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.[1] 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.[2] 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.[3] Total employment is expected to increase by a modest 19 employees from 2,136 to 2,155.[4] 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.[5] 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

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[1] OFFICE OF MANAGEMENT AND BUDGET, FISCAL YEAR 2016, APPENDIX 1193 (2015).

[2] SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION, Table 1, at 16 (2015).

[3] 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.

[4] *Id.*, Table 9, at 25.

[55] 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.[6] 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.[7] 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.[8] In fact, it is quite probable that smaller loan demand would increase simply as a

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[6] 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.

[7] 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).

[8] 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, it 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.[9]

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[10] and frequently add to the overall cost of the 7(a) Loan Program (through higher defaults).[11] 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.[12] 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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[9] 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.

[10] 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.

[11] For example, the SBA cancelled its Patriot Express Loan Program (a pilot) due to high defaults.

[12] 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.[13]

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.[14]

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.[15] 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).[16] 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

[13] 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.

[14] 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.

[15] OMB, FY 2015 FEDERAL CREDIT SUPPLEMENT, BUDGET OF THE U.S. GOVERNMENT 73 (2014).

[16] 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.[17] 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[18]

The Small Business Investment Company (SBIC) was instituted in an effort to ensure that small businesses could obtain equity as well as debt financing.[19] 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

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[17] SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 8, at 24 (2015).

[18] 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.

[19] The Jumpstart our Business Startups Act, enacted in the 112th 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[20] 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[21] 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

[20] SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 8, at 24 (2015).

[21] *Id.*

program[22] 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.[23] 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.[24] 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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[22] *Id.* at 45.
[23] *Id.* Table 1, at 16.
[24] *Id.* at 43.

The administrative costs for operating[25] 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.[26] 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.[27]

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…."[28] 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.[29]

The recovery on defaulted loans made by CDCs typically range from 23 to 25 cents on the dollar.[30] 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

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[25] 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.

[26] *Id.* Table 1, at 16.

[27] 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.

[28] *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.

[29] 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.

[30] 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.[31]

Entrepreneurial Development Programs

Almost a quarter of the SBA's budget is devoted to providing outreach and technical assistance to small businesses.[32] 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[33] 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

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[31] 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.

[32] *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.

[33] 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.[34] 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.[35] 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.[36] 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[37] and reduced to $2.7 million.

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[34] SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 6, at 21 (2015).

[35] 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.

[36] *Id.*

[37] *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.[38]

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[39] – 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),[40] including changes to the program that continued to fund centers on a long-term basis rather than

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[38] *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.

[39] *Id.*

[40] 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[41] 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.[42] 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.[43] 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

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[41] *Id.*

[42] 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.

[43] 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[44] 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.[45] 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).[46] 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.[47] 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).[48]

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[44] SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 6, at 21 (2015).
[45] *Id.*
[46] *Id.*
[47] *Id.* at 31.
[48] 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,[49] 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.[50] As a result, the government would save about $12 million which is the administrative cost of operating the Office of International Trade.[51]

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

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[49] SBA, FY 2016 CONGRESSIONAL BUDGET JUSTIFICATION Table 6, at 21 (2015).

[50] 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).

[51] 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.[52] 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).[53]

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

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[52] *Id.* Table 10, at 27.

[53] 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).[54] 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.[55] 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

[54] *Id.* at 126.

[55] The Committee suspects that the request will be to eliminate those additional requirements.

year – five years after they were supposed to be finished);[56] 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.[57] 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

[56] 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

[57] 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.[58]

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.[59]

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).[60] 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

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[58] 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.

[59] 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.

[60] 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,[61] 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.[62] 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

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

[62] 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.[63] Among the problems with the allocation is that the SBA does not have statutorily required Chief Information or Chief Acquisition Officers.[64] 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.[65]

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

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[63] *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.

[64] 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 (6th 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.

[65] 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.[66] 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).[67] 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.

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[66] 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.

[67] 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.