met the eligibility criteria for inclusion in the HUBZone Program.

Contracting officers relied on these self-certifications and, until recently, the SBA did not check to determine whether the firm's assertion on qualification for eligibility was correct. However, after a series of investigations by GAO that found serious flaws in the self-certification by small businesses, the SBA revamped the program to include verification by agency personnel of HUBZone status. The issue of self-certification remains a primary vulnerability in the program. More significantly, if ineligible firms receive contracts as a result of incorrect status, it undermines the economic development goals of the program by denying legitimate firms federal government contracts.

Service-Disabled Veterans' Program

Congress, in 1999, amended § 15 of the Small Business Act to require the President to establish a government-wide procurement goal of not less than 3 percent for small businesses owned and controlled by service-disabled veterans. Veterans Entrepreneurship and Small Business Development Act, Pub. L. No. 106-50, 113 Stat. 233, 247 (1999). Little movement was made to increase participation by service-disabled veterans in the federal procurement process; four years later, Congress added a new § 36 to the Small Business Act with the inclusion of § 308 of the Veterans Benefits Act of 2003, Pub. L. No. 108-183, 117 Stat. 2651, 2662 (codified at 15 U.S.C. § 657f).[50] The provision authorized but, unlike the HUBZone program, did not mandate that contracting officers set aside specific contracts for competition solely among small businesses owned by service-disabled veterans. Even after the enactment of § 36, federal agencies were not meeting the three percent goal and the President issued an executive order, E.O. No. 13,360 mandating that the heads of agencies develop strategies for implementing and achieving the goals of § 36.

Women's Procurement Program

In 2000, Congress added a new subsection (m) to § 8 of the Small Business creating a women's procurement program. Small Business Reauthorization Act of 2000, § 811, Pub. L. No. 106-554 (codified at 15 U.S.C. § 637(m)). The program authorizes, but does not mandate, that the contracting officer may set aside contracts for awards to certain women-owned businesses if the contracting officer believes that two or more such

[50] The bill originated with the Committee on Veterans' Affairs and the Committee on Small Business waived jurisdiction.

businesses will submit offers at a fair and reasonable price and the contract is for the procurement of goods of less than $5,000,000 for contracts with a manufacturing industrial classification or $3,000,000 for all other contracts. Unlike the 8(a), HUBZone, and service-disabled veterans program, there is no authority to award sole-source (non-competitive contracts). The Committee, on March 5, 2014, reported by voice vote, H.R. 2452, which would authorize, but not require, contracting officers to use sole-source awards in the women's procurement program – in essence equalizing this program with the other targeted Small Business Act contracting programs.

Implementation of the program depends on the Administrator of the SBA identifying industries in which small business concerns owned and controlled by women are underrepresented in federal government procurement. The Administrator was supposed to identify these after performing a study. After five years in which the SBA did not implement the program, the SBA was sued for action unreasonably withheld, 7 U.S.C. § 706(1). The United States District Court for the District of Columbia found that the SBA unreasonably withheld implementation of the program in a 2005 decision and ordered that the SBA perform a study of historically underrepresented industries as mandated by statute, and kept jurisdiction of the case. Some five years subsequent to that court order, in late 2010, the SBA finally promulgated regulations to implement the program including the identification of women-owned businesses historically underrepresented in federal government contracting.[51]

SBA Small Business Database Errors

In 2012, the federal government began the process of moving three separate databases (Central Contractor Registration or CCR, Excluded Parties List, and Online Representations and Certifications) into one database denominated – the System for Award Management.[52] The CCR database that is now part of SAM was used by contracting officers to identify, among other things, the businesses which are considered small.[53] If the SAM database is flawed,[54] the ability of contracting officers to identify small businesses is severely and adversely affected.

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[51] A detailed history of the administrative actions to implement this program would make this already lengthy memorandum even longer. Individuals wishing a more detailed history should contact the Chief Counsel for the Committee.

[52] Federal Acquisition Regulation; Transition to the System for Award Management (SAM), 77 Fed. Reg. 187, 187 (Jan. 3, 2012).

[53] Section 3(a)(1) of the Small Business Act, 15 U.S.C. § 632(a)(1), provides in pertinent part: "[a] small business concern … shall be deemed to be one that is independently owned and operated and which is not dominant in its field of operation." The Act does not define these basic terms. The Administrator is authorized to consider the number of employees, dollar volume (including gross revenue), net income, and any other factor or combination of factors to determine what constitutes a small business for purposes of the Small Business Act or any other statute. Thus, the Administrator's determination on small business size is conclusive for purposes of federal procurement. 15 U.S.C. § 637(b)(6); *see DSE, Inc. v. United States*, 169 F.3d 21, 26 (D.C. Cir. 1999).

[54] The transition to SAM has been fraught with numerous difficulties. Diana Richards, Neil Whiteman & Sarah Gleich, "*Contractor Reporting Requirements in the Wake of the Implementation of the System for Award Management*" WEST BRIEFING PAPERS, SECOND SERIES, May 2013, No. 13-6, at 3-7, *available at* http://www.gibsondunn.com/publications/Documents/DRichard-NWhiteman-Contractor-Reporting-

The Committee on Small Business has held a number of hearings and conducted its own investigations which uncovered significant flaws in one of the predecessor database to SAM – the CCR particularly as it relates to the identification of small businesses. Among the revelations of these investigations was the fact that large businesses and not-for-profit organizations were listed as small businesses.[55] Some of these problems arise from the fact that the federal government determines the size of the small business at time of contract award and the business outgrows its appropriate size standard but the government never modified the CCR database. In other cases, a large firm purchases a small firm that has a government contract, but the contracting officer fails to require a contract novation[56] showing the new owner of the business that has the contract, the government concurred in that assignment, and that it is no longer small. Either circumstance could lead a contracting officer to conclude that a business it awards a contract to is small even though it is not. This miscoding is particularly problematic with respect to Federal Supply Schedule[57] contracts because GSA determines that the placement on the schedule (rather than when an order is made off the schedule) constitutes the time of award. Since supply schedule contracts may last for many years or decades, it is possible that the supply schedule, used by many contracting officers, will reflect outdated size information through no fault of the contracting officer. Of course, miscoded information makes it much more difficult for the federal government to achieve the statutory goals for small business utilization set forth in § 15(a) of the Small Business Act.

The problems with the legacy CCR system only were compounded with the transition to SAM. Functionality made it difficult, if not impossible, for businesses to register and certify their status as a small business. SAM did not alleviate the problems of identifying small businesses that were revealed in the Committee's examination of CCR. Moreover, SAM does not permit contracting officers to search for small businesses in a given industrial classification thus limiting the ability of contracting officers to perform the appropriate market research to determine whether to set aside a contract for small businesses or to unbundle a contract. Despite the significant barriers that SAM presents in small business utilization, the SBA makes scant mention of this issue in its budget. It certainly does not identify specific budgetary resources allocated to assisting the federal government in remediating SAM.

Requirements.pdf. A full explication of the problems with SAM are beyond the scope of this memorandum since the SBA does not maintain operational control over the database.

[55] Except with respect to agricultural cooperatives and their eligibility for disaster loans, non-profit entities are not considered small businesses for purposes of the Small Business Act.

[56] The Anti-Assignment Act, 41 U.S.C. § 15 and 31 U.S.C. § 203 prohibits the transfer of government contracts without the consent of the government. A novation is entered into to show that the federal government consented to the transfer of the government contract. *See Bonneville Power Admin. v. Mirant Corp.*, 440 F.3d 238, 252 (5th Cir. 2006); *Aerospace Components, Inc.*, 84-3 BCA (CCH) ¶ 17,536.

[57] The Federal Supply Schedule is operated by the General Services Administration. It provides federal agencies with a simplified method for obtaining commercial supplies and services at prices associated with volume discount. Federal agency contracting officers then simply look up an item listed on the schedule and obtain it from one of the suppliers that is willing to supply the item at price established by GSA. 48 C.F.R. § 8.402.

The problems with CCR, were to some extent, ameliorated by the SBA's database – the Dynamic Small Business Search (or DSBS for those with predilections for acronyms).[58] However, Committee staff have found that the DSBS search process is no longer accurate with the number of firms being identified as small constitutes a subset of firms identified as small in the Federal Procurement Data System (the government's database of contracts awarded). The malfunctioning of DSBS undermines a key strategic initiative of the SBA – to ensure that small business contracting goals are met.[59] If they SBA is unable identify small businesses on its own database, one should not expect that other federal agencies should be able to make such identification. However, the SBA makes no mention of this problem in its budget justification and certainly does not allocate funds to correct DSBS.

Subcontracting Issues

Section 15(o) of the Small Business Act, 15 U.S.C. § 644(o), prohibits the award of a contract if the small business subcontracts more than 50 percent of the work (with exceptions that are not relevant for this memorandum) to large businesses. This policy is reflected in the FAR which requires a clause be inserted in all contracts alerting small businesses to the prohibition in section 15(o).[60] In essence, the Small Business Act and the FAR prevent a small business from acting as a front for a large business during the bid phase,[61] or can result in contract termination if the violation is discovered after the contract award.[62] Despite these potential penalties, violations of the subcontracting limitations continue unabated. If the purpose of small business contracting programs is to ensure that small businesses are the ultimate recipients of the economic benefits from the award of contracts, then this practice of improper subcontracting, also colloquially referred to as pass-throughs, undermines the Congressional rationale for the creation of the programs in the first instance. The SBA omits any discussion of this problem in its budget justification and allocates a paltry increase of $92,000 to cover all of its subcontracting initiatives.[63]

Most small government contractors would recognize their inability to produce certain items needed by the federal government. Typical examples are usually taken from large

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[58] The website for DSBS is http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.

[59] SBA Budget Justification, *supra* note 32, at 5.

[60] The clause provides that a small business will perform at least 50 percent of the cost of the contract except in construction, including the manufacturing of supplies. For general construction, small businesses must perform 15 percent of the cost (exclusive of materials) and specialty trade construction, 25 percent. 48 C.F.R. § 52.219-14. The clause only applies if the contract is awarded to a small business through a procedure other than full and open competition, i.e., one of the set-aside programs established in the Small Business Act.

[61] The failure of a small business to agree to perform the required amount of work constitutes a non-responsive bid. *See Centech Group, Inc. v. United States*, 554 F.3d 1029, 1038 (Fed. Cir. 2009).

[62] *In re: Barton Chemical Corp.*, 87-1 BCA (CCH) ¶ 19,623 (violation of subcontracting limitation material breach of contract).

[63] SBA Budget Justification, *supra* note 32, at 26, Table 10. It is important to note that this increase is an increase in costs not necessarily additional personnel or time allocated to the problem. The increases could be related to rising costs, such as travel and utilities, which are beyond the scope of the SBA's ability to reduce their costs. So it is quite conceivable that the SBA may have reduced personnel associated with subcontracting matters.

weapon systems needed by the military, such as aircraft carriers or fighter jets. Despite their inability to produce such items, Congress recognized that small businesses still might make valuable contributions to the overall development and mandated that small businesses have maximum opportunity to participate in contracts for major systems. 15 U.S.C. § 637(d)(1).

To implement this objective, Congress requires large firms that are awarded contracts to submit a subcontracting plan. *Id.* at § 637(d)(5)(A)(iv). The plans must contain, among other things, the efforts that the contractor will take in ensuring proper small business utilization as well as numeric goals for use of small business as subcontractors. *Id.* at § 637(d)(6). Prime contractors are required to make a good faith effort to comply with the subcontracting plans. *Id.* at § 637(d)(8). Failure to make a good faith effort to comply with the subcontracting plan will subject the contractor to liquidated damages.[64] *Id.* at § 637(d)(4)(F).

The SBA is required to assist agencies in ensuring that small businesses have maximum opportunities to offer goods and services as subcontractors. 15 U.S.C. § 637(d)(10). To carry out this mission, SBA personnel are directed to review compliance with subcontracting plans. *Id.* at § 637(d)(10)(C). However, neither the FAR[65] nor the SBA regulations specify what decisional calculus should be used by the contracting officer or SBA personnel in assessing good faith compliance with the subcontracting plan. Given this lack of criteria, it is not surprising that the federal government has never sought, much less obtained, either liquidated damages or termination for default related to the failure to make a good faith effort to comply with federal subcontracting plans. Yet, the SBA makes no mention of this problem in their budget justification.

Statutory Implementation Delays

During the past two years, Congress, through defense authorization acts, has incorporated a number of bills reported out of the Committee on Small Business that seek to improve the federal procurement environment for small businesses. The SBA was required to: issue new guidelines for agency small business contracting; file a report on why agencies have not met their contracting goals (an annual requirement); promulgate regulations to improve the mentor-protégé program;[66] issue rules to permit more teaming arrangements

[64] Liquidated damages refers to "the sum a party to a contract agrees to pay if he breaks some promise, and which, having been arrived at by a good faith effort to estimate in advance the actual damage that will probably ensue from the breach, is legally recoverable . . . if the breach occurs." *Pantuso Motors, Inc. v. CoreStates Bank, N.A.*, 798 A.2d 1277, 1282 (Pa. 2002) (quoting citations omitted). In the case of failure to comply with the subcontracting plan, the liquidated damages are specified in the FAR as the "amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal." 48 C.F.R. § 19.705-7(b). The procedures to obtain liquidated damages are set out in the FAR. *Id.* at § 19.705-7(c).

[65] The FAR simply orders the contracting officer to "look at the totality of the contractor's actions, consistent with the information and assurances provided in its plan." *Id.* at § 19.705-7(d).

[66] Under mentor-protégé program, small businesses may team with a large business mentor in order to obtain a specific government contract without running afoul of affiliation rules that would otherwise deem the small business as large in the absence of a mentor-protégé relationship. 13 C.F.R. §§ 121.103(h)(3)(iii), 124.520.

through modification of subcontracting limitations; adjust its databases to identify large businesses misclassified as small; establish a website for large businesses to post subcontracting opportunities for small businesses; promulgate regulations creating a safe harbor for small businesses who make a good faith effort to comply with the complex agency size-standard rules; publish a plain English guide for small businesses on how to comply with the agency's size standard rules; issue regulations on its authority to suspend or debar (temporarily or permanently prohibit a business from obtaining government contracts); and issue a SOP on how the agency will conduct suspension and debarment proceedings. None of these requirements have been executed by the SBA and some are more than a year behind schedule. To no one's surprise, there is no mention of the Agency's effort to comply with these statutory mandates in its budget justification.

Government Contracting Programs and FY 2015 Budget

There are two primary expenses involved in the SBA operation of its government contracting programs – salaries for personnel and expenses for information technology resources. The SBA does not categorize salaries and expenses for its government contracting programs. Thus, the only sound budget data can be gleaned from the agency's breakdown of operational costs for the program which increases by less than $1 million from FY 2014. It is unclear how much, if any of the costs for operating these government contracting programs will be directed at the vulnerabilities already cited in this memorandum. or

Nor does the SBA budget justification address the need for more personnel designed to assist small businesses in obtaining federal government prime and subcontracting opportunities. The individuals, procurement center representatives (PCRs)[67] in the case of prime contracting assistance and commercial marketing representatives (CMRs)[68] in the case of subcontracting opportunities are highly trained in the federal procurement process. There has been a bipartisan call to increase the number of such individuals in the

[67] PCRs generally are assigned to contracting activities and work under the supervision of the contracting activity personnel (but report to the Office of Government Contracting at the SBA). 48 C.F.R. § 19.402(a)(1). They are supposed to: 1) review proposed acquisitions to recommend procurements for setting aside to small businesses or specific categories of small businesses; 2) advise contracting officers whether the acquisition strategy will prevent small businesses from competing; 3) suggest alternative contracting methodologies designed to increase the probability small businesses will be able to compete for various procurements; 4) recommend small businesses that should be contacted about procurement solicitations; 5) appeal rejections of contracting officer's failure to solicit from a small business if the failure results in no small businesses are solicited for a particular contract; 6) review contracting activity compliance with the requirements of Part 19 of the FAR;[67] 7) participate in conferences designed to increase small business utilization in federal procurement; 8) advocate for full and open competition; and 9) determine items in a larger procurement can be provided by small businesses *Id.* at § 19.403(a). In the Federal Acquisition Regulation, the last two enumerated activities are assigned to so-called breakout PCRs. Congresses eliminated the distinction but the regulations have yet to be updated.

[68] CMRs promote the use of small businesses by prime federal contractors required to submit subcontracting plans, i.e., businesses other than small. They review compliance with federal subcontracting plans. In addition, they perform market outreach to match small businesses and large prime federal contractors. GAO, THE COMMERCIAL MARKETING REPRESENTATIVE ROLE NEEDS TO BE STRATEGICALLY PLANNED AND ASSESSED 3-4 (GAO-03-54) (Nov. 2002). CMRs also perform other functions and are not solely assigned to CMR-related activities. *Id.* at 9-11.

SBA but only limited progress has been made (in prior year budgets there has been some minimal allocation to hire additional PCRs and CMRs). No mention of such additional personnel is mentioned although the SBA does request significant sums for entrepreneurial training programs that it developed, initiated, and wants to enhance.

Entrepreneurial Assistance and Outreach Programs

The SBA oversees the operation of a multiplicity of programs that provide technical assistance to individuals wishing to start small businesses and to already extant small businesses. Collectively, these programs are categorized as entrepreneurial development or ED programs. The programs range from narrowly targeted programs to very broad programs that take advantage of the resources of America's higher education system and volunteer business executives. The programs all have one commonality – the SBA shares funding or staffing or a combination of both with non-profit organizations, other federal agencies, and state or local governments. Other than some personnel to oversee the operations of these programs, the primary cost of the programs is the monies appropriated to fund the SBA's contribution to these outreach efforts.

Small Business Development Centers

The largest ED program in terms of facilities and outreach is the Small Business Development Center (SBDC) program. Basically, the SBA executes cooperative grant agreements with selected state agencies (or institutions of higher education)[69] to operate centers where prospective entrepreneurs and existing small business owners can go to obtain assistance.[70] The assistance is provided at no cost to the business. This enables the entrepreneurs to take advantage of the skills and expertise of higher education faculty and students to provide assistance.

Funds are provided pursuant to a complex formula related to the percentage of population of each state relative to the national population. The formula is further complicated by requiring minimum amounts of grants and those minima are calculated from a statutory baseline of $85,000,000 in funding for the program. Funds provided by the federal

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[69] When the program was started in 1980, the grantees either could be state agencies or institutions of higher education. Congress later changed the program only allowing institutions of higher education and women's business centers to be grantees but grandfathering in existing state agency grantees. To complicate matters, state agencies that are grantees often subcontract the provision of services to institutions of higher education. For example, the grantee for the State of Illinois used to be Department of Trade but the services were provided by a subcontract with the community colleges of Illinois. Finally, neither the SBA nor the section of the Small Business Act creating the program makes a proper distinction between the grantees and the service centers where small businesses are assisted. Both are interchangeably and incorrectly called SBDCs. For a more detailed discussion of this imprecise drafting, see H.R. REP. NO. 108-325, Pt. 1, at 112-13 (2003).

[70] The assistance provided by the grantee through its SBDC network is specified in statute and is quite broad to include: business analysts; technology transfer agents; information retrieval specialists; various part-time professionals who donate time, such as lawyers and professional engineers; and laboratories and engineering facilities. SBDCs have the authority to utilize federal national laboratories. They also have the authority and ability to provide small businesses with advice about energy efficient technologies.

government must be matched by the SBDC grantee from non-federal sources, such as private donations or state funds.

Given the SBA's stated goal of reaching more entrepreneurs,[71] one might expect the agency to devote greater resources to its ED program with the greatest reach – the SBDC program. Of course, when it comes to the SBA – expectations are rarely, if ever, met. For FY 2015 Budget, the request for SBDC funding is $113.63 million – a funding level identical to that enacted in FY 2014.

Women's Business Centers

Women's Business Centers (WBCs) were created to provide training, counseling, and mentoring to women entrepreneurs, especially those women who were socially and economically disadvantaged. WBCs were established in 1991 as a three-year pilot program. In 1997, Congress kept the basic premise of the demonstration projects but redesignated the names to Women's Business Centers, extended the time frame for the demonstration projects to five years, modified the matching contributions, and imposed review requirements to ensure that Women's Business Centers were meeting the obligations of their grants. The intent of Congress in 1997 was to provide a limited amount of government funding until the centers were sufficiently established that they could operate solely on the basis of private funds.

Two years later, Congress reacted to complaints that these centers could not raise funds during the end of the telecommunications and Internet bubbles. Congress created a pilot program to provide some of the centers with so-called sustainability funds. Initially, sustainability funds represented about one-third of the total funds appropriated for establishment of WBCs. Today, approximately 50 percent of the funds appropriated are to go to existing centers operating through the sustainability "pilot" program (which really is no longer a pilot program)[72] and little effort is made to force the centers to seek more non-federal funding. If the government always appropriated around $14 million (the typical appropriation for the program), new centers would be created as old centers passed their five-year anniversary and lost their federal funding. However, since the creation of the sustainability "pilot" project and the ever-increasing funds devoted to funding existing centers past their five-year anniversary, far fewer new centers can be established even if the population of potential women entrepreneurs is not coextensive with the geographic area served by the existing centers.

The FY 2015 request for WBCs $14 million dollars which is the same amount as provided in FY 2014 and in fact is identical to the funds provided for WBCs going back to FY 2010. An open question exists concerning whether the services provided by WBCs overlap and duplicate services provided by other extant ED program partners of the SBA or are available from other federal agencies especially since about 25 percent of their

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[71] *See* SBA Budget Justification, *supra* note 32, at 6.

[72] The sustainability pilot was designed to last only four years, i.e., to 2003. But the pilot program, has through authorizing language on appropriations bills, become something more permanent with the expectation that sustainability funds will always be available.

clients are now men according to Committee hearing testimony. This potential duplication is particularly problematic given the fact that WBCs were not supposed to have a steady stream of permanent federal financing.

SCORE

The SBA provides office space to a corps of executives from both large and small businesses. These executives volunteer their time to provide assistance to entrepreneurs. Such assistance can be as simple as suggesting that a business owner contact the SBA to as much as helping them draft business or marketing plans. The scope of the service provided by the volunteers depends on their interest and the relationship that develops between the volunteers and the clients they are counseling. Although originally known as the Service Corps of Retired Executives, the program is now known as SCORE because many of the contributing executives are active rather than retired. The FY 2015 request for SCORE is the same as was enacted in FY 2014 and in fact is the same as that of FY 2010 – $7 million. This monetary assistance primarily relates to the SBA's costs for providing office space, telephones, Internet access and other ancillary services to the volunteers.[73] Even though costs of services like office space continue to rise,[74] the flat funding will make it difficult for SCORE to contribute to the SBA's goal of reaching more entrepreneurs through its ED programs.

Veterans Business Development

The SBA has an Associate Administrator for Veteran's Affairs that oversees the Office of Veterans Business Development. The Office provides services to maximize the availability, applicability and utility of all programs offered by the SBA to veterans and service-disabled veterans, and reservists. The Office has Veterans Business Development Officers in each SBA district office to prepare and plan businesses operated by veterans. Veterans Business Development Officers are SBA employees that have special expertise in addressing the needs of veterans.

Through cooperative agreements with non-profit entities, the Office manages a Veterans Business Outreach Centers (VBOCs). The program operates in a manner almost identical to that of the SBDCs and WBCs, i.e., the SBA provides funds and the non-profit entities raise matching funds. The scope of services provided to veterans is identical to the services provided to all entrepreneurs by SBDCs and WBCs.

The FY 2015 request to fund Veterans Outreach is $2.5 million – the same as in FY 2014 and has not changed since FY 2010. This request primarily covers the operation of the VBOCs because funds for employees located at SBA district offices are subsumed in the salaries and expenses account for the agency. It again remains unclear whether the

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[73] The employees of the SCORE organization primarily provide administrative and coordination functions for counselors and clients. No study has been conducted whether those services could be provided at a lower cost by SBA employees.

[74] *Compare* SBA Budget Justification, *supra* note 32, at 19, Table 4 (noting increase in operating costs of SBA for office space).

minimal resources devoted to VBOCs could be better used by broader programs that also can provide services to veterans.[75]

In contrast to the SBA's effort, the Department of Veterans Affairs' (which has some type of contact with every single veteran in the United States) Office of Small and Disadvantaged Utilization has 42 full-time employees and one of its functions, according to the Department, is to help veterans start small businesses.[76] And that represents a small portion of the resources that are available to the Department of Veterans Affairs should it wish to consider an even more aggressive push to assist veteran entrepreneurs. The office that provides education to entrepreneurs is funded through the Department's Supply Fund which has revenue from other federal agencies of approximately $2 billion (or almost 3 times the size of the SBA's budget).[77] Furthermore, Department has more than 2,800 employees just devoted to general agency management (which is more than the entire staff of the SBA).[78] The comparative scope and scale of the resources available to the Department in comparison to the available to the SBA needs no further explication.

Native American Outreach

The Office of Native American Affairs ensures that American Indians, Native Alaskans and Native Hawaiians seeking to create, develop and expand small businesses have full access to the necessary business development and expansion tools available through the SBA's entrepreneurial development, lending and procurement programs. The Office engages in numerous outreach activities including tribal consultations, development and distribution of promotional materials, attendance and participation in national economic development conferences. There are no separate outreach offices, such as VBOCs or Women's Business Centers, for outreach to Native Americans. Funding for Native American outreach remains unchanged from the enacted FY 2014 at $2 million. Unlike other smaller ED programs, this represents an increase from FY 2010 and even from FY 2013 (of an increase of almost $1 million from FY 2013 and FY 2010). Other than training session done in conjunction with the Department of Interior's Bureau of Indian Affairs, it is unclear what additional services have been provided to Native Americans with the increased funding.[79]

The Bureau of Indian Affairs is more than twice the size of the entire SBA. It has a budget of $2.7 billion with 5,900 employees.[80] There is little doubt that the Department

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[75] VBOCs have been specifically authorized by Congress whereas the SBA initiative called Boots to Business for helping active military to start businesses when they leave was an initiative created by the SBA without any specific delegation from Congress.

[76] 3 DEPARTMENT OF VETERANS AFFAIRS, FY 2015 CONGRESSIONAL BUDGET SUBMISSION, at GenAd-18, (2014), *available at* http://www.va.gov/budget/docs/summary/Fy2015-VolumeIII-BenefitsBurialProgramsAndDeptmentalAdministration.pdf. To be sure, the revenue generated by the Department funds more than the Office of Small and Disadvantaged Business Utilization and that does more than simply promote entrepreneurship among veterans.

[77] OMB, BUDGET OF THE U.S. GOVERNMENT FY 2015 APPENDIX 1130 (2014).

[78] *Id.* at 1126.

[79] *Compare id.* at 83-85.

[80] OMB, BUDGET OF THE U.S. GOVERNMENT FY 2015 APPENDIX 692-93 (2014).

of Interior has far more resources to assist Native Americans, including entrepreneurs, than the SBA could ever muster. Given the resource disparity, a significant question is raised whether the funds allocated to the SBA's Office of Native American Affairs could be better spent elsewhere in the agency.

Office of International Trade

The Office of International Trade provides assistance to businesses involved in export or import business.[81] The major component is the placement of SBA personnel at United States Export Assistance Centers operated by the Department of Commerce. The Small Business Jobs Act of 2010 mandated that the Office increase the number of SBA personnel from 18 to 30 at the Export Assistance Centers as well as some other managerial changes. The FY 2015 Budget Request does not make a separate allocation for the Office of International Trade but the agency estimates that the cost for operating the office is $10.8 million which is an increase in $141,000 from FY 2014.[82] It is not clear what services the Office of International Trade provides that is not available from other sources, in particular the Department of Commerce. As a result, it remains an open question concerning the value of this office.

New ED Program Initiatives

The FY 2015 Budget Request includes four ED programs that were initiated by the SBA without direction from Congress. These four programs (Boots to Business, Entrepreneurship Education, Growth Accelerators, and Regional Innovation Clusters) duplicate services already provided by existing ED partners. Furthermore, the SBA does not have adequate metrics to assess the quality of these programs. Nevertheless, the SBA requested a total of $33 million for these programs – an increase of $12 million from what was requested and appropriated in FY 2014.[83]

Executive Direction

The budget for Executive Direction appears to be some type of catch-all or black box into which SBA operations are funneled but not broken out in the FY 2015 Budget Request. As a result, it is impossible to ascertain what the components of that line item are included in the budget request. The agency did identify additional contributions for www.businessusa.gov – a one-stop computerized information service for small businesses. There is no evidence that this computer system is at all helpful to small business owners and appears to duplicate much of the resources that are otherwise available on the web from the SBA and state governments. Despite this the SBA is

[81] There are specialized 7(a) guaranteed loans for businesses involved in international trade. Less than 10 percent of the loans made under the 7(a) Loan Program are these specialized international trade loans.
[82] SBA Budget Justification, *supra* note 32, at 27, Table 10.
[83] The FY 2014 appropriations bill for the SBA includes funds for these programs. However, those requests are in the form of direction in a conference report rather than specific statutory language so it is unclear whether the SBA needs spend the money so allocated. Nevertheless, since the SBA requested these funds, they are likely to spend them on these programs.

requesting a total of $6 million for this effort which represents an additional $3 million dollars over FY 2014.