

**ORGANIZATIONAL MEETING AND SBA VIEWS AND  
ESTIMATES FOR THE 114TH CONGRESS**

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**HEARING**

BEFORE THE

**COMMITTEE ON SMALL BUSINESS**

**UNITED STATES**

**HOUSE OF REPRESENTATIVES**

**ONE HUNDRED FOURTEENTH CONGRESS**

**FIRST SESSION**

HEARING HELD  
FEBRUARY 12, 2015



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## ORGANIZATIONAL MEETING AND SBA VIEWS AND ESTIMATES FOR THE 114TH CONGRESS

THURSDAY, FEBRUARY 12, 2015

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Steve Chabot [chairman of the Committee] presiding.

Present: Representatives Chabot, Luetkemeyer, Hanna, Huelskamp, Rice, Gibson, Brat, Radewagen, Knnight, Curbelo, Bost, Hardy, Velázquez, Hahn, Payne, Meng, and Adams.

Chairman CHABOT. Good morning. The Committee will come to order.

I call the Committee on Small Business Organizational Meeting to order at this time. I want to welcome all the returning and new members of the Committee. And before introducing the new Republican members, I would like to take a moment to recognize the Ranking Democratic Member, Congresswoman Nydia Velázquez, with whom I served as ranking member when she was the chair of this Committee back in 2007–2008. We had an excellent working relationship for the most part, and I hope to use that example to foster civil discourse, even when we have our policy differences. And we know, of course, there will be differences in this Committee as there are in all Committees, but for the most part, the Small Business Committee is one of those Committees, kind of like the Foreign Affairs which I also serve on, where there is more to agree on than disagree. So I hope that we can continue to have that very good relationship that we have both personally and professionally.

There are seven new Republican members of the Committee. Mr. Gibson retired from the United States Army as a colonel, and then returned to his hometown in the Hudson Valley of New York when he was elected to Congress back in 2010. And we welcome him here to the Small Business Committee.

The other new members that I am going to recognize at this time are our freshmen. Mr. Bost served as a state legislator and helped run a small business in Illinois.

Mr. Brat was a professor of Economics and Business at Randolph Macon College in Virginia. And it was kind of an earthquake last year when he won a primary but we will not go into that. So we are welcoming him to the Committee certainly.

Mr. Curbelo was a small business owner and school board member in Miami, Florida, and we welcome him here to the Committee.

Mr. Hardy, Crescent Hardy served in the Nevada state legislature. Where is Crescent? There he is, right here. And owned a small construction firm in Nevada.

Mr. KNIGHT. Mr. Knight is—there he is. Mr. Knight is also a veteran. He was a police officer and served in local government and the state legislature in California.

Amanda Radewagen is the first woman to represent American Samoa in Congress, and has the title of orator in the village of Aumua.

The very diverse background of our new members will add to the experience and expertise of our returning members to create a pro-growth agenda for America's entrepreneurs.

I would like to welcome back the members who served on the Committee during the 113th Congress. Mr. King from Iowa, Mr. Luetkemeyer from Missouri, Mr. Hanna from New York, Mr. Huelskamp from Kansas, and Mr. Rice from South Carolina.

And finally, I would like to announce the vice chair of the Committee and the subcommittee chairs for the 114th Congress. Mr. Luetkemeyer, who served as vice chair of the Committee in the 113th Congress will return to that position in the 114th Congress, and we are very fortunate to have somebody of Mr. Luetkemeyer's stature and capabilities in case I cannot make it to a meeting or whatever because he is a tremendous member of Congress and we are lucky to have him.

Two subcommittee chairs from the 113th Congress also will be returning to those positions in the 114th Congress. Mr. Hanna will chair, again, the Subcommittee on Contracting and Workforce, and Mr. Rice will chair the Subcommittee on Economic Growth, Tax, and Capital Access. Mr. Curbelo will chair the Subcommittee on Agriculture, Energy, and Trade. Ms. Radewagen will chair the Subcommittee on Health and Technology. And Mr. Hardy will chair the Subcommittee on Investigations, Oversight, and Regulation. And I think we are going to have a great year, a great Committee, and we welcome everybody—the new members back and the older members, we hope that you will put as much effort into it this Congress as you did last because it was really an excellent Committee under the previous chairman, Mr. Graves, and we are going to try to follow in his footsteps as far as the way he led this Committee because I think he did a very good job.

And I would now like to yield to the Ranking Member, Ms. Velázquez, to introduce her members.

Ms. VELAZQUEZ. Good morning, and thank you, Mr. Chairman. I, too, want to say that it is a pleasure to have Chairman Chabot at the helm because we have worked together before when I was the chair of the Small Business Committee and he was the ranking.

I always say that when it comes to small business, there is no republican or democratic approach; that we need to do our best to address the issues that will enable small businesses to do what they do best, and that is to create jobs and to expand our economy. I look forward to a cordial, productive, substantive working relationship with the chairman and to be able to pass bipartisan legislation the way we did when I was the chair. I always recognized

the right of the minority, and I expect that the chairman will do the same. I am confident that will happen.

Also, I would like to welcome the members of the committee, new members and all members from both sides of the aisle.

We have two new members joining us, Brenda Lawrence of Michigan. I believe she is not here yet. Representative Lawrence is new to Congress this term. She is a former mayor of Southfield, Michigan, and a former long-time employee of the U.S. Postal Service. She also serves on the Oversight and Government Reform Committee where she is ranking member of the Subcommittee on the Interior.

Alma Adams of North Carolina, welcome. Representative Adams is new to Congress as well. Prior to being elected to the House, she served in the North Carolina House and was also Professor of Art History. In addition to this committee, she serves on the Education and Workforce Committee and the Agriculture Committee.

We have several returning members to the committee. With us today is Janice Hahn of California. This is her second full term on the committee and second in Congress as she initially won a special election in 2011 and filled a portion of that term. Prior to being elected to the House, she served on the City Council in Los Angeles. She also served on the Transportation and Infrastructure Committee.

Congresswoman Grace Meng hails from Queens, New York, and this is her second term in Congress and on the committee. In addition to this assignment, she also serves on the Foreign Affairs Committee. An attorney, she previously served in the New York State Assembly.

I look forward to working with all of you during the next two years. I thank the chairman and yield back.

Chairman CHABOT. Thank you very much. The gentlelady yields back.

Now we will move on to the organizational part of today's meeting.

There are 28 million small businesses in America, a lot. While the members of this Committee will have policy differences, all of us have one common goal—to make sure that our small businesses can prosper and create the solid middle-class jobs that America needs. Given that, there are certainly numerous issues where we can find common ground, as the Ranking Member said, that will make government more efficient and ensure that the Small Business Administration carries out the will of Congress, rather than continually inventing new and untested initiatives. I believe that the Rules Package, Oversight Plan, and Budget Views under consideration today will lay the groundwork for finding those areas that we have in common, while maintaining the highest levels of bipartisanship for which the Committee is known.

I would now yield to the ranking member, Ms. Velázquez, if she would have an opening statement.

Ms. VELAZQUEZ. Thank you, Mr. Chairman for yielding.

Small business continue to make unprecedented contributions to our economy, and we will do whatever it takes to support them. They have generated nearly two-thirds of net new jobs over the last 15 years and are the innovators and drivers of economic progress.

Entrepreneurship also serves as the backbone of our nation's economy, enabling individuals to pursue their dreams and become financially self-sufficient.

As we move forward, we must make sure that small businesses are given the resources and protections they need to prosper as both republicans and democrats want and need small firms to succeed and create jobs in our community. I look forward to continuing this tradition during the 114th Congress.

I yield back.

Chairman CHABOT. Thank you. The gentlelady yields back.

I would like to thank the majority and minority staffs for their hard work and cooperation in putting together this rules package. There is only one significant change from the rules adopted in the 113th Congress. In consideration of the time demands of members, I believe it is appropriate to apply the five-minute rule on questioning of witnesses to the Chair, myself, and the Ranking Member. Even with this change, I expect that we will be able to accommodate the needs of all members in questioning witnesses. So basically, we had the opportunity to go on more or less as long as we wanted before other members and we are going to make sure that we make it as equal as possible so that all members have an opportunity to question witnesses. So we are going to apply that same rule to ourselves. And I would now recognize the ranking member, Ms. Velázquez, for any remarks that she may have on the rules package.

Ms. VELÁZQUEZ. Sure. Thank you, Mr. Chairman.

Our committee's rules are not only a vital institutional requirement, but they also set clear parameters for how we will operate. More importantly, they contain protections to ensure that all points of view are considered. It is important for members on both sides of the aisle to note that in most regards, these are the same rules that I used when I was chair of the committee, and I believe this is a testament to Chairman Chabot's leadership.

In this day and age when too many try to stack the rules in their favor, it is refreshing that this committee does not have to be concerned about those distractions. A committee that is run openly and with a sense of community is a committee that works and can best achieve its objective. It is my hope that the rules we consider today will make this happen.

I yield back.

Chairman CHABOT. Thank you.

Are there any other members who wish to be recognized for a statement on the rules package?

If not, the Committee now moves to consideration of the rules package. The clerk will read the title of the document.

The CLERK. Rules and procedures adopted by the Committee on Small Business, United States House of Representatives, the 114th Congress 2015–2016.

Chairman CHABOT. I ask unanimous consent that the rules package be considered as read and open for amendment in its entirety.

Does any member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on adopting the rules. All those in favor say aye.

All opposed say no.

In the opinion of the chair, the ayes have it.

The ayes have it.

The rules for the Small Business Committee of the 114th Congress are adopted and the staff is authorized to make technical and grammatical changes.

Today's second order of business is to consider the Committee's Oversight Plan. This plan represents the agenda for the Committee during the 114th Congress. I wish to thank the ranking member, Ms. Velázquez, for her input into the Oversight Plan. The plan is very similar to that adopted in the 113th Congress with a slightly greater emphasis on performing an examination of SBA programs. It is my view that the plan recognizes this Committee's broad oversight authority under the rules of the House to investigate any problem affecting small business.

At this point, I would yield to the Ranking Member for any comments she may have on the Oversight Plan.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

The oversight plan sets forth a policy framework for our work this Congress, and the chairman is to be commended on producing a thoughtful document. The plan calls for the robust oversight of the SBA and other federal small business initiatives, a long tradition that this committee takes seriously. It also delineates several programs for review and possible termination. In this context, the committee has forged a bipartisan consensus opposing the SBA's continued creation of unauthorized pilot programs. Diverting taxpayers' dollars away from proven programs can often open the door to fraud, waste, and abuse, something we are all working to minimize. Whether it is the SBA or other matters of importance to small businesses, Congress needs a clear agenda of assisting them, and it is paramount that we start addressing these issues as soon as possible. By doing so, we have the potential to truly help create new jobs and move the economy forward.

With that, I urge members to approve this oversight plan.

I yield back.

Chairman CHABOT. Thank you.

Are there any other members who wish to be recognized for a statement on the Oversight Plan?

If not, the Committee now moves to consideration of the Oversight Plan. The clerk will read the title of the document.

The CLERK. Oversight Plan of the Committee on Small Business for the 114th Congress.

Chairman CHABOT. I ask unanimous consent that the Oversight Plan be considered as read and open for amendment in its entirety.

Does any member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on adopting the Oversight package. All those in favor say aye.

All those opposed say no.

In the opinion of the chair, the ayes have it.

The Oversight Plan for the Small Business Committee in the 114th Congress is adopted, and Committee staff are authorized to make technical and grammatical changes in the Oversight Plan.

Today's third order of business is to consider the Views and Estimates of the President's Fiscal Year 2016 budget for the Small Business Administration. The SBA budget request for Fiscal Year 2016 in my view fails to address certain critical matters. These matters are not items on which the Agency has discretion; they have been mandated by Congress. During the last five years, Congress has imposed some 15 requirements on the SBA to complete with respect to its government contracting programs. The SBA only has completed one of those tasks. Despite this, the SBA budget request makes no mention of these mandates. The SBA is required to have an individual whose primary responsibility is to oversee acquisition management within the Agency, the chief acquisition officer or CAO. This is a significant vulnerability for the SBA in my view and for the taxpayers. Yet, the Agency's response is to assign the CAO's duties to the chief financial officer, thereby distracting the chief financial officer from providing appropriate oversight to the SBA's \$100 billion loan portfolio.

In addition, the Agency does not have an individual that serves as the chief information officer even though it is a statutory requirement. This compounds the problem of overseeing the SBA's information technology, including the Loan Management Accounting System that uses 1960s technology and that the inspector general continues to cite as a critical vulnerability.

While the Agency continues to ignore congressional mandates, the budget request has the audacity to request over \$40 million for initiatives of its own design. The SBA's first responsibility is to complete the tasks mandated by Congress before it expends funds on untested initiatives the Agency believes will help small businesses. Even if the SBA had completed all of the tasks assigned to it by Congress and filled the statutory mandated management positions, the budget request priorities still, in my view, are misplaced. The budget request makes no mention of adding more key personnel who will help small businesses enter or compete in the nearly \$500 billion federal procurement marketplace. Instead, the SBA requested nearly \$37 million to provide entrepreneurial training that duplicates longstanding programs operated by the SBA and its partners, such as Small Business Development Centers and SCORE.

The views and estimates that we are considering today highlight these problems and asks for a reduction of SBA's budget while judiciously reallocating funds to areas that will reduce agency vulnerabilities and prove more effective in assisting small business owners.

At this point, I would like to yield to the ranking member, Ms. Velázquez, for any comments she might have on the Committee's views and estimates.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

The SBA continues to be an important agency for spurring economic activity. Through its access to capital, procurement, and entrepreneurial development programs, the agency assists hundreds of thousands of entrepreneurs each year. The SBA budget submis-

sion gives this committee the opportunity to assess the agency's priorities on whether it is carrying out its statutory mission appropriately. The SBA's near-term blueprint for accomplishing its mandate is its Fiscal Year 2016 budget request of \$860 million. This funding will enable the agency to continue to provide loans, contracts, and training to small businesses across the country. In this capacity, the SBA truly plays a vital role, strengthening our economy and promoting job creation.

In many areas, I concur with the majority's views and estimates on this project. This includes opposing unauthorized pilot programs which continue to grow unchecked at the agency. Policing SBA's contracting programs has unfortunately become a necessity and this needs to be a top priority. Finally, I am glad to see that the majority opposes the administration's 504 refinancing proposal. Such an initiative is outside of the mission of the underlying program's purpose and places undue risk on taxpayers.

However, in several areas the views and estimates take cost-cutting measures a bit too far. It supports abolishing the Prime program as does the administration itself. This program should continue to be funded as it provides resources to low income entrepreneurs seeking to become self-sufficient. Critics say Prime is duplicative, but that is a hard case to make when the Microloan program is tied to a loan and Prime is tied to capacity building and technical assistance. Plus, they barely receive more than 3 percent of the agency's budget.

Similarly, eliminating the Veterans Business Outreach Center, Office of Native American Affairs, and Office of International Trade are misguided. While other departments do, in fact, perform similar activities, the SBA operates these initiatives with a small business focus, an element that the other federal entities lack. As a result, these activities should remain in the SBA, and if reform is needed, it should be pursued incrementally instead.

As we all know, disagreement on priorities in the agency's annual budget is not unusual. As we move forward, I look forward to working to refocus the SBA on its statutory mission in a manner that is both efficient and prudent.

And with that, Mr. Chairman, I yield back.

Chairman CHABOT. Thank you. The gentlelady yields back.

Are there any other members who wish to be recognized for a statement on the Committee's Views and Estimates on the SBA budget request for Fiscal Year 2016?

If not, the Committee now moves to its consideration of the views and estimates. The clerk will read the title of the document.

The CLERK. 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 2016.

Chairman CHABOT. I ask unanimous consent that the views and estimates be considered as read and open for amendment in its entirety.

Does any member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on adopting the views and estimates on the SBA budget request for Fiscal Year 2016. All those in favor say aye.

All those opposed, no.

In the opinion of the chair, the ayes have it, and the views and estimates are agreed to.

I now recognize the Ranking Member for a motion.

Ms. VELAZQUEZ. Sure. Mr. Chairman, I would like to ask unanimous consent. I would like to give notice pursuant to House Rule 11 Clause 2(1), that the committee democrats will be filing additional views with the Budget Committee regarding SBA's Fiscal Year 2016 budget.

Chairman CHABOT. Without objection, so ordered.

And the Committee is authorized to make technical and grammatical corrections to the views and estimates.

I would like to thank everyone and look forward to working with all of you. This meeting of the Committee on Small Business is adjourned and the Committee will stand in recess for a few moments to prepare for a Committee hearing. We do have a hearing following up, so members and anyone here that would like to stay, we will be starting that up in just a moment or two so we can get the witnesses in there.

So at this time, the Committee is briefly adjourned. We will be back shortly.

[Whereupon, at 10:25 a.m., the Committee was adjourned.]

**A P P E N D I X**

Rules and Procedures

Adopted by the

Committee on Small Business

United States House of Representatives

114<sup>th</sup> Congress, 2015-16

**1. GENERAL PROVISIONS**

The Rules of the House of Representatives, in total (but especially with respect to the operations of committees Rule X, cl. 1(q), cl. 2, cl. 3(l), and Rule XI) are the rules of the Committee on Small Business to the extent applicable and are incorporated by reference. Each Subcommittee of the Committee on Small Business (“the Committee”) is a part of the Committee and is subject to the authority and direction of the Committee, and to the rules of the House and the rules adopted herein to the extent applicable.

**2. REFERRAL OF BILLS BY THE CHAIR**

The Chair will retain consideration of all legislation referred to the Committee by the Speaker. No action will be required of a Subcommittee before legislation is considered for report by the Committee. Subcommittee chairs, pursuant to the rules set out herein, may hold hearings on any bill referred to the Committee.

**3. DATE OF MEETING**

The regular meeting date of the Committee shall be the second Wednesday of every month when the House is in session. The Chair may dispense with the meeting of the Committee, if in the sole discretion of the Chair, there is no need for such meeting. Additional meetings may be called as deemed necessary by the Chair or at the request of the majority Members of the Committee pursuant to Rule XI, cl. 2(c) of the rules of the House.

At least 3 days notice of such an additional meeting shall be given unless the Chair, with the concurrence of the Ranking Minority Member, determines that there is good cause to call the meeting on less notice or upon a vote by a majority of the Committee (a quorum being present). To the extent possible, the three days shall be counted from the 72 hours before the time of the meeting. Announcements of the meeting shall be published promptly in the Daily Digest and made publicly available in electronic form.

The determination of the business to be considered at each meeting shall be made by the Chair subject to limitations set forth in House Rule XI, cl. 2(c).

The Chair shall provide to each Member of the Committee, to the extent practicable, at least 48 hours in advance of a meeting, a copy of the bill, resolution, report or other item to be considered at the meeting, but no later than 24 hours before the meeting. Such material also shall be made available to the public at least 24 hours in advance in electronic form.

The rules for notice and meetings as set forth in Rule 3 of these Rules shall not apply to special and emergency meetings. Clause 2(c)(2) of Rule XI and clause 2(g)(3)(A) of Rule XI of the Rules of the House, as applicable, shall apply to such meetings.

A record vote of the Committee shall be provided on any question before the Committee upon the request of any Member of the Committee. A record of the vote of each Member of the Committee on a matter before the Committee shall be available in electronic form within 48 hours of such record vote, and, with respect to any roll call vote on any motion to amend or report, shall be included in the report of the Committee showing the total number of votes cast for and against and the names of those Members voting for and against.

The Chair of the Committee shall, not later than 24 hours after consideration of a bill, resolution, report or other item cause the text of the reported item and any amendment adopted thereto to be made publicly available in electronic form.

#### **4. Announcement of Hearings**

Public announcement of the date, place, and subject matter of any hearing to be conducted by the Committee shall be made no later than 7 calendar days before the commencement of the hearing. To the extent possible, the seven days shall be counted from 168 hours before the time of the Committee's hearing.

The Chair, with the concurrence of the Ranking Minority Member, or upon a vote by the majority of the Committee (a quorum being present), may authorize a hearing to commence on less than 7 calendar days notice.

*A. Witness Lists*

Unless the Chair determines it is impracticable to do so, the Committee shall make a tentative witness list available at the time it makes the public announcement of the hearing. If a tentative witness list is not made available at the time of the announcement of the hearing, such witness list shall be made available as soon as practicable after such announcement is made. A final witness list shall be issued by the Committee no later than 48 hours prior to the commencement of the hearing.

*B. Material for the Hearing*

The Chair shall provide to all Members of the Committee, as soon as practicable after the announcement of the hearing, a memorandum explaining the subject matter of the hearing and any official reports from departments and agencies on the subject matter of the hearing. Such material shall be made available to all Members of the Committee no later than 48 hours before the commencement of the hearing unless the Chair, after consultation with the Ranking Minority Member, determines that certain reports from departments or agencies should not be made available prior to the commencement of the hearing. Material provided by the Chair to all Members, whether provided prior to or at the hearing, shall be placed on the Committee website no later than 48 hours after the commencement of the hearing unless such material contains sensitive or classified information in which case such material shall be handled pursuant to Rule 15 of the Committee's Rules.

**5. Meetings and Hearings Open to the Public**

*A. Meetings*

Each meeting of the Committee or its Subcommittees for the transaction of business, including the markup of legislation, shall be open to the public, including to radio, television, and still photography coverage, except as provided by House Rule XI, cl. 4. If the majority of Members of the Committee or Subcommittee present at the meeting, determine by a recorded vote in open session that all or part of the remainder of the meeting on that day shall be closed to the public because the disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade, or incriminate any person or otherwise would violate any law or rule of the House; *provided however*, that no person other than Members of the Committee, and such congressional staff and such executive branch representatives they may authorize, shall be present in any meeting which has been closed to the public.

The Chair and Ranking Minority Member are *ex officio* Members of all Subcommittees for the purpose of any meeting conducted by a Subcommittee.

### *B. Hearings*

Each hearing conducted by the Committee or its Subcommittees shall be open to the public, including radio, television and still photography coverage. If the majority of Members of the Committee or Subcommittee present at the hearing, determine by a recorded vote in open session, that all or part of the remainder of the hearing on that day shall be closed to the public because the disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade, or incriminate any person or otherwise would violate any law or rule of the House; *provided however*, that the Committee or Subcommittee may by the same procedure also vote to close one subsequent day of hearings. Notwithstanding the requirements of the preceding sentence, a majority of those present (if the requisite number of Members are present under Committee rules for the purpose of taking testimony) may vote: (i) to close the hearing for the sole purpose of discussing whether the testimony or evidence to be received would endanger the national security, would compromise sensitive law enforcement information, or violate Rule XI, cl. 2(k)(5) of the House or (ii) to close the hearing, as provided clause 2(k)(5) of Rule XI of the House.

The Chair and Ranking Minority Member are *ex officio* Members of all Subcommittees for any hearing conducted by a Subcommittee. Members of the Committee who wish to participate in a hearing of the Subcommittee to which they are not Members shall make such request to the Chair and the Ranking Minority Member of the Subcommittee at the commencement of the hearing. The Chair, after consultation with the Ranking Minority Member of the Subcommittee, shall grant such request.

No Member of the House may be excluded from non-participatory attendance at any hearing of the Committee or any Subcommittee, unless the House of Representatives shall by majority vote authorize the Committee or Subcommittees, for purposes of a particular subject of investigation, to close its hearing to Members by the same procedures designated to close hearings to the public.

Members of Congress who are not Members of the Committee but would like to participate in a hearing shall notify the Chair and the Ranking Minority Member and submit a formal request no later than 24 hours before the commencement of the meeting or hearing.

To the maximum extent practicable, the Committee shall provide audio and video coverage of each hearing or meeting for the transaction of business in a manner that allows the public to easily listen and view the proceedings and shall maintain the recordings of such coverage in a manner easily accessible to the public.

## 6. Witnesses

### *A. Statement of Witnesses*

Each witness who is to appear before the Committee or Subcommittee shall file an electronic copy of the testimony with the Committee and the Ranking Minority Member no later than 48 hours before the commencement of the hearing. In addition, the witness shall provide 25 copies of the testimony by the commencement of the hearing. The Chair may waive the requirement by the witness providing 25 copies in which case the Committee or Subcommittee shall provide the 25 copies.

Each non-governmental witness shall provide to the Committee and the Ranking Minority Member, no later than 48 hours before the commencement of the hearing, a curriculum vitae or other statement describing their education, employment, professional affiliation or other background information pertinent to their testimony.

As required by Rule XI, cl. 2(g) of the Rules of the House, each non-governmental witness before the commencement of the hearing shall file with the Chair a disclosure form detailing any contracts or grants that the witness has with the federal government. Such information shall be posted on the Committee website within 24 hours after the witness appeared at the hearing.

The failure to provide the materials set forth by the deadlines set forth in these rules may be grounds for excluding both the oral and written testimony of the witness unless waived by the Chair of the Committee or Subcommittee.

The Committee will provide public access to printed materials, including the testimony of witnesses in electronic form on the Committee's website no later than 24 hours after the hearing is adjourned. Supplemental material provided after the hearing adjourns, shall be placed on the Committee website no later than 24 hours after receipt of such material.

### *B. Number of Witnesses and Witnesses Selected by the Minority*

For any hearing conducted by the Committee or Subcommittee there shall be no more than four non-governmental witnesses of which the Ranking Minority Member of the Committee or Subcommittee (as appropriate) is entitled to select one witness for the hearing. Witnesses selected by the Ranking Minority Member of the Committee or Subcommittee shall be invited to testify by the Chair of the Committee or Subcommittee (as appropriate). Rule 6(A) shall apply with equal force to witnesses selected by the Ranking Minority Member of the Committee or Subcommittee.

The limitations set forth in the preceding paragraph shall not apply if the Committee holds a hearing to honor the work of the small business community in conjunction

with the annual celebration of Small Business Week. Witness limitations for such a hearing shall be determined by the Chair in consultation with the Ranking Minority Member.

*C. Interrogation of Witnesses*

Except when the Committee adopts a motion pursuant to subdivisions (B) and (C) of clause 2(i)(2) of Rule XI of the Rules of the House, Committee Members may question witnesses only when they have been recognized by the Chair for that purpose.

The Chair and Ranking Minority Member of the Committee or Subcommittee shall face no limitation on the length of the time that they may question a witness. After recognition by the Chair, other Members shall have the opportunity, as set forth in Rule XI, cl. 2 (j) of the Rules of the House, to question each witness on the panel for a period not to exceed five minutes.

For any hearing, the Chair of the Committee or Subcommittee may offer a motion to extend the questioning of a witness or witnesses by Members other than the Chair or Ranking Minority Member identified in the motion for more than five minutes as set forth in Rule XI, cl. 2(j)(B).

The Chair of the Committee or Subcommittee shall commence questioning followed by the Ranking Minority Member. Thereafter, questioning shall alternate between the majority and minority Members in order of their arrival at the hearing after the gavel has been struck to commence the hearing with the first arriving having priority over Members of his or her party. If Members arrive simultaneously or are there prior to the gavel being struck to commence the hearing, order of questioning shall be based on seniority.

In recognizing Members to question witnesses, the Chair may take into consideration the ratio of majority and minority Members present in such a manner as to not disadvantage the Members of either party.

**7. Subpoenas**

A subpoena may be authorized and issued by the Committee in the conduct of any investigation or series of investigations or activities to require the attendance and testimony of such witness and the production of such books, records, correspondence, memoranda, papers and document, as deemed necessary. Such subpoena shall be authorized by a majority of the full Committee. The requirement that the authorization of a subpoena require a majority vote may be waived by the Ranking Member of the Committee. The Chair may issue a subpoena, in consultation with the Ranking Minority Member, when the House is out for session for more than three legislative days.

**8. Quorum**

A quorum, for purposes of reporting a measure or recommendation, shall be a majority of the Committee Members. For purposes of taking testimony or receiving evidence, a quorum shall be one Member from the Majority and one Member from the Minority. The Chair of the Committee or Subcommittee shall exercise reasonable comity by waiting for the Ranking Minority Member even if a quorum is present before striking the gavel to commence the hearing. For hearings held by the Committee or a Subcommittee in a location other than the Committee's hearing room in Washington, DC, a quorum shall be deemed to present if the Chair of the Committee or Subcommittee is present.

**9. Amendments During Mark-Up**

Any amendment offered to any pending legislation before the Committee must be made available in written form by any Member of the Committee. If such amendment is not available in written form when requested, the Chair shall allow an appropriate period for the provision thereof and may adjourn the markup to provide sufficient time for the provision of such written amendment. Such period or adjournment shall not prejudice the offering of such amendment.

For amendments to be accepted during mark-up, there is no requirement that the amendments be filed prior to commencement of the mark-up or prepared with the assistance of the Office of Legislative Counsel. Even though it is not necessary, Members seeking to amend legislation during mark-up should draft amendments with the assistance of the Office of Legislative Counsel and consult with the Chair or Ranking Member's staff (as appropriate) in the preparation of such amendments.

**10. Postponement of Proceedings**

The Chair in consultation with the Ranking Minority Member may postpone further proceedings when a record vote is ordered on the question of approving any measure or matter or adopting an amendment. The Chair may resume postponed proceedings, but no later than 24 hours after such postponement, unless the House is not in session or there are conflicts with Member schedules that make it unlikely a quorum will be present to conduct business on the postponed proceeding. In such cases, the Chair will consult with Members to set a time as early as possible to resume proceedings but in no event later than the next meeting date as set forth in Rule 3 of these Rules. When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

## 11. Number and Jurisdiction of Subcommittees

There will be five Subcommittees as follows:

### *The Subcommittee on Agriculture, Energy and Trade*

This Subcommittee (which will consist of six (6) Republican Members and four (4) Democratic Members) will address policies that enhance rural economic growth, increasing America's energy independence and ensuring that America's small businesses can compete effectively in a global marketplace.

- Oversight of agricultural policies.
- Oversight of environmental issues and regulations (including agencies such as the Environmental Protection Agency and the Army Corps of Engineers).
- Oversight of energy issues, including expansion of domestic resources whether they are renewable or non-renewable.
- Oversight of international trade policy with particular emphasis on agencies that provide direct assistance to small businesses, such as: the Small Business Administration's (SBA) Office of International Trade, the Department of Commerce's United States Export Assistance Centers, the Department of Agriculture's Foreign Agricultural Service, and the Export-Import Bank.
- Oversight of infringement of intellectual property rights by foreign competition.

### *The Subcommittee on Health and Technology*

This Subcommittee (which will consist of six (6) Republican Members and four (4) Democratic Members) will address how health care policies may inhibit or promote economic growth and job creation by small businesses. In addition, the Subcommittee will examine small business job growth through the creation and adoption of advanced technologies.

- Oversight of the implementation of the Patient Protection and Affordable Care Act.
- Oversight of availability and affordability of health care coverage for small businesses.
- Oversight of general technology issues, including intellectual property policy in the United States.
- Oversight of United States telecommunications policies including, but not limited to, the National Broadband Plan and allocation of electromagnetic spectrum.
- The Small Business Innovation Research Program.
- Small Business Technology Transfer Program.

*The Subcommittee on Economic Growth, Tax and Capital Access*

This Subcommittee (which will consist of six (6) Republican Members and four (4) Democratic Members) will evaluate the operation of the financial markets in the United States and their ability to provide needed capital to small businesses. In addition, the Subcommittee will review federal programs, especially those overseen by the SBA, aimed at assisting entrepreneurs in obtaining needed capital. Since the tax policy plays an integral role in access to capital, this Committee also will examine the impact of federal tax policies on small businesses.

- Oversight of capital access and financial markets.
- Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- SBA financial assistance programs, including guaranteed loans, microloans, certified development company loans, and small business investment companies.
- Oversight of the Department of Agriculture business and industry guaranteed loan program.
- Oversight of general tax policy affecting small businesses.
- The management of the SBA disaster loan program.

*The Subcommittee on Investigations, Oversight and Regulations*

This Subcommittee (which will consist of six (6) Republican Members and four (4) Democratic Members) will probe the efficient operation of government programs that affect small businesses, including the SBA, and develop proposals to make them operate in a more cost-effective manner. This Subcommittee also will review the regulatory burdens imposed on small businesses and how those burdens may be alleviated.

- Oversight of general issues affecting small businesses and federal agencies.
- Oversight of the management of the SBA.
- Oversight of the SBA Inspector General.
- Implementation of the Regulatory Flexibility Act.
- Oversight of the Office of Information and Regulatory Affairs at the Office of Management and Budget.
- Use of the Congressional Review Act.
- Transparency of the federal rulemaking process as required by the Administrative Procedure and Data Quality Acts.
- Implementation of the Paperwork Reduction Act.

*The Subcommittee on Contracting and Workforce*

This Subcommittee (which will consist of six (6) Republican Members and four (4) Democratic Members) will assess the federal procurement system, including those

programs designed specifically to enhance participation by small businesses in providing goods and services to the federal government. The Subcommittee will examine various programs designed to provide technical assistance to small businesses, whether specifically aimed at federal contractors or small businesses in general. Finally, the Subcommittee will review the broad scope of workforce issues that affect the ability of small businesses to obtain and maintain qualified employees.

- Oversight of government-wide procurement practices and programs affecting small businesses.
- Oversight of federal procurement policies that inhibit or expand participation by small businesses in the federal contracting marketplace.
- All contracting programs established by the Small Business Act, including HUBZone, 8(a), Women-, and Service Disabled Veteran-Owned Small Business Programs.
- Technical assistance provided to federal contractors and perspective contractors through SBA personnel, Offices of Small and Disadvantaged Business Utilization, and Procurement Technical Assistance Centers.
- The SBA Surety Bond guarantee program.
- Oversight of all federal policies that affect the workforce including, but not limited to, the roles of the Department of Labor and the National Labor Relations Board.
- SBA entrepreneurial development and technical assistance programs unrelated to participation in the federal government contracting.

## **12. Powers and Duties of Subcommittees**

Each Subcommittee is authorized to meet, hold hearings, receive evidence, and report to the Committee on any matters referred to it. Prior to the scheduling of any meeting or hearing of a Subcommittee, the Chair of the Subcommittee shall obtain the approval of the Chair of the Committee.

No hearing or meeting of a Subcommittee shall take place at the same time as the meeting or hearing of the full Committee or another Subcommittee, *provided however*, that the Subcommittee Chairs may hold field hearings that conflict with those held by other Subcommittees of the Committee.

## **13. Committee Staff**

### *A. Majority Staff*

The employees of the Committee, except those assigned to the Minority as provided below, shall be appointed and assigned, and may be removed by the Chair of the Committee. The Chair shall fix their remuneration and they shall be under the general supervision and direction of the Chair.

*B. Minority Staff*

The employees of the Committee assigned to the Minority shall be appointed and assigned, and their remuneration determined, as the Ranking Minority Member of the Committee shall decide.

*C. Subcommittee Staff*

There shall be no separate staff assigned to Subcommittees. The Chair and Ranking Member shall endeavor to ensure that sufficient committee staff is made available in order that each Subcommittee may carry out the responsibilities set forth in Rule 11, *supra*.

**14. Records**

The Committee shall keep a complete record of all actions, which shall include a record of the votes on any question on which a recorded vote is demanded. The result of any vote by the Committee, or if applicable by a Subcommittee, including a voice vote shall be posted on the Committee's website within 24 hours after the vote has been taken. Such record shall include a description of the amendment, motion, order, or other proposition, the name of the Member voting for and against such amendment, motion, order, or other proposition, and the names of Members present but not voting. For any amendment, motion, order, or other proposition decided by voice vote, the record shall include a description and whether the voice vote was in favor or against.

The Committee shall keep a complete record of all Committee and Subcommittee activity which, in the case of a meeting or hearing transcript shall include a substantially verbatim account of the remarks actually made during the proceedings subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks.

The records of the Committee at the National Archives and Records Administration shall be made available in accordance with Rule VII of the Rules of the House. The Chair of the Committee shall notify the Ranking Member of the Committee of any decision, pursuant to Rule VII, cl. 3(b)(3) or cl. 4 (b), to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination of the written request of any Member of the Committee.

The Committee Rules shall be made publicly available in electronic form and published in the Congressional Record not later than 30 days after the Chair of the Committee is elected in each odd-numbered year.

### 15. Access to Classified or Sensitive Information

Access to classified or sensitive information supplied to the Committee or Subcommittees and attendance at closed sessions of the Committee or a Subcommittee shall be limited to Members and necessary Committee staff and stenographic reporters who have appropriate security clearance when the Chair determines that such access or attendance is essential to the functioning of the Committee or one of its Subcommittees.

The procedures to be followed in granting access to those hearings, records, data, charts, and files of the Committee which involve classified information or information deemed to be sensitive shall be as follows:

- (A) Only Members of the House of Representatives and specifically designated Committee staff of the Committee on Small Business may have access to such information.
- (B) Members who desire to read materials that are in possession of the Committee shall notify the Clerk of the Committee in writing.
- (C) The Clerk of the Committee will maintain an accurate access log, which identifies the circumstances surrounding access to the information, without revealing the material examined.
- (D) If the material desired to be reviewed is material which the Committee or Subcommittee deems to be sensitive enough to require special handling, before receiving access to such information, individuals will be required to sign an access information sheet acknowledging such access and that the individual has read and understands the procedures under which access is being granted.
- (E) Material provided for review under this rule shall not be removed from a specified room within the Committee offices.
- (F) Individuals reviewing materials under this rule shall make certain that the materials are returned to the proper custodian.
- (G) No reproductions or recordings may be made of any portion of such materials.
- (H) The contents of such information shall not be divulged to any person in any way, form, shape, or manner and shall not be discussed with any person who has not received the information in the manner authorized by the rules of the Committee.
- (I) When not being examined in the manner described herein, such information will be kept in secure safes or locked file cabinets within the Committee offices.
- (J) These procedures only address access to information the Committee or Subcommittee deems to be sensitive enough to require special treatment.
- (K) If a Member of the House of Representatives believes that certain sensitive information should not be restricted as to dissemination or use, the Member may petition the Committee or Subcommittee to so rule. With respect to information and materials provided to the Committee by the Executive Branch or an independent agency as that term is defined in 44 U.S.C. § 3502, the classification of information and materials as determined by the Executive Branch or

independent agency shall prevail unless affirmatively changed by the Committee or Subcommittee involved, after consultation with the Executive Branch or independent agency.

- (L) Other materials in the possession of the Committee are to be handled in the accordance with normal practices and traditions of the Committee.

#### **16. Other Procedures**

The Chair of the Committee may establish such other procedures and take such actions as may be necessary to carry out the foregoing rules or to facilitate the effective operation of the Committee.

#### **17. Amendments to Committee Rules**

The rules of the Committee may be modified, amended or repealed by a majority vote of the Members, at a meeting specifically called for such purpose, but only if written notice of the proposed change or changes has been provided to each Member of the Committee at least 72 hours prior to the time of the meeting of the Committee to consider such change or changes.

#### **18. Budget and Travel**

From the amount provided to the Committee in the primary expense resolution adopted by the House of Representatives in the 113<sup>th</sup> Congress, the Chair, after consultation with the Ranking Minority Member, shall designate one-third of the budget under the direction of the Ranking Minority Member for the purposes of minority staff, travel expenses of minority staff and Members, and minority office expenses.

The Chair may authorize travel in connection with activities or subject matters under the legislative or oversight jurisdiction of the Committee as set forth in Rule X of the Rules of the House.

The Ranking Minority Member may authorize travel for any Minority Member or staff of the minority in connection with activities or subject matters under the Committee's jurisdiction as set forth in Rule X of the Rules of the House. Before such travel, there shall be submitted to the Chair of the Committee in writing the following at least seven (7) calendar days prior specifying: a) the purpose of the travel; b) the dates during which the travel is to occur; c) the names of the states or countries to be visited and the length of time spent in each; and d) the names of Members and staff of the Committee participating in such travel. Prior approval shall not be required of Minority Staff traveling to participate in a deposition, authorized by the Chair in rule 16 of these Rules of an individual located outside of the Washington, DC metropolitan area.

**19. Committee Website**

The Chair shall maintain an official Committee website for the purpose of furthering the Committee's legislative and oversight responsibilities, including communicating information about Committee's activities to Committee Members and other Members of the House. The Ranking Minority Member may maintain a similar website for the same purpose, including communicating information about the activities of the Minority to Committee Members and other Members of the House.

**20. Vice Chair**

Pursuant to the Rules of the House, the Chair shall designate a Member of the Majority to serve as Vice Chair of the Committee. The Vice Chair shall preside at any meeting or hearing during the temporary absence of the Chair. The Chair also reserves the right to designate a Member of the Committee Majority to serve as the Chair at a hearing or meeting.

**OVERSIGHT PLAN OF THE COMMITTEE ON SMALL BUSINESS FOR THE  
ONE HUNDRED FOURTEENTH CONGRESS**

February 12, 2015, Approved by the Committee on Small Business

Mr. Chabot, from the Committee on Small Business, submitted to the Committee on Oversight and Government Reform and the Committee on House Administration the following

**REPORT**

Rule X, cl. 2(d)(1) of the Rules of the House requires each standing Committee to adopt an oversight plan for the two-year period of the Congress and to submit the plan to the Committees on Government Reform and House Administration not later than February 15 of the first session of the Congress. Under Rule X, the Committee has oversight authority to investigate and examine any matter affecting small business. This Report reflects that broad oversight jurisdiction.

Pursuant to Rule X, cl. 2(d)(1)(F), this oversight plan also includes proposals to cut or eliminate programs that are inefficient, duplicative, outdated, or more appropriately administered by State or local governments.

Oversight of Federal Capital Access Programs

The Committee will conduct hearings and investigations into Small Business Administration (SBA) and other federal agencies that provide capital to America's entrepreneurs that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- Effectiveness of the capital access programs to generate jobs in the fastest growing small businesses.
- Whether lenders are meeting their goals to lend to small businesses and create jobs.
- Risk to the taxpayers of the capital access programs and if those risks are not reasonable, then elimination of those programs.
- Adequacy of SBA oversight of its lending partners to ensure that federal taxpayers are properly protected.
- Capabilities of the SBA information technology to manage the loan portfolio.
- Whether SBA rules, regulations and guidance result in transparent and reasoned decisionmaking with respect to capital access programs.
- Assessment of credit-scoring algorithms as a replacement for individual credit assessment by SBA and its lending partners.
- The exercise of discretion by SBA to create pilot programs and the risk they pose to the taxpayer and whether such authority should be curtailed or eliminated.

- Whether SBA disaster loan program and its oversight ensures that small businesses are able to revive and rebuild communities without unduly placing the federal taxpayer at risk.
- Efficacy and duplication of federal capital access programs offered by the Department of Agriculture to small businesses in rural areas.
- Utilization by small businesses of export capital programs at the Export-Import Bank and the Overseas Private Investment Corporation.
- Continued examination of the Small Business Lending Fund and State Small Business Credit Initiative established by Pub. L. No. 111-240, the Small Business Jobs Act of 2010, in creating jobs and providing capital to small businesses.
- Impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, on small business access to capital.
- Implementation of crowdfunding and other provisions of the Jumpstart Our Business Startups Act, Pub. L. No. 112-106.

In performing oversight, the Committee will focus on particularly risky aspects of financial assistance programs including, but not limited to, commercial real estate refinancing, premier certified lenders, participating security small business investment companies, small business lending companies, express lenders, and loan programs utilizing simplified lending applications.

#### Oversight of SBA and Other Federal Entrepreneurial Development Programs

The Committee will conduct hearings and investigations into the SBA programs that provide training and advice to small businesses that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- Examining effectiveness of SBA entrepreneurial development programs in creating jobs at startups and traditional firms.
- Determining whether certain programs should be eliminated as a result of their ineffectiveness or duplication of programs provided by other agencies or by the private sector.
- Suggesting methods for enhancing coordination among federal agencies in providing assistance to entrepreneurs, including, but not limited to, businesses located in rural areas and those seeking to provide goods and services in the federal procurement marketplace.
- Enhancing the efficacy and utilization of the Manufacturing Extension Partnership at the Department of Commerce, including developments in renewable energy.
- Recommending improvements in assistance to small businesses in rural areas, including those involved in agriculture, forestry, and energy production.

Oversight of Federal Government Contracting Matters

The Committee will conduct hearings and investigations into the federal procurement system that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- Whether fraud or other problems exist in the federal government contracting programs overseen by the SBA including the 8(a), HUBZone, service-disabled veteran, women-owned contracting, and Small Business Innovation Research programs.
- Effectiveness of SBA contracting programs to increase participation by small businesses in federal procurement.
- Effectiveness of federal agency protections against contract bundling and consolidation.
- The accuracy and utility of SBA size standards and federal procurement databases.
- Operation and effectiveness of federal agency assistance provided to small businesses interested in federal procurement, including that provided by the SBA, Offices of Small and Disadvantaged Business Utilization and Procurement Technical Assistance Centers.
- Development of federal acquisition policies and whether small businesses have sufficiently effective voice in development of such policies.
- Cost-effectiveness of outsourcing government work to private enterprise rather than expanding the government to do provide the good or service internally (i.e., government insourcing).
- Implementation and efficacy of changes made in small business federal procurement programs arising from the enactment of the National Defense Authorization Acts for FYs 2012-2015.
- Examination of the Small Business Innovation Research Program as modified by the National Defense Authorization Act for FY 2012, Pub. L. No. 112-81, including, but not limited to, increased efforts at commercializing federally-funded technology.

In performing oversight, the Committee will focus its efforts on uncovering abuse and misuse of the small business designation to obtain federal government contracts.

Oversight of SBA Management

The Committee will conduct the hearings and investigations into the management of the SBA that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- The appropriate mission of the SBA.

- Whether agency employees in the field are empowered to assist small businesses.
- Duplication of offices and missions at SBA headquarters.
- Effectiveness of personnel management to ensure that employees are rewarded for assisting small businesses.
- Capabilities of SBA employees to provide proper assistance to small business owners.
- Agency personnel capabilities to properly manage loan defaults to maximize recovery of collateral.
- Whether SBA improperly utilizes statutory authority to create untested initiatives and the procedures by which the agency develops such programs.

In carrying out this oversight, the Committee will focus particularly on streamlining and reorganizing of the agency's operations to provide maximum assistance to small business owners. Offices that primarily provide assistance or advice to headquarters staff that do not promote the interests of small businesses or protect the federal government as a guarantor of loans will be recommended for cuts or elimination. For some potential offices that the Committee will examine, refer to the section titled "Reductions in Programs and Spending."

#### Oversight of Federal Regulatory and Paperwork Burdens

The Committee will conduct hearings and investigations into unnecessary, burdensome, and duplicative federal rules, reporting and recordkeeping requirements affecting small businesses that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- Centers for Medicare and Medicaid Services.
- Consumer Financial Protection Bureau.
- Consumer Safety Products Commission.
- Department of Agriculture.
- Department of Energy, particularly the Office of Energy Efficiency and Renewable Energy.
- Department of Interior, particularly the Bureau of Land Management and Minerals Management Service.
- Department of Labor, particularly the Occupation Safety and Health Administration.
- Department of Homeland Security, particularly the Transportation Security Administration.
- Department of Transportation, particularly the Federal Aviation Administration and Federal Motor Carrier Safety Administration.
- Environmental Protection Agency.
- Federal Communications Commission.
- Federal Financial Institutions Examination Council and its constituent agencies.
- Food and Drug Administration.

- Office of Federal Procurement Policy.
- Securities and Exchange Commission.

The Committee will identify specific rules and regulations already issued or at the proposed rule stage to assess the impact on small businesses. The Committee will pay close attention to the effect that regulations have on the implementation of advanced technologies including, but not limited to, the deployment of broadband communications (either by wireline or wireless services) throughout the United States. Oversight of the regulatory process also will, to the extent relevant, examine the work of the Office of Information and Regulatory Affairs at the Office of Management and Budget. Special attention will be paid to the work performed by the Chief Counsel for Advocacy at the United States Small Business Administration to ensure that Office is fulfilling its mission to advocate vigorously on behalf of America's small business owners in regulatory matters at federal agencies. Finally, this oversight will entail an examination of compliance by federal agencies with amendments to Executive Order 12,866 and memoranda on regulatory flexibility and regulatory compliance issued by the President on January 18, 2011 and still in effect as of the approval of this Oversight Plan.

#### Oversight of Federal Tax Policy

The Committee will conduct hearings and investigations into the federal tax code, its impact on small business, and Internal Revenue Service's (IRS) collection of taxes that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- Identification of tax code provisions that hinder the ability of small businesses to create jobs and recommendations for modifying those provisions to boost small business job growth.
- Examination of the structure of the tax code in order to simplify compliance for small businesses.
- Assessment of the recordkeeping and reporting requirements associated with tax compliance and suggestions for reducing such burdens on small businesses.
- Evaluation of the estate tax provisions to determine whether they inhibit the ability of successive generations to maintain successful job creating enterprises.
- Efficiencies at the IRS that improve the interaction between the government and small business owners.
- Inefficiencies at the IRS that force small businesses to divert capital from job growth to tax compliance.

#### Oversight of Health Care Policy

The Committee will conduct hearings and investigations into federal health care policy (such as Medicare and Medicaid) and the continued implementation of the Patient Protection and Affordable Care Act that may include any or all of the

following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- The cost of the Patient Protection and Affordable Care Act to small businesses, including the self-employed.
- The impact of the Patient Protection and Affordable Care Act, Medicare and Medicaid on the ability of physicians, pharmacists, and allied health care providers to offer the best care possible to patients.
- The impact of state tort and insurance laws on the cost of medical care.
- Examination of increases in efficiencies that will improve the provision of health care while reducing costs to small businesses that offer their workers health insurance.

#### Oversight of Energy Policy

The Committee will conduct hearings and investigations into energy policy to reduce the cost of energy and increase energy independence that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- Innovations developed by small businesses that create greater energy independence.
- Federal regulatory policies that increase dependence on foreign sources of energy.
- Policies needed to incentivize production of energy in the United States.
- Examination of commercialization of research in renewable energy.
- Federal regulations or policies that increase energy costs for small businesses.

The primary thrust of the Committee's efforts will focus on efforts to use the innovation of America's entrepreneurs to fuel the drive for greater energy independence, including the development of renewable energy products.

#### Oversight of Trade and Intellectual Property Policy

The Committee will conduct hearings and investigations into international trade and intellectual property policies of America and its trading partners that may include any or all of the following, as well as matters brought to the attention of the Committee subsequent to the filing of this Report:

- Impact of free trade agreements to increase exports by American small businesses.
- Whether the federal government is doing enough to protect the intellectual property rights of small businesses by foreign competitors.
- The impact of federal intellectual property policies, particularly patents and copyrights, to protect the innovations of American entrepreneurs.
- Efforts to increase exports by small businesses.

- Whether the United States Trade Representative and Department of Commerce sufficiently protect the interests of small businesses in the negotiation of free trade agreements.
- Whether the United States Trade Representative takes positions at the World Trade Organization that sufficiently promote the interests of American small businesses.

The focus of oversight will emphasize the best mechanisms to promote and protect advanced technology innovations of small businesses.

#### Reductions in Programs and Spending

In addition to the programs and policies already cited, the Committee will examine any and all offices and programs that fall within the Committee's legislative jurisdiction to find areas that could lead to reduction in the federal deficit. Some programs and offices may include:

- State Small Business Credit Initiative operated by Department of Treasury.
- Express Loan Program overseen by SBA.
- Emerging Leaders Initiative started by SBA.
- Clusters Program initiated by the SBA.
- Innovation and Impact Fund Pilot Programs operated by the SBA.
- SBA Office of Policy.
- SBA Regional Administrators.
- Office of Advocacy Regional Advocates.
- SBA Deputy District Directors.
- SBA Office of International Trade.
- SBA Office of Native American Affairs.

In particular, the Committee will assess whether reorganization and reassignment of employees to more critical functions at the SBA, such as positions in the Office of Government Contracting and Business Development will provide a more effective agency at assisting small businesses generate growth.

**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 2016**

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 2016; and (2) recommendations for improved governmental performance.

The President's Budget for FY 2016 asks for authority to reorganize and consolidate federal business and trade programs.<sup>1</sup> Certainly duplication exists and this Committee certainly would be interesting in receiving a plan to rationalize programs and reduce duplication. However, this Committee cannot support authority that affects the delivery of critical services that the Small Business Administration (SBA) provides to America's entrepreneurs absent some well-defined plan that ensures such services will not be diminished.

The budget request for the SBA in FY 2016 is \$860.13 million – a decrease of approximately \$27 million from the levels appropriated for FY 2015.<sup>2</sup> The majority of the decrease stems from the elimination of the subsidy needed to support the cost of the SBA loan programs. Of these funds, slightly more than half are devoted to salaries and expenses.<sup>3</sup> Total employment is expected to increase by a modest 19 employees from 2,136 to 2,155.<sup>4</sup> The SBA also has requested approximately \$37 million in SBA-initiated entrepreneurial development programs that have not been reviewed or approved by this Committee and duplicate existing longstanding small business outreach efforts funded through the agency's appropriation. Nor is there any evidence that such programs have been adequately assessed by the Agency prior to their implementation.<sup>5</sup> Most of the funds for the SBA-created entrepreneurial development programs can be eliminated without hindering outreach to small business. Some of those funds could be reallocated to information technology improvements, hiring additional employees who will assist in ensuring that small businesses obtain their fair share of federal government contracts, and implementing the priorities imposed on the SBA by Congress rather than the Agency conducting their own wish-list of actions.

**Capital Access Programs**

Despite an improving economy, small businesses still have difficulties obtaining needed capital to finance their operations and expansions. While small business await regulatory relief from overly stringent standards imposed by banking regulators, SBA capital access

<sup>1</sup> OFFICE OF MANAGEMENT AND BUDGET, FISCAL YEAR 2016, APPENDIX 1193 (2015).

<sup>2</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION, Table 1, at 16 (2015).

<sup>3</sup> The salaries and expenses is subdivided further into three subaccounts: 1) general agency operations; 2) business loan administrative costs; and 3) disaster loan administrative costs.

<sup>4</sup> *Id.*, Table 9, at 25.

<sup>5</sup> For example, the SBA is currently conducting an examination of the value of one of those programs, Scale Up America. *Id.* at 31. The SBA should have done much of this analysis on the benefits prior to its implementation.

programs (especially those providing debt financing) provide credit-worthy businesses capital that they would be unable to obtain through normal commercial credit markets.

*7(a) Guaranteed Loan Program*

The 7(a) Loan Program is the primary program for providing financial assistance to entrepreneurs. The program utilizes private lenders who make loans and receive guarantees from the SBA that a portion (varying from 50 to 85 percent of the loan) will be repaid by the United States Treasury even if the borrower defaults. SBA is entitled to charge fees to borrowers and its lending partners in order to cover the cost of the program.

The Federal Credit Reform Act (FCRA) requires the SBA to calculate the costs needed to cover potential losses from the cohort of loans made in any particular fiscal year. Determining the net present value under FCRA involves estimating expected loan defaults in the future less any recoveries from collateral on the defaulted loans. If the SBA is able to cover the costs of such loans from the fees it charges and expected recoveries, the program is said to operate at zero subsidy. If the program takes in more money than it needs to cover the cost of the loans, the program is operating at a negative subsidy rate (meaning that borrowers and lenders fees can be reduced). If the SBA needs an appropriation (assuming that Congress does not want to raise fees on small businesses), then the program is considered to operate at a positive subsidy level.

In FY 2015, the 7(a) Loan Program operated at a negative subsidy. This enabled the SBA to waive borrower fees (similar to points on a mortgage) on loans of up to \$150,000.<sup>6</sup> The SBA expects to continue this fee waiver for smaller loans and for veterans and increase the size of loans to veterans that are eligible for fee waivers. This Committee has never endorsed the unilateral action taken by the SBA because it represents a subsidy for smaller loans by businesses needing loans larger than \$150,000.<sup>7</sup> More tellingly, the SBA has never presented, in any document, report or testimony, that the fee waiver is needed for smaller loans or loans to veterans. Nor has the Agency provided an estimate of the number of loans that would have been made to the exempted groups had there not been a fee waiver, i.e., whether the fee waiver had any effect on the market.<sup>8</sup> In fact, it is quite probable that smaller loan demand would increase simply as a

<sup>6</sup> The SBA waived this fee entirely despite the requirement in the Small Business Act mandating that the SBA collect at least a nominal fee. Although the Agency claimed that it had the authority to waive such fees, it is curious that it sought and received legislative authority to waive such fees in the Consolidated and Further Continuing Appropriations Act, 2015.

<sup>7</sup> If the Agency did not waive borrower fees for loans under \$150,000, it could have reduced borrower and lender fees irrespective of loan size (although such reductions would not have been as large as the complete waiver of the borrower fee for loans under \$150,000).

<sup>8</sup> The SBA has alluded to the fact that fee waivers were in place during the height of the financial crisis and Great Recession. However, the Agency pointedly ignores the fact that coetaneous with the fee waiver was an increase in the percentage of loan guaranteed by the SBA (up to 90 percent). There are statistical methodologies for parsing the differential impact of fee waivers and increased guarantee percentages but the SBA has never undertaken such an examination. In short, the fee waiver is but one of a multitude of actions taken by the Agency without any underlying support or rationale. The Committee expects to address this irrational decisionmaking process in legislation.

result of a stronger economy irrespective of whether the fee waiver exists. Finally, the fee waiver for smaller loans presumes these borrowers are less capable of affording the upfront fee; again, the Agency has no data to support that and, in fact, larger loan borrowers may have more of the need for a fee waiver than smaller loan borrowers.

The SBA requests authorization to make \$21 billion in loans under the 7(a) Loan Guarantee Program. Furthermore, the 7(a) Loan Program will continue to operate at zero subsidy. The size of the request (an increase of more than \$5 billion from the FY 2015 request) is designed to avoid what happened at the end of FY 2015 when demand for the loans threatened a shutdown; the temporary cessation was avoided by including an increase of loan authority in a continuing resolution for funding into the beginning of FY 2016. The Committee concurs that such disruptions should be avoided. However, the Agency may be underestimating loan volume by a significant amount because demand for loans appears to be increasing at substantially faster rate than contemplated by SBA. As a result, the Committee believes that a cap of \$23.5 billion would avoid the potential for any sudden cessation of the program and disruption to small businesses that would ensue. The increase will have no impact on the outlays for the federal government as the program will operate at zero subsidy.<sup>9</sup>

The Committee remains strongly concerned about the SBA's use of its pilot program authority pursuant to § 7(a)(25) of the Small Business Act. This authority originally was created to provide the SBA with some flexibility to meet unexpected needs of a diverse small business economy. The SBA, however, abuses this authority by creating programs that last for time frames beyond which one would consider a pilot<sup>10</sup> and frequently add to the overall cost of the 7(a) Loan Program (through higher defaults).<sup>11</sup> Furthermore, the programs are created without notice and comment so that neither lenders nor borrowers provide input that might improve the aims or operations of the pilot. Finally, in some cases, the SBA creates pilot programs under statutes in which it has no authority to create pilot programs, such as the surety bond program.<sup>12</sup> The Committee recommends that no funds be allocated from the 7(a) Loan Program or any other account to establish new pilot programs that provide capital to small business concerns. In addition to limitations on funding, the Committee may consider additional legislative restrictions on this pilot program authority.

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<sup>9</sup> There is the slight possibility that an increase in loan volume may require additional personnel for administration of the loan programs. However, the Committee believes that the Agency has sufficient flexibility to address that issue.

<sup>10</sup> For example, the SBA announced that it will extend the Community Advantage Pilot Program until 2017, SBA, FY 2015 CONGRESSIONAL BUDGET JUSTIFICATION 76 (2014). The program was created in 2012 which means that the pilot program (after the most recently announced extension) will last longer than many government agencies' authorizations. Despite this, the SBA calls it a pilot program and avoids the transparency that would come with notice and comment rulemaking if the program was not a pilot.

<sup>11</sup> For example, the SBA cancelled its Patriot Express Loan Program (a pilot) due to high defaults.

<sup>12</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION 45 (2015) (noting creation of a surety bond pilot program). There is no authority for pilot programs that created the surety bond program – Title IV of the Small Business Investment Act of 1958.

*The Certified Development Company Loan Program*

The Certified Development Company (CDC or colloquially the "504 loan") program utilizes both private and government-guaranteed financing to provide long-term financing on larger capital projects that provide economic development to local communities. Loans made by CDCs must meet certain public policy goals (such as assisting manufacturers or promoting economic development) and demonstrate that the loans will create jobs. As with the 7(a) Loan Program, the SBA does not make loans directly but rather guarantees loans made by Certified Development Companies.<sup>13</sup>

Fees are charged to borrowers and lenders to cover the cost of the program in order to drive the subsidy rate to zero. In previous years, as a result of the value of collateral backing such loans (commercial real estate), the program operated at a positive subsidy rate. However, the Administration estimates that the program will operate at zero subsidy (as the result of increased value of recovered collateral on defaulted loans) for FY 2016, thereby reducing the overall cost of the program by \$45 million. The Administration requested an overall loan authority of \$7.5 billion in which the Committee concurs.<sup>14</sup>

*Commercial Refinancing under the CDC Program*

As an economic development program that was aimed at creating jobs, small businesses could not use loans from CDCs to refinance existing debt. The Small Business Jobs Act of 2010, Pub. L. No. 111-240, created a temporary, two-year program that authorizes refinancing of existing debt using the CDC Loan Program. The authority for the program lapsed. However, the SBA has requested yet again reauthorization of this program for another year so that CDCs could refinance \$7.5 billion in commercial real estate loans on the basis that the program will receive sufficient fees to operate at zero subsidy.

According to reestimates in 2014 by the Office of Management and Budget (OMB), the subsidy rates for the commercial refinance program are 3.19 percent for loans made in FY 2011 and 1.38 percent for loans made in FY 2012.<sup>15</sup> The new reestimates for FY 2016 show that these loans will have a negative subsidy rate (i.e., that the fees paid will actually more than cover the cost of the loans).<sup>16</sup> In previous views and estimates, the Committee was concerned about risk to the taxpayer as well as whether refinancing of existing debt actually is an economic development tool. Those concerns are not diminished by the reestimate of the subsidy rate for refinancing. As a result, the Committee cannot support any allocation of funds to commercial refinance of existing debt until other changes are made to the CDC Loan Program so that taxpayers are

<sup>13</sup> Technically, the SBA guarantees the debentures issued by CDCs that total 40 percent of the cost of the project. Private lenders contribute 50 percent and the small business concerns contribute 10 percent.

<sup>14</sup> The Committee does not expect that loan volume for CDCs will surpass \$7.5 billion even though at zero subsidy, a higher total loan authority could be supported.

<sup>15</sup> OMB, FY 2015 FEDERAL CREDIT SUPPLEMENT, BUDGET OF THE U.S. GOVERNMENT 73 (2014).

<sup>16</sup> OMB, FY 2016 FEDERAL CREDIT SUPPLEMENT, BUDGET OF THE U.S. GOVERNMENT 80 (2015).

protected against downturns in the value of commercial real estate and loan proceeds will be used to ensure economic development – the primary purpose of CDCs.

#### *Microloans*

The Microloan Program is a microfinancing program in which very small loans are made to very high risk customers, usually those that would not consider utilizing banks. The SBA makes loans, at below market rates, to intermediaries who then turn around and lend to small businesses. Although the default rate on loans to intermediaries is nearly zero, there is a cost to subsidize the difference between market interest rates and the interest rates charged to intermediaries. The SBA requests an appropriation of \$3.3 million to cover lending to intermediaries of \$35 million.<sup>17</sup> This represents an increase of \$10 million in lending authority with only an increase of \$800,000 in appropriation. Given the effectiveness of the Microloan Program in job creation, the Committee supports this modest increase.

#### *Small Business Lending Intermediary Pilot Program*

Under the program, 20 intermediaries will be loaned \$1,000,000 each to make loans of up to \$200,000 to small businesses. The Committee has objected to this program in the past and concurs with the Administration's request to eliminate the program for FY 2016.

#### *Small Business Investment Company Program*<sup>18</sup>

The Small Business Investment Company (SBIC) was instituted in an effort to ensure that small businesses could obtain equity as well as debt financing.<sup>19</sup> Although an oversimplification, the SBIC program operates by the federal government guaranteeing an instrument sold by the SBIC to private investors. The SBIC repays the government from payments made to it by the companies in which the SBIC invested.

The Debenture SBIC program is designed to provide equity injections to small businesses that have been operational for a number of years and have a track record of cash-flow and profits. Debenture SBICs have invested in enterprises such as Callaway Golf, Outback Steakhouse, Dell Computer, and Nike. The program is financially sound; it operates at zero subsidy due to the structure of repayments, the fees charges licensees and the value of the collateral of the licensees (the investments in ongoing businesses). The

<sup>17</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 8, at 24 (2015).

<sup>18</sup> There is a Participating Security Program that has been dormant since 2004. The Administration makes no request for funds for that program and, absent serious legislative changes, the program should remain dormant.

<sup>19</sup> The Jumpstart our Business Startups Act, enacted in the 112<sup>th</sup> Congress, was intended to remove many of the barriers that small businesses face in obtaining equity capital. However, the Securities and Exchange Commission implementation has not eliminated the heavy transaction costs associated with accessing the public equity markets and the small businesses are still awaiting crowdfunding rules from the Commission. Given this, a significant gap remains in the ability of small businesses to obtain equity financing that eases their cash flow burdens by reducing reliance on debt capital.

Administration requested an authorization level of \$4 billion for FY 2016<sup>20</sup> in which the Committee concurs.

The SBA created two new initiatives in FY 2012: 1) an Impact Fund designed to help economically distressed regions; and 2) an Early Stage Fund to offer investments to startup businesses. These two programs do not have specific authorization from Congress. Nor is there any certainty that these programs will actually achieve their objectives. In fact, the number of applicants for licenses in the Early Stage Fund is so low that the Agency issued a contract to Bank of America/Merrill Lynch to assist the SBA in developing best practices needed to identify venture capital funds that would benefit from the program. This is typical behavior of the SBA and to prevent the SBA from modifying a successful investment program, the Committee strongly recommends that no funds be provided from any account for the continuation of these programs (the \$4 billion should be allocated to any debenture SBIC that files an adequate application without any precondition or preference to a specific investment strategy). The Committee on the Budget also should provide further protection to the existing debenture SBIC program by requiring any modifications to the program, whether a pilot program or not, be based on a new subsidy calculation that ensures the current debenture program will operate at zero subsidy without any increase in fees.

The Administration suggests that a new small business investment company program for investment in businesses that manufacture goods other than those in biotechnology. While the Committee concurs with that a significant gap exists in venture capital investment for manufacturing outside of biotechnology, a proposal for a heavily-subsidized small business investment company program may not be the most appropriate or only solution to the problem. The Administration did not request any budgetary authority for this type of program and the Committee does not support such a request. However, the Committee does recognize that a continuing dialogue on this issue is vital to the American economy and the growth of solid well-paying middle class jobs.

#### *Surety Bond Program*

Small federal contractors, particularly in the construction industry, are required to post bonds in order to protect the federal government against the failure to complete a project. Title IV of the Small Business Investment Act of 1958 authorizes the SBA to reimburse surety bond writers between 70 and 90 percent of the losses if a small business contractor defaults on a contract to which a surety issued a bond. The program operates on a revolving fund account and sufficient funds exist in the program so that no appropriation is needed. The Committee concurs that the program should not require any appropriated funds to cover the costs of defaults by contractors and that the requested authority of \$1.8 billion<sup>21</sup> in lending authority is more than sufficient to meet the needs of small businesses providing goods and services to the federal government. However, the bond/loan pilot

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<sup>20</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 8, at 24 (2015).

<sup>21</sup> *Id.*

program<sup>22</sup> should be measured under a separate subsidy rate from that of either the underlying lending program or the surety bond program.

#### *Disaster Loans*

The SBA is the primary provider of assistance to the homeowners and small businesses after a natural disaster. The SBA does not request any additional funds needed to subsidize the cost of disaster loans in FY 2016 because the agency has sufficient carryover funds from those appropriated in response to Superstorm Sandy. The Committee concurs with this request. As a caveat, it is important to note that the funds available from Superstorm Sandy would not suffice if a similar event occurred in FY 2016. Such an event would necessitate an emergency supplemental appropriation. Given that there is no way to predict such occurrences, the Committee concurs with the SBA request to provide no additional monies for the revolving disaster loan account.

#### *Management of Capital Access Programs*

There are three primary costs that the SBA must face in the management of its capital access programs: (1) personnel to oversee the programs; (2) computer technology necessary to process data; and (3) capabilities to address defaulted loans. In all three instances, the SBA severely misplaces its priorities in the FY 2015 budget request.

The administrative costs associated with the guaranteed loan programs are covered under an appropriation account separate from the rest of the SBA. The FY 2016 request seeks an increase of \$5 million over the amount appropriated in FY 2015.<sup>23</sup> It appears that approximately \$4 million of that sum is being used for a project called LINC, which is to provide information on lending information to small businesses.<sup>24</sup> There is no information on why this project is needed or how small businesses cannot obtain this information from the SBA's extant website or its entrepreneurial development partners. Furthermore, the Committee's experience, as will be discussed later in this document, shows that the SBA is not an efficient implementer of new computer technology. Given this, the Committee cannot support any allocation of funds for LINC at this time; nor can the Committee support any allocation of funds that would be used to expand the network of lenders using the SBA capital access programs. The Committee is not aware of any gaps in the ability of small businesses to find lenders. In addition, the primary barrier to increased lender participation is to reduce the complexity and ad hoc nature of the Agency's management of its loan programs rather than some amorphous outreach effort to uncover more lenders to offer SBA loan products. In this regard, any effort to improve the efficient operation of the Agency's Loan Processing Center or Guaranty Repurchase Center would greatly aid in convincing lenders to participate and the Committee would support allocation of funds to support such efficiencies.

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<sup>22</sup> *Id.* at 45.

<sup>23</sup> *Id.* Table 1, at 16.

<sup>24</sup> *Id.* at 43.

The administrative costs for operating<sup>25</sup> the disaster loan program also are budgeted under a separate account. In addition, Congress permanently authorized the SBA to transfer unused disaster lending funds to administration of the disaster loan program. For FY 2016, the SBA requests \$187 million – the same as the appropriated amount for FY 2015.<sup>26</sup> The Committee believes that this should be sufficient to fund the administration of the disaster program. Any reductions would inhibit the agency’s ability to provide sufficient personnel and information technology needed for disaster response, particularly a major disaster on the scale of a Hurricane Katrina or Superstorm Sandy.<sup>27</sup>

The information technology needed to manage the SBA guaranteed loan portfolio is outdated; it represents a significant risk and management challenge for the Agency as found by the GAO and the SBA’s Inspector General. Despite the financial risks associated with its outdated technology (including the use of COBOL-based mainframe technology), the Agency only mentions that it will make “incremental improvements to loan accounting systems, begun in FY 2011, will continue....”<sup>28</sup> In allocating funds, the Committee strongly endorses an approach that transfers funds from other projects to the modernization of the SBA’s loan management accounting system.<sup>29</sup>

The recovery on defaulted loans made by CDCs typically range from 23 to 25 cents on the dollar.<sup>30</sup> If recoveries even reached the levels for 7(a) Loans of almost 50 cents on the dollar, the CDC program would be placed on a permanently sound financial footing and Congress could consider expansion in terms of commercial refinance. If the rate of recoveries on CDC loans were doubled (hitting that of loans made in the 7(a) Loan

<sup>25</sup> The administrative costs for this program are not simply those associated with the issuance of disaster loans. Since this is the only direct lending program that the SBA operates, the agency also must service all of these loans until they are sold. In 2008, Congress prohibited the sale of disaster loans for a period of five years after the loans were issued.

<sup>26</sup> *Id.* Table 1, at 16.

<sup>27</sup> As the Committee discovered, mobilizing such resources on an ad hoc basis after Hurricane Katrina presents significant logistical problems inhibiting the ability of the SBA to distribute assistance so that communities can rebuild.

<sup>28</sup> *Id.* at 119. The reference to FY 2011 does not actually tell the full story of the modernization to this back-end accounting system. The project actually began in FY 2006 and was seriously revamped in FY 2011 (to reduce the scope of the project because the Agency did not have the capability to manage a larger-scale modernization). Even with that reduction in scope, the SBA’s migration from a proprietary system to an open-system (still using COBOL – a mainframe language developed in 1960) was more than 2 years late. None of the other projects needed to modernize the system are scheduled. Even if they were, there is no permanent Chief Information Officer, as required by statute, to oversee this project or any of the other information technology projects mentioned in the Agency’s budget justification.

<sup>29</sup> This would not undermine the electronic filing of loan applications since most already are filed using an electronic system, E-Tran although it would slow down the implementation of a new untested interface – SBA One. Nor can the SBA be heard to complain about these limitations since the Agency is rarely an early adopter of information technology. For example, Congress authorized federal agencies to utilize electronic signatures in 2000. Many agencies, including the Department of Housing and Urban Development (which has a fairly large loan guarantee program – Ginnie Mae) uses electronic signatures. But the SBA did not adopt electronic signatures until 2014.

<sup>30</sup> It is important to note that the change in the subsidy rate for CDC Loans in FY 2016 do not generally stem from increased recoveries but rather from an increase in the value of the underlying collateral. Since the value of commercial real estate is rising, a set percentage of recovery on a hypothetical property will be greater today or tomorrow than it was three years ago.

Program), it probably would eliminate the need for any subsidy. CDCs have a vested interest in maximizing their recoveries because that will in the long-run reduce fees that they are required to pay for the operation of the program. Furthermore, CDCs have local knowledge of commercial real estate that the SBA simply cannot have. As a result, transferring the functions of managing defaulted properties and liquidating them to CDCs should increase recoveries and reduce the total Agency workforce.<sup>31</sup>

### **Entrepreneurial Development Programs**

Almost a quarter of the SBA's budget is devoted to providing outreach and technical assistance to small businesses.<sup>32</sup> This is done through a multiplicity of programs that the SBA operates at the specific direction of Congress.

In addition, the SBA also creates, using its general authority to aid small businesses, initiatives that duplicate those that Congress specifically directed the Agency to implement. These SBA-initiated outreach efforts represent nearly 18 percent<sup>33</sup> of the overall entrepreneurial development budget and no such funds should be allocated to the implementation of such programs in FY 2016.

The Committee also believes that the \$14 million spent on the Offices of International Trade and Native American Affairs can be eliminated because those services are duplicated by other agencies with significantly greater resources than those available to the SBA. A similar argument can be made with respect to the \$2.5 million spent on the Veterans Business Opportunity Centers (VBOCs). However, it may make more sense to simply transfer operation and funding of the VBOCs to the Department of Veterans Affairs.

#### *Small Business Development Centers*

Small Business Development Centers deliver their services through 63 cooperative agreements with either state agencies or institutions of higher education. To the extent that a state agency is a grantee, the agency typically subcontracts that performance to an institution of higher education located in the state. These 63 grantees have established over 1,000 service centers to provide technical assistance to small businesses for: business strategy development, technology transfer, government procurement, engineering, accounting, etc. The FY 2016 budget request for SBDCs is \$115 million

<sup>31</sup> The transfer would not create a significant risk for the taxpayer. A substantial majority of the loans made in the 7(a) Loan Program are made by so-called preferred lenders who manage the liquidation of defaulted loans without the intercession of the SBA. The Committee is not aware of any systemic problems in the 7(a) Loan Program associated with preferred lenders liquidating loans that endanger taxpayer dollars.

<sup>32</sup> *Id.* Table 6, at 21. Total expenditures are \$206 million (which represents a reduction of \$17 million from FY 2015, almost all of which stems from the elimination of the STEP trade promotion program) and the Agency request is \$860 million. This excludes salaries and expenses of SBA personnel that manage these programs.

<sup>33</sup> Of the \$206 million, \$37 million are used for the SBA-created initiatives. Not all of the SBA-created initiatives are found in Table 6 of the Agency's FY 2016 Budget Justification.

which is identical to the amount appropriated for FY 2015.<sup>34</sup> The Committee believes the Administration's request underestimates the services and utility of the SBDC Program. The Committee recommends that an additional \$2 million be allocated to this program through the funds that would be saved from the elimination of the Office of Native American Affairs at the SBA.<sup>35</sup> Furthermore, to the extent that SBA initiatives impose new outreach requirements for SBDC grantees, additional funds should be provided through reprogramming of the general salaries and expenses account.

#### *SCORE*

SCORE provides face-to-face counseling from 389 chapter locations with 10,900 SCORE volunteers. SCORE volunteers provide the full gamut of business consultation services from development of business plans to strategic marketing to financing. SBA's SCORE database also enables small businesses to find a SCORE volunteer that best suits the need of the small business. For example, the owner of a restaurant can find SCORE volunteers who were in the food service business. The Committee concurs with the budget request of \$8 million which is a \$1 million increase from FY 2015.<sup>36</sup> As with the request for SBDCs, should the SBA-created initiatives impose new outreach efforts on SCORE volunteers, those should be met with a concomitant increase in funds for SCORE through reprogramming of the general salaries and expenses account.

#### *7(j) Technical Assistance*

Section 7(j) of the Small Business Act authorizes the Administrator to contract for the provision of management, technical, and consulting services to participants in the 8(a) government contracting business development program. Unlike other assistance programs in which any interested individual may obtain an appointment and seek advice, this program is limited solely to participants in the 8(a) program. While the assistance is useful for participants, the Committee believes that these services can be provided, in part, by other entrepreneurial development partners and personnel at the agency (including Business Opportunity Specialists that have not been fully deployed while the Agency creates new entrepreneurial outreach programs unrelated to the 8(a) program). Given the failure of the SBA to provide adequate levels of staffing through Business Opportunity Specialists, the Committee supports a reduction in 7(j) technical assistance from \$2.8 million enacted in FY 2015 and requested in FY 2016<sup>37</sup> and reduced to \$2.7 million.

<sup>34</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 6, at 21 (2015).

<sup>35</sup> Given the fact that § 21 of the Small Business Act requires SBDC grantees to serve all small businesses located within their grant territory, including tribal areas of Native Americans, the reallocation will strengthen the outreach to Native Americans through the expansive network of SBDC service centers.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

*Microloan Technical Assistance*

The keystone of the Microloan Program is not the lending that is done by intermediaries but rather the training that they provide to their borrowers so that the borrowers can operate their businesses without defaulting on loans. The Committee believes that this is a valuable and irreplaceable component of the microloan program – assisting a new class of entrepreneurs. However, testimony before the Committee reveals that a majority of training provided by microloan intermediaries is not to borrowers but to prospective borrowers, many of whom do not become borrowers. This function can be provided by other programs at the SBA and elsewhere. To the extent that the additional technical assistance will be awarded to intermediaries for use in educating actual borrowers, the Committee supports the Administration's request of \$25 million for FY 2016, an increase of \$2.7 million.<sup>38</sup>

*National Women's Business Council*

The National Women's Business Council is a bipartisan federal advisory council created to serve as an independent source of advice and counsel to the President, Congress, and the SBA on economic issues of importance to women business owners. By interacting with women throughout the country, the Council develops and promotes policies and programs to help women entrepreneurs, the largest growing class of small business owners in the country. The Administration request is \$1 million for FY 2016<sup>39</sup> – the same as the appropriated amount for FY 2015. Given the general increase in cost of operations, the Committee supports the request.

*Women's Business Centers*

Women's Business Centers (WBCs) provide training, counseling, and mentoring to women entrepreneurs. WBCs are public/private partnerships in which the federal government provides funds that were to be matched by private donors. When they were originally created, Congress intended federal funding to be temporary as the centers found private funding. However, over time, the centers were unable to obtain private funding and became more reliant on federal funding (so-called sustainability),<sup>40</sup> including changes to the program that continued to fund centers on a long-term basis rather than

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<sup>38</sup> *Id.* To the extent that the funds are used for general education of potential borrowers, the Committee would not support an increase. As already noted, the true benefits of the Microloan Program emanate from the ongoing technical assistance provided to borrowers by intermediaries. Using these funds for educating the general public undermines that mission and also duplicates programs available through other SBA resource partners.

<sup>39</sup> *Id.*

<sup>40</sup> The original argument for creating the sustainability aspect of the WBC Program was that the centers were having difficulty raising private sector funds when the Internet bubble burst. However, given the recent gains in the stock market (the Dow Jones average has more than doubled since March of 2009), <http://research.stlouisfed.org/fred2/series/DJIA>, existing WBCs should have less difficulty in raising money from the private sector. This would ensure that the program operates as Congress originally intended when it created the WBCs.

devoting scarce federal resources to opening new centers. In addition, the centers, rather than offering assistance to women in underserved areas, the centers tended to locate in areas already well served by SBDCs. Finally, approximately a quarter of WBC clients are men.

The SBA has not provided this Committee with any suggestions to prevent additional mission creep by WBCs. Instead, the Agency requests an additional \$1 million in funding for WBCs<sup>41</sup> and legislative authority to ask invasive questions of small businesses that sought counseling from SBDCs and WBCs (but not any of their other entrepreneurial outreach efforts) ostensibly to see how well the businesses succeed.<sup>42</sup> Until the SBA provides a plan that ensures WBCs return to their previous mission and establish plans that ensure they obtain sufficient funds to operate without significant federal contributions, the Committee cannot support the request for an increase in funds. Furthermore, SBA should work to ensure that funds are provided to centers providing advice to women in underserved communities rather than duplicating the efforts of SBDCs. Absent these efforts, the Committee may have to consider more drastic actions, including the possibility of ending the program.

#### *Veterans Business Outreach Centers*

Veterans Business Outreach Centers (VBOCs) are modeled on SBDCs and WBCs. The SBA already provides significant assistance to veterans who are seeking to start or already operate small businesses through SBDCs, SCORE, and WBCs. The SBA has noted that VBOCs are underfunded; yet the SBA, neither asks for an increase nor even deigns to include a separate line item for funding of VBOCs. Given the stepchild nature of the program at the SBA, it makes most sense to transfer the program to an organization that has far greater resources to reach veterans – the Department of Veterans Affairs.<sup>43</sup> Should the VBOCs remain within the SBA, they should receive an increase in funding coming out of the funds for the SBA-created initiatives, or funds for Executive Direction.

#### *Prime Technical Assistance*

Under the Program for Investment in Microentrepreneurs (PRIME), the SBA provides federal funds to community-based, regional, and national organizations that in turn will offer training and technical assistance to low-income and very low-income entrepreneurs

<sup>41</sup> *Id.*

<sup>42</sup> Congress created strict privacy regulations which the SBA has not properly implemented to protect businesses from this type of invasive behavior that often had less to do with rationalizing the entrepreneurial efforts of the Agency's partners and more to do with overt political motives.

<sup>43</sup> The Department of Veterans Affairs entrepreneurial outreach activities are funded through fees obtained from the Department's Supply Fund. III DEPARTMENT OF VETERANS AFFAIRS, FY 2016 BUDGET, BENEFITS AND BURIAL PROGRAMS AND DEPARTMENTAL ADMINISTRATION, at GenA-297 (2015), available at <http://www.va.gov/budget/products.asp>. Those fees bring in an estimated \$2.1 billion annually, see OMB, BUDGET OF THE U.S. GOVERNMENT FY 2016 APPENDIX 1089-90 (2015), and employs more than 2,100 people (or roughly the size of the entire SBA). These resources provide a robust outreach to veterans which can be examined at <http://www.va.gov/osdbu/>. It cannot be gainsaid that the Department of Veterans Affairs has significantly greater resources to reach veteran entrepreneurs than the SBA.

with small businesses of five employees or less. The major focus of PRIME is to provide assistance to very small businesses that typically, because of their lack of experience and education, are unable to gain access to banks and other providers of capital. The services provided by PRIME duplicate other services and the Committee concurs with the SBA FY 2016 budget request<sup>44</sup> to eliminate funding.

#### *HUBZone Program*

The basic purpose of the HUBZone Program is to direct federal contracts to small businesses in distressed urban and rural areas to promote economic development of these areas. Contracting officers are authorized to set aside contracts for competition among eligible HUBZone small businesses, sole source, or use bid preferences when large firms and HUBZone small businesses are in competition. HUBZones are distressed urban and rural areas characterized by chronic high unemployment or low household income or a combination of both.

Investigations by GAO revealed vulnerabilities in the program, especially related to self-certification. Funds related to correcting these problems and improving the operations of the HUBZone program are discussed elsewhere in this document. The SBA requests FY requests \$3 million in FY 2016 for the HUBZone program.<sup>45</sup> The Agency does not explain what it will do with these funds since the operations of the program, including certification are subsumed within the SBA's salaries and expenses account. Since there is no explanation for the use of the funds in a 167 page document, the Committee believes that this request should be denied. To the extent that the \$3 million is allocated, those monies could go to the hiring of additional personnel in the Office of Government Contracting/Business Development which will actually help small businesses obtain federal government contracts and create jobs.

#### *Office of Native American Affairs*

The Office of Native American Affairs assists American Indians, Alaska Natives, and Native Hawaiians seeking to create, develop and expand small businesses. The SBA is requesting \$2 million for FY 2016 (the same as appropriated for FY 2015).<sup>46</sup> The services provided by this Office duplicate efforts of other entrepreneurial outreach efforts, particularly those of SBDCs. And although the Office has been in existence for many years, the Agency is first undertaking a review of the Office in the current fiscal year.<sup>47</sup> However, there is more telling issue – that the resources available to the Office are dwarfed by those elsewhere in the federal government. There is an entire subagency at the Department of Interior – the Bureau of Indian Affairs – devoted to Native American affairs. That Office has a budget of approximately \$2.9 billion (or more than 3 times the SBA's budget) and about 5,700 employees (or 2.5 times the number at SBA).<sup>48</sup>

<sup>44</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 6, at 21 (2015).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 31.

<sup>48</sup> OMB, BUDGET OF THE U.S. GOVERNMENT FY 2016 APPENDIX 684-85 (2015).

Given the discrepancy in resources and the fact that the Bureau's mission is to assist Native Americans, it makes sense to terminate the Office of Native American Affairs at the SBA and transfer the entrepreneurial outreach efforts to the Bureau.

*Office of International Trade*

According to the SBA, the Office of International Trade enhances the ability of small businesses to compete in the global marketplace. The Small Business Jobs Act of 2010 overhauled the operation of this office by, among other things: 1) appropriating \$30 million for a state trade and export promotion pilot program (STEP Program); 2) increasing SBA employees located at the Department of Commerce Export Assistance Centers; and 3) adding 10 regional export development officers in the SBA's regional offices.

Although the SBA has the cessation of funding for STEP, Congress has continually appropriated funds for the program (although at levels lower than that set out in the Small Business Jobs Act of 2010) and for FY 2015 allocated \$17.4 million. The SBA again requests that no funds be allocated for this program in FY 2016,<sup>49</sup> requested no further funds or authorities for the STEP program. The Committee has never supported the program, has never found that it provides any significant benefits to small businesses, and concurs with the budget request to eliminate the funding for the program in FY 2016.

The rationale for increasing SBA personnel at these Export Assistance Centers also is wanting. Essentially, the argument goes that Commerce Department personnel would be incapable of helping small businesses or explaining various financing programs to these small businesses. The Committee rejects that contention. Commerce Department personnel, with some minor additional training, should be able to handle advice to small businesses. Furthermore, the Department of Commerce's International Trade Administration has far greater resources devoted to trade promotion than the SBA ever could muster.<sup>50</sup> As a result, the government would save about \$12 million which is the administrative cost of operating the Office of International Trade.<sup>51</sup>

No rationale exists to assign regional trade finance specialists to SBA regional offices. Small businesses access SBA services through district offices. Placing personnel in regional offices ensures that they are unlikely to come in close contact with small businesses. Furthermore, as already noted, appropriate training should provide existing district office personnel with sufficient expertise to understand the various options for

<sup>49</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 6, at 21 (2015).

<sup>50</sup> The International Trade Administration Office at the Department of Commerce has a budget of approximately \$500 million and has about 1,800 employees. Even if one only looked at the Global Markets Office, that budget would exceed the total entrepreneurial development budget of the SBA. OFFICE OF MANAGEMENT AND BUDGET, FISCAL YEAR 2016, APPENDIX 194-95 (2015).

<sup>51</sup> The SBA's FY 2015 Budget Justification does not provide a budget request specifically for the Office of International Trade as its budget is subsumed in other accounts (such as salaries and expenses). However, a rough estimate can be made by examining the total administrative resources devoted to this function and subtracting out the \$17.4 million allocated for the STEP. That results in a cost of roughly \$12 million. See *id.*, Table 1.4a, at 70.

international trade finance. As a result, the Committee recommends that funding for these individuals be eliminated.

The Committee certainly understands the importance of international trade to small businesses. However, the taxpayer would save about \$29 million in total by the elimination of the STEP Program and Office of International Trade without undermining the ability of small businesses to obtain necessary information to enter the import or export markets.

### **Government Contracting Programs**

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. The SBA does not make a specific request for funds to operate to the government contracting program; rather, those expenses are subsumed in the general salaries and expenses account for the Agency. Nevertheless, the SBA provides an estimate of the total cost for operating these programs at \$98.76 million or roughly an increase of \$3.5 million from FY 2015.<sup>52</sup> The SBA never explains how the increased sums will be used to promote the award of federal government contracts to small businesses. Nevertheless, there are some vital functions that need additional funding to help implement the priorities of Congress.

#### *PCRs and CMRs*

The SBA has two types of individuals devoted to ensuring that small businesses have maximum opportunities to provide goods and services to the federal government. They are procurement center representatives (PCRs) and commercial marketing representatives (CMRs).<sup>53</sup>

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). 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 that small businesses will be able to compete for various procurements; (4) recommend small businesses that should be contacted about procurement solicitations; (5) appeal a contracting officer's failure to solicit from small businesses after identification of responsible small business bidders PCR or other sources; (6) review contracting activity compliance with small business contracting

<sup>52</sup> *Id.* Table 10, at 27.

<sup>53</sup> The Federal Acquisition Regulation actually describes three types of SBA personnel – PCRs, CMRs, and breakout PCRs. That last category was eliminated from the Small Business Act but the Federal Acquisition Regulation has not yet been updated.

requirements of federal laws and federal regulations; (7) participate in conferences designed to increase small business utilization in federal procurement; 8) advocate for the use of full and open competition when that strategy will benefit small businesses; and 9) determine whether a contract is improperly bundled, i.e., some or all of the contracted goods or services could be provided by small businesses if the contract was not bundled.

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. Frequently, CMRs often perform other functions in addition to their efforts to find subcontracting opportunities.

PCRs and CMRs play a vital role in helping small businesses obtain federal procurement opportunities. The number of such individuals at the SBA is well short of their need. PCRs require significant procurement knowledge. The functions of a CMR require also require a solid foundation in the federal procurement process and is clearly a full, not part-time, position.

While in other years, the SBA has called for the hiring of additional PCRs, the FY 2016 budget is silent on this matter. The Committee has had significant bipartisan support for the hiring of additional PCRs and CMRs. Of the savings resulting from the elimination of SBA-created entrepreneurial development initiatives, approximately \$2 million should be allocated to hiring new PCRs and CMRs. This reallocation will provide a significant benefit to small businesses and the taxpayer as it will help ensure robust small business competition when the government buys goods and services.

The SBA maintains that they are unable to hire sufficient PCRs, CMRs, and Business Opportunity Specialists who have the necessary procurement certification (a requirement imposed on the Agency in 2013).<sup>54</sup> So instead of redirecting some of the \$37 million in resources that meet the SBA wish-list of activities, the Agency expects to request that the certification and training requirements be modified.<sup>55</sup> Yet again, this demonstrates that the Agency gets it backwards. When Congress imposes a requirement on an agency, the agency, the agency is required to faithfully execute those laws as required by Article II of the Constitution. Faithful execution of the laws enacted by Congress certainly does not entail an agency ignoring those laws because it finds them problematic or inconvenient.

#### *Completion of Congressionally-Mandated SBA Contracting Regulatory Changes*

In the last four years, Congress has made a number of changes to the government contracting programs overseen by the SBA. These changes require the agency to take the following actions: 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 (finally published this

<sup>54</sup> *Id.* at 126.

<sup>55</sup> The Committee suspects that the request will be to eliminate those additional requirements.

year – five years after they were supposed to be finished);<sup>56</sup> issue rules to permit more teaming arrangements 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 that make a good faith effort to comply with the complex agency size-standard rules; issue regulations on its authority to suspend or debar (temporarily or permanently prohibit a business from obtaining government contracts); issue a SOP on how the agency will conduct suspension and debarment proceedings; promulgate rules to allow companies with individual subcontracting plans to receive credit for lower tier subcontractors; create a certification program for woman-owned small businesses; create a data quality improvement plan on bundling and consolidation of contracts; use the Small Business Procurement Advisory Committee to file comments on proposed changes to the Federal Acquisition Regulation; issue best practices guides on achieving maximum practicable utilization of small businesses in federal procurement; and institute reviews of agencies to ensure that small business offices are acting in compliance with the Small Business Act. The SBA has not completed any of these enumerated tasks and some are more than four years overdue. Of these enumerated tasks, only one is mentioned in the Agency's Budget Justification – expected completion of government-wide mentor-protégé rules.<sup>57</sup> The SBA makes no mention of these other tasks in its plans for FY 2016 related to government contracting.

In contradistinction, the SBA determined that it was necessary to fund approximately \$37 million in entrepreneurial programs not specifically authorized or mandated by the Committee. The SBA simply gets it wrong and its first priorities should be those created by Congress not duplicative initiatives created out of whole cloth by SBA employees. As a result, the Committee again reiterates that no funds should be allocated to the SBA-created entrepreneurial development initiatives until such time as the Agency completes the tasks assigned to it by Congress, including the issuance of rules and the employment of qualified PCRs, CMRs, and Business Opportunity Specialists.

#### *Vulnerabilities in SBA Contracting Programs*

There are five major programs developed by Congress to promote small business contracting opportunities. 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. The other programs are targeted at specific classes of small businesses are: 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

<sup>56</sup> 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. The Agency finally issued

<sup>57</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION 51 (2015).

competition at all. If a contract is awarded through one of these programs, the small business awardee is required to perform the majority of the work.<sup>58</sup>

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. The Committee believes that the SBA has sufficient resources, as reflected in the FY 2016 budget request, for operation of the specific small business programs.<sup>59</sup>

The Committee is concerned about the possibility of the SBA overseeing a new contracting set-aside program for new small businesses and others that have limited experience selling to the government (not all of which might be small businesses as there are very large businesses that also do not sell to the government).<sup>60</sup> Given the inability of the Agency to implement congressional directives concerning federal procurement matters and the resources currently available to protect the integrity of the contracting programs the SBA already oversees, the Committee opposes the establishment of any new set-aside initiatives or the allocation of any resources to their creation.

Ultimately, the issue is not the availability of resources but proper management and oversight within the Agency; no amount of funds can ensure that SBA leadership will place a proper focus on the proper implementation of these contracting programs. However, the elimination of duplicative entrepreneurial development efforts could free up Agency management to focus on its government contracting programs.

### **Agency Structure**

The SBA, unlike most federal agencies, provides services in a variety of locations rather than through its headquarters operations or through one of ten regional offices. The SBA has 68 district offices at which small business owners obtain advice, seek information, and work with SBA employees to obtain government contracts. In addition, district offices also provide office space for the outreach efforts conducted by SCORE counselors. In addition to these district offices, the SBA has a loan processing center outside of Sacramento, CA, a national office that oversees the purchase of loan guarantees and the liquidation of defaulted loans in Herndon, VA, six area-wide offices to handle disputes about a business size in the government contracting realm, two offices (in Buffalo, NY and Forth Worth, TX) for disaster response, and a national finance office

<sup>58</sup> This prohibits small firms from acting as fronts for large businesses. The first line of defense against this type of fraud is the agency's contracting officer and the contracting officer technical representative (the individuals who handle post-contract award) – not the SBA.

<sup>59</sup> Reductions in spending on the Office of Government Contracting/Business Development could be counterproductive as it could lead to an increase in fraud or other abuse of these contracting programs thereby denying legitimate small businesses of valuable opportunities.

<sup>60</sup> OFFICE OF MANAGEMENT AND BUDGET, FISCAL YEAR 2016, BUDGET 73 (2015).

in Denver, CO which also hosts much of the SBA's internal contracting function. Given this decentralized structure, it is relevant to consider whether the agency has properly allocated resources among its various offices.

#### *Personnel in the 10 Federal Regions*

As already noted, the SBA delivers services to small business owners through a panoply of offices. While some functions are overseen by program offices,<sup>61</sup> most of these operations are managed by an Office of Field Operations at SBA's Washington, DC headquarters.

In addition to the district offices and services provided at various locations throughout the country, the SBA also has employees in each of the ten federal regions. The Agency staffs these offices with regional administrators, regional communications officials, and concomitant support staff. Despite this robust presence in the federal regional offices, the Committee has never been clear, what, if any role, is ever played by these employees staffed to the regional offices. As a result, the Committee believes that regional offices of the SBA can be eliminated without any diminution of effective agency management. The Committee recommends that no funds be allocated for the operation of its ten regional offices and those funds can be reallocated to more vital needs such as improvements in the agency's information technology and hiring additional PCRs and CMRs.

#### *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.

#### *Executive Direction*

The budget for executive direction, a conglomeration of various offices at the SBA has requested an increase of \$5.62 million from the levels appropriated in FY 2015.<sup>62</sup> The Agency fails to explain how most of that increase will be utilized. The Committee is unable to ascertain where most of the funds will be directed other than that they will be used for the Office of the Administrator, Center for Faith Based & Neighborhood

<sup>61</sup> For example, the Sacramento Loan Processing Center is managed by the Office of Capital Access at SBA's Washington, DC headquarters.

<sup>62</sup> SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION, Table 3, at 10 (2015).

Partnerships, Office of General Counsel, Office of Congressional & Legislative Affairs, Office of Hearings & Appeals, Office of Communications and Public Liaison, Office of the Chief Financial Officer, Office of National Ombudsman & Regulatory Enforcement Fairness, Office of Veterans Business Development, and Business USA.<sup>63</sup> Among the problems with the allocation is that the SBA does not have statutorily required Chief Information or Chief Acquisition Officers.<sup>64</sup> Nothing in the budget justification suggests that the Agency expects to use these funds to remedy these statutory oversights.

The Committee strongly urges that budget submissions by federal agencies provide more granular detail so that the Committee can provide a more accurate assessment to the Committee on the Budget on the propriety of an agency's budgetary allocations. We recommend that the \$5.62 million for Executive Direction be eliminated in any FY 2016 allocation of funds.<sup>65</sup>

#### *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. 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

<sup>63</sup> *Id.*, Table 3, at 18. As best as the Committee can ascertain, about \$827,000 are directed to the Office of Veterans Business Development, the National Women's Business Council, the Ombudsman, and Faith Based Initiatives. That leaves roughly \$4.8 million unexplained. According to the SBA, at a briefing by, among others, the Agency's Chief Financial Officer (CFO), some of those funds are allocated for information technology projects. However, those projects all show up under other accounts so that simply is not an acceptable explanation.

<sup>64</sup> According to the SBA's CFO, she also acts as the Chief Acquisition Officer (CAO). The only problem with that is the statute requiring the appointment of a CAO, 41 U.S.C. § 1702, states that the "primary duty of a Chief Acquisition Officer is acquisition management." *Id.* at § 1702(b)(1). It is a basic principle of statutory construction that undefined terms are to be given their ordinary dictionary meaning. *Kouichi Taniguchi v. Kan Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2002 (2012); *Mallard v. United States*, 490 U.S. 296, 301 (1989). The term "primary" when used as an adjective as it is in the statute creating CAOs means "principal, chief or major importance." II SHORTER OXFORD ENGLISH DICTIONARY 2345 (6<sup>th</sup> ed. 2007). The Committee finds it difficult to understand how the CFO, whose duties listed in the statute creating the CFO, incorporates eight separate functions, 31 U.S.C. § 902(a), that would make it impossible for the CFO to then have as his or her primary duty acquisition management. But as we have seen in this document, specific statutory language has never stood in the way of the SBA doing as it pleases.

The SBA cannot make the argument, that even if permitted, this conflation of responsibility saves the taxpayer money. The Agency's Inspector General has noted significant violations of federal contracting rules by the SBA's personnel which could affect the taxpayer through the purchase of higher cost goods and services. That is why Congress mandated a separate CAO and any salary savings would be outweighed by potential costs for the SBA's contracts.

<sup>65</sup> Nor is the Committee convinced that any additional funds for Executive Direction will result in better performance by the Agency. For example, the Committee is aware of at least two separate incidents in which the Office of the General Counsel has undertaken ad hoc decisionmaking in which either SBA policy was not properly delineated or changed longstanding Agency policy without any explanation – both in violation of the transparent decisionmaking required by the Administrative Procedure Act. The Committee is perplexed how additional resources will enable the SBA to comport with the requirements of Administrative Procedure Act. On the other hand, if the Committee was presented with such a plan, it certainly might support an increase.

Washington, DC. This includes a personal office of the Administrator that is almost the same size as those for the Secretaries of Defense or Agriculture.<sup>66</sup> Nothing in the SBA budget suggests that the Administrator plans to reduce the size of the Office of the Administrator. This is unacceptable to the Committee and it recommends a ten percent reduction in funds for the Office of the Administrator.

*Inspector General*

The SBA manages a loan portfolio in excess of \$100 billion. It also deals with thousands of small business federal government contractors. As has already been noted in this document, there are significant vulnerabilities in the SBA's operations – vulnerabilities that place the taxpayer at risk and undermine the integrity of the federal procurement process. As the first line of defense against waste, fraud and abuse, the Office of the Inspector General plays a vital role in uncovering significant criminal, civil, and management problems at the SBA. The Committee strongly recommends an additional \$1 million in savings derived elsewhere in the Agency's budget be allocated to the Inspector General to ensure that office has sufficient resources to root out fraud, abuse, and waste.

*The Office of the Chief Counsel for Advocacy*

The Office of the Chief Counsel for Advocacy was created in 1976. Its primary mission is to represent the interests of small businesses in federal agency regulatory proceedings. The Office accomplishes this primarily through its oversight of agency compliance with the Regulatory Flexibility Act (RFA).<sup>67</sup> The primary costs of the Office of the Chief Counsel for Advocacy are salaries for 46 employees and funds to conduct economic research. The Office maintains 10 individuals in each of the SBA's regional offices as regional advocates. A far more effective use of the personnel would be to eliminate the regional positions and increase the size of Washington personnel who actually review rules to ensure agencies comply with the RFA. In addition, the Committee believes that the economic research activities of the Office should be targeted to analysis of agency rulemakings rather than some of the broader research currently conducted by the Office. With the aforementioned caveats, the Committee concurs with the FY 2016 Request of \$9.12 million.

<sup>66</sup> Secretary Vilsack and Secretary Hagel are able to manage much larger agencies (Department of Agriculture and Defense respectively) with only 13 individuals in each of their personal offices.

<sup>67</sup> The RFA requires federal agencies to consider the impacts of their proposed and final rules on small entities, including small businesses, and if those impacts are significant on a substantial number of such entities, develop alternatives that reduce such consequences without undermining the objectives sought to be achieved by the agency.

