Views and Estimates of the Committee on Small Business on Matters to be set forth in the Concurrent Resolution on the Budget for Fiscal Year 2014

Pursuant to clause 4(f) of Rule X of the Rules of the House and § 301(d) of the Congressional Budget Act of 1974, 2 U.S.C. § 632(d), the Committee on Small Business is transmitting herein: (1) its views and estimates on all matters within its jurisdiction or functions to be set forth in the concurrent resolution on the budget for Fiscal Year 2014; and (2) recommendations for improved governmental performance.

Unlike in previous years, the views and estimates set forth herein provide no comments on the President's budget since none has been submitted for consideration by the Committee; nor has the Committee received any testimony from the Administrator of the Small Business Administration (SBA) concerning its budget request for FY 2014. Given the paucity of information forthcoming from the President and the SBA, the views and estimates contained herein provide the Committee's recommendations on ways to improve performance of the SBA. These views and estimates also incorporate by reference the views and estimates provided by the Committee on Small Business during the 112th Congress.

The Administrator has noted on multiple occasions before the Committee that the SBA provides entrepreneurs with the three Cs – capital, contract assistance, and counseling. The views and estimates will consider these seriatim.

Capital Access Programs[1]

Unlike large enterprises that can seek out funds from commercial debt and equity markets, small businesses must rely on their own personal assets, retained earnings, and commercial bank funds for needed capital. For 60 years (since the 1953 creation of the SBA during the Eisenhower Administration), the SBA has sought to fill gaps in the commercial debt and equity markets.

Program Costs

The four major programs overseen by the SBA are the: 7(a) Guaranteed Loan Program (7(a)); Certified Development Company (CDC) Loan Program; Small Business Investment Company (SBIC) Program; and Microloan Program. In none of these programs does the SBA directly provide funds to small businesses; instead, the SBA

[1] The SBA disaster loan program provides funds to homeowners and small businesses after the President has declared a major disaster as that term is defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5208. Funding for the Disaster Loan Program was addressed in the Disaster Relief Appropriations Act, 2013, Pub. L. No. 113-2. That legislation provides sufficient funds for the SBA to meet expected needs for disaster relief in the coming year. However, those funds will not be adequate if there is another major event such as Hurricane Katrina or Superstorm Sandy. In those instances, it is likely that the President would seek a supplemental appropriation.

provides funds by guaranteeing the repayment of issuance of credit and equity by private-sector partners.[2]

The SBA must operate these programs within the parameters established by the Federal Credit Reform Act, 2 U.S.C. §§ 661-61f (FCRA).[3] The statute requires that all federal agencies calculate the current cost[4] of their credit programs. *Id.* at §§ 661(a), 661a(5). The FCRA, in essence, requires that sufficient funds are deposited in those accounts to cover the cost of the loans made in any given year. Funds may be obtained from fees charged to borrowers, the private sector partners that provide the credit, monies appropriated by Congress, or some combination of the three. If the programs do not require any appropriated dollars, they are considered to be operating at zero-subsidy.

Two of the programs – 7(a) and CDC Loan Programs – were redesigned by Congress during the 1990s and the early 2000s to operate, to the extent possible, with a zero subsidy. However, recent economic conditions required Congress to appropriate funds for use by the 7(a) and CDC Loan Programs because the fees charged to borrowers and lenders did not cover the cost of the programs. To the extent that the President's budget reveals the need for appropriations to cover the costs of the loan programs as the term cost is defined in the FCRA, the Committee believes that the budget resolution should provide sufficient funds to do so.

When this issue has arisen in the past, the Committee has considered and rejected increasing the fees charged by borrowers and lenders. Given the economic data that small businesses generate most of the new jobs in the United States, it would be counterproductive at this time to increase the cost of credit to small businesses and thereby restrict their capacity to create new jobs.

The Microloan Program operates with a small subsidy due to the interest rate charged to microloan intermediaries (the entities that actually provide credit to small businesses). However, no microloan intermediary has ever defaulted on its loans and the minimal historic costs given the benefits of job creation strongly militate in favor of providing appropriated funds to cover the interest rate differential.

The primary issue related to the SBIC program is not whether it can still operate at zero-subsidy. Given historical data, the Committee would expect that the SBIC program will continue to operate without any need for appropriations to cover the cost of the program as that term is used in the FCRA. Rather, the issue with the SBIC program is whether the program level will be sufficient to enable it to meet the demand of small businesses

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[2] The textual explanation constitutes an oversimplification of these four programs but suffices for the purposes of these views and estimates.

[3] Of course, the SBA is required to operate these lending programs according to the strictures established by Congress in the Small Business and Small Business Investment Acts.

[4] When stripped to its bare essentials, the definition of cost in the FCRA simply means the dollar value t of loans year made minus (the dollar value of the loans repaid plus the amount of monies recoverd from defaulted loans). A net present value of this calculation is made to obtain the amounts that must be set aside in a current account to cover the costs of each lending program.

seeking equity capital. The Committee believes that a program level of $4 billion will be sufficient to meet the needs of small businesses seeking capital.[5]

Recoveries on Defaults

As already noted, one of the key components of the FCRA cost calculation is the amount of monies obtained in recoveries on defaulted loans. In previous views and estimates, the Committee has noted that the SBA is ill-equipped to handle recoveries in its capital access programs. This is true whether the recoveries involve defaults in the 7(a) or CDC loan programs or through receiverships in the SBIC program.

The inability to manage the recoveries on defaults increases the costs of these programs on lenders, borrowers, and taxpayers. For example, the SBA frequently fails to sell portfolio companies of SBICs placed into receivership even when there are sound offers for such companies. In a more glaring example, the credit supplement to the FY 2013 budget revealed that returns on defaulted CDC loans were approximately 23 cents on the dollar (and only about half of what was received in the 7(a) loan program).[6] Simply put, SBA personnel do not have the industry expertise (in managing portfolio companies of SBICs in receivership) or, in the case of commercial real estate, sufficient local knowledge to effectively manage distressed properties and businesses. Simply appropriating more funds for the SBA will not solve an underlying management issue; the Committee will continue to assess legislative changes that ensure experts with solid local and industry knowledge are placed in charge of conducting recoveries and workouts in the SBA capital access programs. In turn, this will ensure that the subsidy costs (and the need for appropriated monies) will decrease.

Information Technology and Capital Access Programs

The information technology needed to manage the SBA guaranteed loan portfolio is outdated and poses a significant risk to the federal fisc. The loan accounting system, first developed by the SBA in the 1970s, utilizes COBOL in a mainframe environment. The efforts at modernizing this system (even a scaled-back version) are behind schedule, lack an overall enterprise technology management plan, and suffer from cost overruns. This is unacceptable because a modern loan accounting system would enable the SBA to manage its loan portfolio in a manner that protects the taxpayer, mainly by improving returns on recoveries of defaulted loans. Until the SBA completes the tasks already established for modernizing its loan management accounting system, no additional funds should be provided for the agency's information technology.

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[5] This represents an increase in the program level from FY 2013 of $1 billion. Given the zero subsidy nature of the program, the increase will have no effect on the program cost or the deficit.

[6] Historically, recoveries in the CDC loan program have been between 20 and 25 cents on the dollar. The Committee is unaware of any reason that recoveries would be outside this range for FY 2014.

Lender Oversight and Credit Risk Management

The problems associated with the development of a modern loan management accounting system also undermine the ability of the SBA to perform proper lender oversight. If the SBA is unable to obtain timely and accurate data on the loans made by its private sector partners, the agency will not have the information needed to assess the credit risk of its loan portfolio or the underwriting standards of its lending partners. For a $90 billion loan portfolio, that is simply unacceptable, and the SBA must refocus its efforts to ensure its loan management accounting system can provide the needed data to perform credit risk assessment[7] and lender oversight.

Information technology is not the only problem facing the SBA in performing adequate lender oversight. The agency resources are not allocated properly to ensure such lender oversight or to take action against a risky lender. As an example, the SBA, for the first time in its existence, revoked the authority of a CDC to operate in December 2012.[8] That process took nearly two years and a not insignificant portion of that time involved the SBA arranging for services to take over the loan portfolio of the shuttered CDC. It remains an open question whether the SBA has allocated sufficient resources to undertake the necessary actions should it revoke the authority of other lending partners.

Federal Contracting Programs[9]

One of the primary missions of the SBA is to ensure that small businesses receive a "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 in a federal market for goods and services that reaches $515,697,897,218.85.[10] SBA utilizes personnel to expand opportunities for small businesses; other resources are devoted to managing the contracting programs targeted at specific subsets of small businesses.

Budget allocations for the operation of the SBA's government contracting programs are subsumed within the agency's overall request for salaries and expenses. With respect to

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[7] Although the SBA has a separate credit risk database, the accuracy of that system is based, in part, on the data obtained from the loan management accounting system. Therefore, absent an accurate and modern loan management accounting system, the SBA's credit risk database remains flawed.

[8] The Committee is unaware of any instance in which the SBA has revoked the authority (for mismanagement or credit riskiness) of a lender in the 7(a) Program. Many lenders have lost their authority due to the failure to make sufficient loans but none have had their authority revoked for mismanagement even when their upper level managers committed fraud.

[9] An adjunct to the government contracting programs is the SBA Surety Bond program that enables small businesses access to surety bonds when they otherwise would be unable to obtain such bonds. The program operates as zero-subsidy and the Committee expects that it will operate without the need for appropriations in FY 2014.

[10] The statistic was derived from the Federal Procurement Data System on February 19, 2013 at 4:30 pm. While some may quibble with the accuracy of this figure, it is certainly more accurate than is available on the SBA's loan management accounting system.

the contracting programs, it is not the overall allocation amount of salaries and expenses that is the problem; rather it is how the SBA allocates those resources to the government contracting programs that inhibit its ability to carry out the various mandates set forth in the Small Business Act.

A key type of personnel at the SBA is the Procurement Center Representatives or PCRs. These individuals are located at contracting activities (i.e., other federal agencies) and constitute the SBA's front line in promoting the use of small businesses and first line of defense against contract bundling. Despite their importance in achieving the objectives Congress set out in § 15(a) of the Small Business Act, less than 3 percent of the personnel at the agency are PCRs. Funds should be reallocated so that the SBA actually dedicates the necessary personnel so that PCRs can perform their jobs in an effective manner, rather than the current situation in which the approximately 60 PCRs must each review about $8.6 billion dollars in government contracts.

The SBA oversees the operations of a number of contracting programs targeted at specific segments of the small business community. These contracting programs present a number of vulnerabilities: (1) small businesses might misrepresent their size (and not actually be small); (2) small businesses may misrepresent their status for purposes of eligibility, such as not being a woman-owned and controlled business; or (3) small businesses do not perform the necessary quantum of work on the contract. Given these vulnerabilities, there are key defenses – adequate personnel to check the small businesses and updated databases for use by contractors and federal contracting officers. While the SBA has made strides in correcting these vulnerabilities, greater resources need to be allocated to ensure that only eligible businesses obtain contracts in programs established pursuant to the Small Business Act.

Counseling Programs[11]

While the SBA underallocates resources in critical areas, such as lender oversight and government contracting programs, the agency overallocates funds and personnel to provide counseling for small business owners. No one should question the value of training for small business owners and those whose wish to start small businesses. However, in times of budgetary restrictions, hard choices must be made. This is particularly true when the counseling programs at the SBA overlap each other and often duplicate the educational services provided by other agencies.

The Government Accountability Office (GAO) identified 54 programs at the SBA and the Departments of Commerce, Agriculture, and Housing and Urban Development that provide counseling services to small businesses.[12] Other studies have found similar

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[11] The SBA denominates these programs as entrepreneurial development but all provide counseling to small business owners and those individuals wishing to embark on entrepreneurship. Given the overall theme of these views and estimates, the Committee will utilize the term "counseling" rather than the SBA programmatic designation.
[12] GAO, ECONOMIC DEVELOPMENT, EFFICIENCY AND EFFECTIVENESS OF FRAGMENTED PROGRAMS ARE UNCLEAR 3-4 (2011) (GAO-11-651T).

duplication in outreach efforts for veterans.[13] Presumably other areas of entrepreneurial outreach and duplication exist between the SBA and other federal agencies. In addition to overseeing counseling programs authorized by Congress, the SBA exacerbates this overallocation of resources to entrepreneurial outreach by creating its own programs unauthorized by Congress, such as the development of regional clusters and establishment of an Emerging Leaders Program; programs which utilize scarce federal resources and have no proven track record of success.

Given tight budgetary constraints and the need for the SBA to reallocate resources in other critical areas, entrepreneurial outreach at the SBA should be limited to one program with a broad mission, the access points needed to provide assistance in the most locations, and capable of obtaining non-federal funds to help defray costs. Only one counseling program overseen by the SBA meets this standard – the Small Business Development Center (SBDC) Program. All other entrepreneurial outreach efforts at the SBA either overlap with the SBDC Program or duplicate efforts at other federal agencies. As a result, they either should be folded into the mission of the SBDC Program or their responsibilities should be taken over by other agencies.[14] This consolidation should include the cessation of any entrepreneurial outreach efforts created by the SBA without the express authorization of Congress. Once that action has been taken, the SBA should work with these other agencies and the SBDCs to coordinate the delivery of counseling services for entrepreneurs.

Pilot Programs, Lack of Transparency and Ad Hoc Decisionmaking

The SBA also establishes its own initiatives in the capital access programs (colloquially denominated as "pilot programs"). In some instances the agency does so under broad legislative mandate;[15] at other times it does so without any express authorization from Congress. Frequently, these initiatives are established while programs specifically authorized by Congress have yet to be implemented.[16]

Generally, these capital access pilot programs are created through the issuance of standard operating procedures (SOPs). These SOPs are never issued pursuant to the notice and comment process set forth in the Administrative Procedure Act (APA).[17]

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[13] INSTITUTE FOR VETERANS AND MILITARY FAMILIES, SYRACUSE UNIVERSITY, A NATIONAL VETERANS STRATEGY: THE ECONOMIC, SOCIAL AND SECURITY IMPERATIVE 5 (2013), *available at* http://vets.syr.edu/wp-content/uploads/2013/02/National-Strategy-PublicationFINAL.pdf.
[14] For example, the Department of Agriculture has greater resources to provide training and outreach to small businesses located in rural areas than the SBA. Thus, the functions and mission of the Office of Rural Affairs at the SBA can be transferred to the Department of Agriculture.
[15] Congress ceded to the agency limited authority to create pilot programs in the 7(a) loan Program. 15 U.S.C. § 636(a)(25).
[16] For example, the SBA has yet to promulgate regulations for the establishment of the renewable fuels investment companies under the SBIC program that Congress authorized in 2007. Despite this failure, the SBA created two other initiatives within the SBIC program during the past two years – the Impact Investment and Early-Stage Innovation Funds. Such derogation of Congressional mandates is inexcusable.
[17] To be sure, the loan programs are specifically excluded from the requirements of notice and comment in the APA, 5 U.S.C. § 553(a)(2). However, the SBA codified a regulation that requires the agency to conduct rulemaking pursuant to the notice and comment requirements of the APA even though the

Absent input from the public, the SBA has no way to assess whether these pilot programs will meet the equity and debt needs of small businesses or be used by its lending partners. In certain instances, these initiatives place the federal taxpayer at risk.[18] SBA must be more transparent in promulgating regulations and guidance to ensure that changes in their capital access programs provide necessary assistance to small businesses.

The lack of transparency in the operation of the capital access programs goes beyond the failure to obtain public input. In some instances, the SBA creates new procedures, such as for licensing of SBICs, without the concomitant changes in the SBA regulations or even the SOPs. For example, the extant SOP for licensing of SBICs was issued in 1984, has not been updated, and has not been followed by the agency for years. In other cases, the SBA will cite its authority to waive any of its regulations, 13 C.F.R. § 120.3, to operate the capital access programs in any manner that the agency believes is appropriate.

This makes it quite possible for the SBA to create ad hoc unwritten determinations that treat similarly situated individuals differently – agency action that has been prohibited since the enactment of the APA in 1946.[19] This lack of transparency does not represent good agency management, will not ensure that proper assistance is provided to small businesses, and may place the federal taxpayer at increased risk from faulty operation of the capital access programs. The Committee will consider legislative action to foreclose the ad hoc decisionmaking by the agency.

SBA Management and Administration

The views and estimates already established the case for the reallocation of resources within the SBA. One potential avenue for finding the needed resources is the current structure of the agency.

Personnel in the 10 Federal Regions

The SBA provides most of its services to small businesses through 84 district offices that are staffed with personnel who are knowledgeable on a variety of small business related topics. When a small business owner or entrepreneur has contact with an agency official, it is typically at a district office.[20] Those district offices are overseen by an Office of Field Operations at SBA headquarters in Washington, DC.

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rulemaking otherwise would be exempt. 13 C.F.R. § 101.108. It is an abecedarian tenet of administrative law that an agency must comply with its own regulations. *Accardi v. Shaughnessy*, 347 U.S. 260, 265-67 (1954); *Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 536 (D.C. Cir. 1986). Some of the SOPs create obligations on both the agency and small businesses, including pilot programs. As a result, these SOPs must be issued pursuant to notice and comment. *Cf. Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000) (imposition of monitoring guidance for power plants must be issued through notice and comment); *National Ski Areas Ass'n v. United States Forest Serv.*, 2012 Lexis 197335, at *24-27 (D. Colo.) (directives placed in Forest Service Manual constitute rules requiring notice and comment).

[18] One pilot program, a liquidation pilot in the CDC program, cost the agency about $8 million dollars, which it is trying to recoup.

[19] *Morton v. Ruiz*, 415 U.S. 199, 232 (1974).

[20] The primary exception to this would be when an individual is applying for a disaster loan. In those cases, the applicant will be dealing with on-site field personnel and disaster loan call centers.

Despite this agency structure, the SBA also has ten regional administrators, regional communication officials and support staff. It remains unclear what management function or responsibility these regional administrators or regional offices have. Given that, the Committee believes that the position of regional administrator should be eliminated. Without regional administrators, there would be no reason to have regional offices and the Committee recommends that those offices be shuttered.

Another office at the SBA with ten regional representatives is the Office of the Chief Counsel for Advocacy. The primary responsibility of that office is to monitor agency compliance with the Regulatory Flexibility Act, a statute mandating agencies examine the impact of their proposed and final rules on small businesses. While input from small businesses is quite useful in performing that role, the office does not need regional representatives to obtain that input. As a result, the Committee believes that the Office of the Chief Counsel's regional personnel should be eliminated. However, rather than simply eliminate all ten positions from the Office of the Chief Counsel for Advocacy, the Committee recommends that five additional positions be created to review federal agency compliance with the Regulatory Flexibility Act. This would result in a net savings of five individuals in the office while boosting its capability to fight burdensome regulations inhibiting the ability of small businesses to create jobs.

District Personnel

As already noted, the SBA's primary contact with small businesses is through its district offices. The district offices are, logically enough, headed by a district director. However, in about 75 percent of the offices, there also is a deputy district director. The Committee is of the opinion that district offices do not need a separate, dedicated individual to be the deputy. If the district director is unavailable (due to vacation or illness), that person simply can appoint someone to act temporarily as the district director. The Committee strongly recommends that no monies be allocated to pay for individuals whose sole job is to act as a deputy district director. Instead, deputy district directors should be reassigned to other functions at the agencies that provide direct assistance to small businesses.

Headquarters Structure

According to the agency, there about 600 people at SBA headquarters leaving approximately 1,600 people to interact with small businesses in their field operations.[21] Given the fact that there are about 28 million small businesses in the United States, the Committee finds that the agency structure is too concentrated at headquarters in Washington, DC. This would include an Office of Policy with an apparently amorphous mission and a personal office of the Administrator that is the same size as that of the

[21] Not all field personnel are located at district offices. The SBA also has major employment centers to process loans (thereby speeding credit to small businesses) and a disaster loan call center (to help those seeking to rebuild after a disaster).

Secretaries of Defense or Agriculture.[22] This is unacceptable to the Committee and it recommends a 10 percent reduction in funds for the Office of the Administrator and that no funds should be provided to fund the Office of Policy.

[22] Secretary Vilsack and Secretary Panetta are able to manage much larger agencies (the Departments of Agriculture and Defense, respectively) with only 13 individuals in each of their personal offices.