



SMALL BUSINESS ADMINISTRATION

13 CFR Part 131

RIN 3245-AG02

Office of Women's Business Ownership: Women's Business Center Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is codifying regulations for the Women's Business Center (WBC) Program as directed in section 29 of the Small Business Act (the Act). This final rule also codifies policy and procedural changes included in the WBC Program Announcement and Notice of Award (NOA). These changes include, but are not limited to, the following: language on risk assessment, as required by the Uniform Grant Guidance; limitations on carryovers; a reduction in reporting requirements; and eligibility criteria for selection as a WBC. Implementing these regulations will result in greater standardization and transparency in the delivery of the WBC Program.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Women's Business Center Program (WBC Program) was created under the authority of Title II of the Women's Business Ownership Act of 1988 (Pub. L. No. 100-533). The WBC Program authority is now codified in the Small Business Act (Act), 15 U.S.C. 656. The initial Demonstration Training Program, later renamed the WBC Program, was created with the Congressional intent to remove barriers to the creation and development of small businesses owned and controlled by women and to stimulate the economy by aiding and encouraging the growth and development of such businesses. The specific objectives of the Demonstration Training Program were to provide long-term training and counseling to potential and current women business owners, including those who are Socially and Economically Disadvantaged as defined in 13 CFR 124.103 and 124.104.

Since its creation, the WBC Program has transformed through a number of public laws from a Demonstration Training Program into a permanent program. The laws that have impacted the WBC Program include the following: The Women's Business Development Act of 1991 (Pub. L. No. 102-191); the Women's Business Centers Sustainability Act of 1999 (Pub. L. No. 106-165); the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Pub. L. No. 110-28); and the Small Business Jobs Act of 2010 (Pub. L. No. 111-240).

Section 29 of the Act, 15 U.S.C. 656, authorizes the SBA to provide financial assistance, in the form of grants, to private nonprofit organizations to conduct five-year projects for the benefit of small business concerns owned and controlled by women. The

Act further authorizes the SBA to renew a grant for additional three-year periods and provides that there are no limitations on the number of times a grant may be renewed.

On November 22, 2016, the SBA published a proposed rule with a request for public comment in the Federal Register to outline program requirements and standardize the delivery of the WBC Program (81 FR 83718). The information proposed by the SBA included clarification of terms and definitions as well as overall program policies.

This final rule codifies the SBA's oversight responsibilities of the WBC Program into a newly created Part 131 of the SBA's regulations by incorporating the following: (A) standard definitions for the program (13 CFR 131.110); (B) program-participation requirements and application procedures (13 CFR 131.210, 13 CFR 131.300, 13 CFR 131.400); (C) financial-management and grant-administration requirements (13 CFR 131.500); (D) oversight and programmatic and financial-examination provisions (13 CFR 131.700 and 13 CFR 131.720); (E) procedures for the suspension, termination, and non-renewal of a grant (13 CFR 131.830); and (F) procedures for dispute resolution (13 CFR 131.840).

II. Summary of Comments Received

The comment period was open from November 22, 2016, to January 23, 2017, and the SBA received 46 comments. Of the 46 comments received, 36 were from individuals or groups that concurred with the comments submitted by the Association of Women's Business Centers (AWBC). This preamble includes the SBA's response to all of the comments received.

One of the comments received referenced the intended use of the Women's Business Center (WBC or Center) regulations. The commenter indicated that while the

SBA's intent of the proposed rule is to outline policies and procedures for the WBC Program and streamline both the program announcement and the notice of award, it continually references both of the aforementioned program documents for additional guidance. The commenter suggested that program applicants and/or participants should not have to refer to multiple documents for guidance. While the proposed rule references both the program announcement and the notice of award (NOA), the Office of Women's Business Ownership (OWBO) anticipates that both documents will include references to the regulations, resulting in consistency for the program. The regulations will continue to reference the program announcement and NOA, which outline the period of performance and is the legally binding agreement signed annually by the host organization and an authorized staff person at the SBA. In addition, any changes to the grant, including award amounts, SBA targeted/specialized services, initiatives or populations will continue to appear in the annual program announcement(s) and/or NOA.

There were three comments to the Advanced Notice of Proposed Rulemaking (ANPRM) (80 FR 22434, April 22, 2015) that a commenter indicated were not fully addressed in the Notice of Proposed Rulemaking (NPRM). The comments were: (1) Training – The commenter stated that the training provided by OWBO is limited, only addresses compliance, and does not include training on best practices. OWBO shares best practices through regular outreach to the network of WBCs. Best practices are also shared at the annual WBC training conference held by the AWBC. Historically, the compliance training coordinated by OWBO has included instruction on the preparation of effective funding applications, budgets, and modifications. OWBO has also paired new WBCs or new WBC staff with experienced, effective centers or staff for discussions that included,

but were not limited to, the pros and cons of using certain training curriculums, what and how to charge fees for services, and marketing strategies. (2) Data Collection System -- Several commenters identified the need for the SBA to update the current data collection system. As an Agency priority, the SBA recently improved the Entrepreneurial Development Management Information System (EDMIS) to reduce system errors related to data uploading. The Agency continues to identify ways to improve or replace EDMIS. We appreciate the ongoing feedback from our stakeholders. (3) Repository of Information --A commenter requested that the SBA outline its plan to develop a repository of information for WBCs. The commenter further stated that the repository should include information on best practices, program materials, and documents that can be shared among WBCs. It should also include a forum for questions and answers, an up-to-date map of current WBCs, their managers, and program profiles that include a description of their services, outputs, and outcomes. Additionally, the commenter envisioned the clearinghouse/repository as a forum for WBCs to ask questions and solicit advice. Currently, some of the information identified by the commenter (program materials and reporting documents) can be accessed at the SBA's public website for the program, www.sba.gov/wbc. The locations and contact information for all WBCs are included in the local SBA assistance tool at <https://www.sba.gov/tools/local-assistance/wbc>. OWBO is continuing to identify new opportunities for sharing relevant information across the WBC network.

As stated in the preamble of the proposed rule, the SBA intends to work with women's organizations to develop an information repository; however, this rulemaking action is not the proper forum to include an outline of such repository. The creation and

management of a repository, as part of this rule, would necessitate frequent modifications to its governing documents. As the repository develops and evolves, it would become extremely burdensome and ineffective for the SBA to continually revise the program regulations. The commenter further suggested that the SBA provide funds to the AWBC to develop a clearinghouse if the SBA is unable to develop one. However, there are currently no resources available to the SBA to develop and manage a clearinghouse or to direct and fund another entity to carry out such a function.

One public comment addressed concerns with the Women-Owned Small Business Procurement Program (WOSB), 13 CFR Part 127. However, the WOSB Program is outside the scope of this rule.

131.110 Definitions.

This section defines 57 words and phrases used in the management and oversight of the WBC Program. These definitions have been consolidated from existing documents, including program announcements and cooperative agreements, to ensure consistency and clarity within the WBC Program.

Several commenters suggested that the definition for counseling be revised. Specifically, a commenter questioned why resource partners and SBA district office personnel are included in the definitions, as WBCs do not require assistance from other resource partners or SBA district office personnel to provide counseling services. Based on the public comments received, the SBA has determined that it will remove the definitions related to district office personnel as well as to resource partners.

Commenters recommended that the definition for full-time be clarified and that the “full-time” executive director or program manager of a given WBC be able to have

responsibilities for associated programs that support and extend the impact of the SBA-funded WBC Program. This rule does not prohibit the Executive Director or WBC Program Director from performing tasks associated with activities that support the WBC project. Rather, the proposed rule defines a full-time employee as one who should not engage in activities that do not pertain to the WBC project. Activities in support of the WBC project are therefore allowable. Additionally, part-time staff paid through the WBC budget are allowed to complete any task(s) associated with the WBC project. The SBA has determined that the definition will remain as originally proposed.

The proposed rule limited the term of an Interim Program Director to no more than 60 days. The SBA received several comments suggesting 60 days did not allow the center sufficient time to identify a new WBC Program Director. In light of the comments and upon further consideration, the SBA has decided to increase the time allowed for an Interim Director to remain in position on an interim basis from 60 days to 90 days. The language in this final rule has been revised.

The proposed rule defined socially and economically disadvantaged women as, “women who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. It also includes women whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.” A commenter suggested that the word gender be added just before the word racial in this definition. It is the SBA’s position that women have been recognized as socially disadvantaged on a case-by-case basis under the SBA’s contracting programs on the grounds that they have experienced

cultural bias on the basis of gender. There is not a gender-based presumed group for women as there are for race-based groups or members of minority groups, but individual women have been recognized by the SBA as being socially disadvantaged. The SBA would like to avoid conflicting definitions of socially and economically disadvantaged. Furthermore, 13 CFR 124.103 expressly references the fact that social disadvantage can be based on gender in 13 CFR 124.103(c)(2)(i). Additionally, all of the examples included under § 124.103(c)(3) involve cases of women establishing social disadvantage. Given the aforementioned information, the SBA has determined that the definition will remain as originally proposed.

A commenter suggested that the SBA change the terms “counseling records” and “training records” to “client records.” The SBA agrees with the recommendation and included revised language in this final rule.

131.300 Women’s Business Centers (WBCs)

As part of the negotiation process for the cooperative agreement, the ANPRM required that each Center do the following: (1) collaborate with its local SBA district office and OWBO to develop annual goals, and (2) receive written concurrence on annual goals from its SBA district office for inclusion in the application submission. However, a public commenter reported that many district offices do not have staff equipped to provide this support. The commenter also stated that receiving written concurrence from the SBA district office for inclusion in the application submission places the burden of coordination on the WBC. Lastly, the commenter included an example from the previous year of one SBA district office that was reluctant to provide concurrence at the WBC’s

request because they felt it was providing “preferential treatment.” The SBA agrees with the commenter. Therefore, this provision will be removed from the final rule.

131.310 Operating Requirements

Paragraph (e) requires that all new applicants accepted into the WBC Program after the effective date of this rule be required to include the specific identification “Women’s Business Center” as part of their WBC’s official name. The proposed rule similarly required that any WBC applying for a renewal grant after the effective date of this rule also include the specific identification “Women’s Business Center” as part of its official name. The rule further proposes that any existing WBC that does not include “Women’s Business Center” in its name (until such time that a renewal application is submitted) must include the following language prominently on its website and promotional documents: “The Women’s Business Center is funded in part by the U.S. Small Business Administration.” A commenter wrote that the two sentences seemed contradictory. In the first sentence, “must” is used. In the second sentence, it seems inclusion of “Women’s Business Center” in the official name is optional as long as “funded in part by the SBA” is prominently displayed on websites and promotional documents. The commenter recommended that the language be clarified. The SBA agrees with the commenter and has revised the language for clarification.

A commenter requested that the SBA define “official” name and explain how it differs from “legal name.” The SBA’s intention is that the official name is the name assigned to the WBC by its host organization. The legal name is the name of the host organization and is the name usually listed in the Application for Federal Assistance, SF 424. For clarification, the language in this final rule has been revised.

The SBA received several comments regarding whether the costs incurred to change the official name of the WBC to comply with the rule are allowable. As this rule only applies to the official name of the WBC and not the host organization, costs associated with the name change should be minimal and are allowable.

Paragraph (g) addresses conflict of interest. A commenter suggested that it was reasonable to require employees, contractors, and consultants to sign a conflict-of-interest statement, but thought the requirement to have volunteers sign a conflict-of-interest statement was burdensome. The SBA has revised this section of the proposed rule and the submission of conflict-of-interest policy statements is no longer required. However, the WBC must implement conflict-of-interest policies consistent with 2 CFR 2701.112.

131.330 Services and Restrictions on Services

Paragraph (a) of § 131.330 requires WBCs to create and update client records to document each time services are provided to a client. A comment was received stating that this language focuses on documentation of counseling services and does not document the provision of training services, despite the fact that 85% of the WBC's clients receive training. SBA agrees that this regulatory provision was unclear, and the Agency has revised the rule to refer to services generally and removed references to any specific category of services.

Paragraph (b)(5) of the proposed rule prohibited WBCs from intervening in loan decisions, servicing loans, making credit recommendations, or influencing decisions regarding the award of any loans or lines of credit on behalf of the WBC's clients, unless the WBC operates as an SBA Microloan Intermediary and is awarding an individual or small business concern an SBA microloan. A comment was received that recommended

the SBA expand the exception, since not all WBCs who are lenders are microlenders, if they make small business loans above the microloan definition. The commenter further explained that not all WBCs who are microlenders are SBA microlenders. The SBA does not agree with the commenter to expand the exception related to the WBCs' involvement in loan activities. The SBA loan programs include restrictions and protections against self-dealing that may not be present in other non-SBA lending programs. As such, other lending programs may present greater risk of conflicts of interest. The language in paragraphs (b)(5) and (6) of the rule remains the same to ensure compliance regarding WBC loan activities.

A comment was received regarding the WBC Program Director's participation in the loan process. The commenter suggested that the policies governing WBCs should exempt Certified Development Financial Institutions (CDFIs) in addition to SBA microlenders. The commenter also stated that the relationship between the WBC Director and the loan client is critical to the growth and success of the client's business and that the WBC Director maintains an ongoing relationship with clients through site visits and check-ins. This commenter further stated that the involvement of the WBC Program Director was critical to the loan process, not only for the SBA microlenders but also for the CDFIs. The SBA agrees that the role of the WBC Program Director is important in supporting access to capital. However, the WBC staff must limit their interaction in the loan process to loan packaging activities. The language in sections (b)(5) and (b)(6) of this rule remains the same to ensure compliance regarding WBC loan activities.

One commenter suggested that WBC Program Directors be allowed as much time as possible for fundraising activities. This rule does not propose restrictions on

fundraising activities or the time allowed for fundraising. However, fundraising activities require prior approval from the Assistant Administrator of OWBO and must comply with 2 CFR 200.442.

131.340 Specific WBC Program Responsibilities

In paragraph (c)(2), the WBC Program Director is required to have the necessary authority from the host organization to control all WBC budgets and expenditures. A commenter wrote that, while they support the requirement, many WBCs do not have this authority from the host organization. The commenter suggested that the regulations be revised to include guidelines on how the SBA will properly enforce this requirement. Because SBA's guidance in this area may develop over time based on practical experience, lessons learned, and changing circumstances, SBA believes that this guidance could be flexible and more effectively provided through annual program announcements rather than via regulation. Therefore, as a result of the comment received, this provision of the proposed rule has been removed.

131.350 Selection and Retention of the WBC Program Director

To ensure effective management of the WBC project, paragraph (a)(2) outlines the actions a WBC must take if there is a vacancy in the WBC Program Director position. Several commenters indicated that the 90-day timeframe included in the proposed rule did not allow sufficient time to recruit and hire a permanent WBC Program Director. While the SBA will uphold the 90-day requirement, the rule's language has been revised to allow the approved Interim WBC Program Director to remain in the position past 90 days upon obtaining the prior written approval from the Assistant Administrator of OWBO or designee.

Paragraph (a)(3) of the proposed rule requires an Interim Program Director to allocate his/her time and effort solely to the WBC Program until a permanent WBC Program Director is in position. A commenter suggested that an Interim Program Director may have other responsibilities within the recipient organization. The commenter also stated that while the Interim Program Director should allocate a large percentage of his/her time and effort to the WBC, it may not be possible or necessary to allocate all of his/her time and effort solely to the WBC Program. The SBA agrees with the commenter and has revised the language in this final rule.

Paragraph (b) outlines the SBA's process to ensure that candidates for the WBC Program Director position are qualified to manage the day-to-day operations of the WBC project. A comment was submitted stating that the SBA's involvement in the hiring of the WBC Program Director should be limited to reviewing legal issues such as conflict of interest, disbarment (sic), and payment of taxes. Additionally, the commenter stated that since the SBA grant represents partial funding for the WBC, not the entire funding, personnel decisions should be left to the discretion of the recipient organization. The SBA has determined that it is important to review a candidate's resume to ensure that the candidate has the core competencies outlined in paragraph (a)(1) of this rule. It should be noted that all funds (Federal, non-Federal cash match, and program income) included in the WBC budget are considered WBC project funds and constitute full funding for the project. Further, in adherence to 2 CFR 200.201 (b)(5) and 2 CFR 200.308, changes in the project leader or key person require the prior written approval of the Federal awarding agency. Therefore, provisions of the proposed rule remain unchanged.

131.400 Application Procedures

Several commenters noted that the application process, especially for existing WBCs, is onerous and gives no deference to past performance. Further, several commenters recommended for the process to be streamlined. SBA concurs with those comments and has removed the sections related to application procedures (e.g., new applications, renewals, and decisions) from the rule. This approach will afford SBA the flexibility to innovate and refine the application process based on practical experience as well as current Office of Management and Budget regulations. Subsequent sections of this rule have been renumbered reflecting this deletion.

Paragraph (b)(1) outlines application selection criteria, including the applicant organization's expertise in providing long-term and short-term training and counseling programs, and, most specifically, experience in providing targeted business development services to a distinct population.

A commenter suggested that the term “distinct population” be replaced with “women.” The commenter further stated that the selection criteria should be focused on the applicant’s experience and commitment to helping women. The SBA agrees with the commenter that the focus of the program is women but will maintain the use of the term “distinct population” in this section of the rule, as the definition for “distinct population” specifically references women. However, the language has been revised to reference the definition for “distinct population,” which is included in the Definitions section of this rule.

131.520 Carryover of Federal Funds

This section limits the option to carry over any unexpended Federal funds to the next funding period to WBCs within the first or second year of an initial phase project

only. Several commenters suggested that more flexibility is needed as there may be some circumstances that impact a Center's ability to expend funds. WBCs are responsible for matching all carryover funds. It has been the SBA's experience that when unexpended Federal funds are carried over to the next funding period, WBCs often have difficulty raising matching funds for both the carryover funds and the option year funds. This creates a situation in which the organization will match and spend the carryover funding but is then not able to spend the current year funding, thus creating a cycle where it must request carryover funding the following year. While there is never a penalty for requesting less funding, carryover funding represents an underutilization of the Federal funds provided. Also, elimination of the carryover does not preclude a Center from requesting the maximum amount of available funding the following year.

The SBA has given the issue of carryover funds further consideration and determined that based on the public comments received, it would be more efficient to address this issue via policy. Therefore, the language in this final rule has been revised accordingly.

131.530 Matching Funds

Paragraph (i)(1) outlines items that cannot be considered as sources of matching funds, including uncompensated student labor. A commenter requested that the prohibition of student labor for matching funds be clarified. The commenter explained that some WBCs, including those whose recipient organizations are universities, utilize university undergraduate and graduate students for substantive work. These students receive school credit for their work instead of monetary compensation. Lastly, the commenter suggested that the services provided by these students be allowed as matching

funds. The SBA reviewed the issue and determined that a WBC can claim student volunteer time as an in-kind contribution, provided the WBC can document adequate valuation for the services. However, if a WBC is providing some form of tuition remission to the student volunteers and claiming that as a direct cost under its grant (or including it in its indirect cost rate), then it cannot also claim that time as an in-kind contribution. If the WBC will not claim the student's time under the grant in some way, and if the WBC can adequately document the value of the services provided, then the WBC should be able to claim student volunteer time as an in-kind contribution. The SBA removed the language in the proposed rule that prohibited the use of student volunteer time as in-kind match. Relatedly, a commenter raised the notion of using the in-kind criteria established by the IRS and referenced in FASB FAS 116 which describes how volunteer service hours can be used as match. OWBO disagrees with this comment and concludes that 2 CFR 200.96 and 2 CFR 200.306 is sufficient in this area and would also cover special circumstances such as allowing donated salaries to be used as cash match.

The SBA also received a comment that described the process used to validate match as tedious and burdensome. The commenter suggested that the match requirement be decreased significantly or eliminated entirely. Based on the public comments received regarding the match requirements, the Agency has determined to address this issue via policy and has removed paragraphs (d) through (h) of this section from the final rule.

131.570 Payments and Reimbursements

This section detailed the process through which advances and reimbursements were disbursed. Several commenters noted that the program had accumulated administratively burdensome requirements over its existence and where appropriate

should be curtailed. Section 131.570 was removed as its provisions should be implemented via policy.

131.600 Reports

This section lists the types and frequencies of reports required for submission. One commenter suggested that, while the SBA/OWBO has streamlined many of its reporting requirements, additional improvements could be made to eliminate duplication of time and effort. The commenter also indicated that the renewal application process could be shortened by simply updating the information that was included in the initial application. The requirement to submit a renewal application every three years is consistent with the Act. While this section of the rule does not provide information on the renewal application process (See § 131.420), the SBA has and will continue to streamline its application processes. For example, OWBO established a 10-page limit for the narrative response for renewal applications. Additionally, some of the forms previously required (e.g., Cost Sharing (SBA 1224) and Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions (SBA 1623)) are no longer required. Several commenters highlighted the need for the Agency to revamp its reporting processes. Based on the public comments, the Agency undertook a comprehensive review of its reporting requirements. Redundant and ineffective processes were identified and eliminated. As a result, the Agency identified a need for continuous improvement in this area and will remove this section from the final rule. This will allow the Agency flexibility to address reporting via policy and to modify those requirements as needed in order to make the WBC program more effective and efficient.

and to improve the delivery of its services. Subsequent sections of this rule have been renumbered accordingly reflecting this deletion.

131.900 Client Privacy

Several commenters noted that OWBO should provide clarity on the means, methods, and purpose of data collected by the program and should collect additional performance and demographic data. This desire for more data is hindered by § 131.900 and therefore the section has been removed from the final rule.

Compliance with Executive Orders 12866, 13563, 12988, 13132, and 13771, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Executive Order 12866

The Office of Management and Budget has determined that this rule constitutes a “significant regulatory action” under Executive Order 12866. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

The SBA provides a detailed Regulatory Impact Analysis for this final rule below.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The WBC Program was established in 1988 as a pilot program and became permanent in 2007. Regulations for the WBC Program had not been previously promulgated. The SBA had used the program announcement and the notice of award to incorporate statutory requirements to implement the WBC Program. The annual program announcement and the notice of award have become, for all practical purposes, documents that interpret the statute. The SBA believes it is past time for regulations

outlining guidance of the policies and procedures for the WBC Program. This regulation incorporates the changes required by 2 CFR part 200. The Office of Management and Budget (“OMB”) issued the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule (Uniform Guidance) on December 26, 2013”, which is referred to as OMB “Super Circular” or “Omni Circular” and is codified at 2 CFR Part 200. The Super Circular supersedes and streamlines requirements applicable to the administration, use and audit of federal grant funds by non-profit organizations, state, local and tribal governments, and colleges and universities. This regulation also encompasses other program changes that have taken place since the WBC Program was initially established. Additionally, the AWBC has supported implementing regulations to streamline and standardize processes.

2. What are the potential benefits and costs of this regulatory action?

In fiscal year 2016, the WBC Program received \$17 million in Federal funds, which it provided to over 100 WBCs. The SBA also received \$18 million in Federal funds for WBCs in fiscal year 2017. Grantees are required to supply a one-to-one match of those funds, except in the program’s initial two years, during which time the required match is two-to-one (Federal to match). The benefit of this requirement is that the grantee is as invested as the Federal Government in ensuring the success of the WBC Program, while small businesses benefit from the no- or low-cost counseling and training.

The counseling and training services that the WBCs provide help educate small businesses to promote growth, expansion, innovation, increased productivity and management improvement. In 2017, the WBC Program assisted 148,106 clients. These clients benefitted from technical advice on topics like how to obtain loans, how to create

a business plan, how to promote their business, and other areas. According to a 2016 WBC survey, clients of the WBC Program created 17,438 new business starts and received over \$582,000,000 in capital infusion. Further, the potential benefits of this rule are based on both incorporating all of the changes that have occurred with the publication of 2 CFR 200 and a streamlining of the program announcement and the notice of award. The new regulations further clarify the program announcement(s) issued by OWBO.

The costs to the SBA in making this revision are minimal, as most of the requirements of this rule are currently implemented and followed. The estimated annual cost to the Federal Government for oversight of the WBC Program is currently provided for in the existing SBA infrastructure.

The annual cost to the WBCs includes the burden at the time of application and the annual financial reporting required of WBCs. Over the past five years, there were a total of 133 new applications for the WBC Program, averaging 27 applications per year. The SF 424 (Application for Federal Assistance) on *grants.gov* does not include a field for revenue size; however, given that the majority of entities are small, the SBA can presume that the majority of applicant organizations are also small. It is projected that a grants writer would require approximately 20 hours to complete and submit the required application forms through *grants.gov*. Using the loaded wage for an accountant at \$44.06 per hour (BLS does not publish a wage for grants writers so an accountant wage is used as a proxy; the 2018 hourly wage rate for an accountant is \$33.89 and adding 30% for benefits totals \$44.06 per hour), this would cost the applicant organization approximately \$881 or a total cost of \$23,787 to all applicants of the WBC program annually.

A participant in the WBC Program submits a Federal Financial Report and attachments twice a year, the estimated burden of which is two hours twice a year. The annual submission of a work plan requires substantially less time than the renewal application, as its purpose is to update the initial application to reflect any changes. The estimate for completion of the work plan and attachments on an annual basis is approximately 14 hours. Using the loaded wage for an accountant at \$44.06 per hour, the estimated annual cost for a WBC would be \$617. There are currently 113 entities that participate in the WBC Program for a total cost of \$69,721.

Considering the cost to new applicants and the annual preparation of a work plan and attachments for participants, the annual cost of this rule is \$93,508. The annualized cost of this rule in 2016 dollars is \$89,740.

Comments were submitted regarding the costs considered in this rule. The commenters indicated that the section of the proposed rule describing the regulatory flexibility analysis minimizes the scope of WBC reporting requirements and grossly underestimates the cost and amount of time required. One commenter also suggested that, in addition to the cost and time required to submit an application, WBCs are required to submit a work plan each year. The commenter also identified the multiple reporting requirements (e.g., EDMIS quarterly reports, semi-annual or quarterly narrative and financial reports) as burdensome to the WBCs. While the commenter did not provide an estimate of time or cost for the tasks referenced in this section, the proposed rule estimated a burden to complete the required forms and reports annually at 14 hours of work. The estimate of 14 hours refers only to the time it would take on average to complete WBC application documents. Also, contrary to the statement provided by the

commenter, WBCs are not required to submit an application and a work plan each year. Centers are required to submit either an application (if in a renewal phase) or a work plan (if in an option year) annually. Furthermore, there are no additional costs for the submission of budgetary and performance reports as the cost for these activities is already included as part of the funds provided to the WBC to manage the program. This rule serves to codify existing requirements. Further, the work plan submissions require narratives that do not exceed five pages. The SBA will, however, continue to explore ways to further reduce and simplify reporting requirements.

3. What alternatives have been considered?

After publishing the ANPRM on April 22, 2015, the NPRM on November 22, 2016, and reviewing the comments submitted, the SBA believes that publishing regulations for the WBC Program would be the best way to create long-lasting consistency in the implementation of the WBC Program. The alternative would be to not publish regulations and instead continue to rely on grant documents to implement the WBC Program. However, 15 USC 656(n)(3) requires the SBA to issue regulations establishing standards for financial audit disclosures. Because the SBA is required to issue regulations for part of the WBC Program, the Agency believes it would be more beneficial to grantees and the public to issue regulations establishing one set of rules for the program as a whole rather than relying upon a piecemeal approach utilizing a mix of regulations and grant documents to govern the program.

Executive Order 13563

Prior to developing this final rule, the SBA issued an ANPRM on April 22, 2015, to solicit comments. Additionally, public comments were solicited as part of the NPRM

issued on November 22, 2016. Further, the OWBO staff attended the annual WBC training conferences to discuss policy, procedures, and the proposed regulations.

Comments for both the ANPRM and NPRM can be found at:

<https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=SBA-2015-0007>

The SBA did not receive any comments from other Federal Agencies.

Executive Order 12988

For the purposes of Executive Order 12988, Civil Justice Reform, the SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Sec. 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden. The regulations provide for WBC Program participants' rights of appeal in the event they are aggrieved by an Agency decision, thereby limiting the possibility of litigation. This final rule does not have retroactive or pre-emptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, the SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This final rule is an Executive Order 13771 regulatory action with an annualized cost in 2016 dollars of \$89,740 and a net present value of \$1,281,998. There are several unquantifiable benefits of the WBC program for small businesses including new business starts and capital infusion. Details on the estimated costs and a discussion of the benefits of this final rule can be found in the rule's regulatory impact analysis.

Compliance with the Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rule, the Regulatory Flexibility Act (RFA) requires the agency to prepare a final regulatory flexibility analysis (FRFA), which describes whether the rule will have a significant economic impact on a substantial number of small entities. However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing a FRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The counseling and training services that the WBCs provide help educate small businesses to promote growth, expansion, innovation, increased productivity and management improvement. In 2017, the WBC Program assisted 148,106 clients. These clients benefitted from technical advice on topics like how to obtain loans, how to create a business plan, how to promote their business, and other areas. According to a 2016 WBC survey, clients of the WBC Program created 17,438 new business starts and received over \$582,000,000 in capital infusion.

Further, the potential benefits of this rule are based on both incorporating all of the changes that have occurred with the publication of 2 CFR part 200 and a streamlining of the program announcement and the notice of award. The new regulations further clarify the program announcement(s) issued by OWBO.

This rule covers both the application process to become funded as a WBC and the on-going operations for currently funded WBCs. As these populations are different, the analysis is included for each.

This final rule could theoretically affect all nonprofit entities, as the statute requires that an entity be organized as a nonprofit in order to participate. According to the IRS, for tax year 2010 there were over 269,000 entities that filed returns as a 501(c)(3).

The North American Industry Classification System (NAICS) codes that are most relevant to participation in the WBC program are 541611, Administrative Management and General Management Consulting Services and 541990, All Other Professional, Scientific and Technical Services. The size standard for both of these NAICS codes is \$15 million in average annual receipts. According to the IRS, 92 percent of all 501(c)(3) filers had total revenue greater than \$10 million. The majority of the 501(c) entities would fall under the threshold as a small entity. In addition, as the application process is voluntary and does not require a nonprofit entity to apply, the vast majority of nonprofits would not be affected. Over the past five years, there were a total of 133 new applications for the WBC Program, averaging between 25 and 35 applications per year. The SF 424 (Application for Federal Assistance) on *grants.gov* does not include a field for revenue size; however, given that the majority of entities are small, the SBA can presume that the majority of applicant organizations are also small. It is projected that a grants writer would require approximately 20 hours to complete and submit the required application forms through *grants.gov*. Using the loaded wage for an accountant at \$44.06 per hour, this would cost the applicant organization approximately \$881. These estimates are based on burden statements associated with the *grants.gov* application forms and anecdotal information supplied by applicant organizations to the WBC Program. Therefore, the SBA has determined that the application section of the final rule would not have a significant impact on a substantial number of small entities.

There are currently 113 entities that participate in the WBC Program, all of which are small entities. A participant in the WBC Program submits a Federal Financial Report and attachments twice a year, the estimated burden of which is two hours twice a year.

The annual submission of a work plan requires substantially less time than the renewal application, as its purpose is to update the initial application to reflect any changes. The estimate for completion of the work plan and attachments on an annual basis is approximately 14 hours. Using the loaded wage for an accountant at \$44.06 per hour, the estimated annual cost would be \$617. Therefore, the SBA has determined that the financial reporting section of the final rule would not have a significant impact on a substantial number of small entities.

Comments were submitted regarding the SBA's compliance with the Regulatory Flexibility Act (RFA). The commenters indicated that the section of the proposed rule describing the regulatory flexibility analysis minimizes the scope of WBC reporting requirements and grossly underestimates the cost and amount of time required. One commenter also suggested that, in addition to the cost and time required to submit an application, WBCs are required to submit a work plan each year. The commenter also identified the multiple reporting requirements (e.g., EDMIS quarterly reports, semi-annual or quarterly narrative and financial reports) as burdensome to the WBCs. While the commenter did not provide an estimate of time or cost for the tasks referenced in this section, the proposed rule estimated a burden to complete the required forms and reports annually at 14 hours of work. The estimate of 14 hours refers only to the time it would take on average to complete WBC application documents. Also, contrary to the statement provided by the commenter, WBCs are not required to submit an application and a work plan each year. Centers are required to submit either an application (if in a renewal phase) or a work plan (if in an option year) annually. Furthermore, there are no additional costs for the submission of budgetary and performance reports as the cost for these

activities is already included as part of the funds provided to the WBC to manage the program. This rule serves to codify existing requirements. Further, the work plan submissions require narratives that do not exceed five pages. The SBA will, however, continue to explore ways to further reduce and simplify reporting requirements.

Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

The SBA has determined that this final rule will not impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. Currently, the following eight PRA submissions are associated specifically with the WBC Program: (1) OMB control number 3245-0140, Notice of Award and Cooperative Agreement; (2) OMB control number 3245-0169, Federal Cash Transaction Report, Financial Status Report, Program Income Report, and Narrative Program Report; (3) OMB control number 3245-0324, EDMIS data collection (Forms 641 and 888); (4) OMB control number 4040-0004, SF 424, Application for Financial Assistance; (5) OMB control number 4040-0006, SF 424A, Budget Summary for Non-Construction Projects; (6) OMB control number 4040-0007, SF 424B, Assurances for Non-Construction Projects; (7) OMB control number 4040-0013, SF-LLL, Disclosure of Lobbying Activities; and (8) 4040-0014SF-425, Federal Financial Report. These reports will not change and no new reports are required in this final rule.

List of Subjects in 13 CFR Part 131

Entrepreneurship, Grant programs-business, Minority businesses-women, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA adds 13 CFR part 131 to read as follows:

PART 131—WOMEN’S BUSINESS CENTER PROGRAM

Sec.

- 131.100 Introduction.
- 131.110 Definitions.
- 131.200 Eligible entities.
- 131.300 Women’s Business Centers (WBCs).
- 131.310 Operating requirements.
- 131.320 Area of service.
- 131.330 WBC services and restrictions on service.
- 131.340 Specific WBC program responsibilities.
- 131.350 Selection and retention of the WBC Program Director.
- 131.400 Grant administration and cost principles.
- 131.410 Maximum grant.
- 131.420 Carryover of Federal funds.
- 131.430 Matching funds.
- 131.440 Program income and fees.
- 131.450 Budget justification.
- 131.460 Restricted and prohibited costs.
- 131.470 Payments and reimbursements.
- 131.500 Oversight of the WBC program.
- 131.510 SBA review authority.
- 131.520 Audits, examinations, and investigations.
- 131.600 Cooperative agreement and contracts.
- 131.610 Other Federal grants.
- 131.620 Revisions and amendments to cooperative agreements.
- 131.630 Suspension, termination, and non-renewal.
- 131.640 Dispute procedures.
- 131.650 Closeout procedures.

Authority: 15 U.S.C. 656.

§ 131.100 Introduction.

(a) The Women’s Business Centers (WBC) program has grown and evolved to provide a variety of services to many entrepreneurs ranging from those interested in starting businesses to those looking to expand an existing business.

(b) The U.S. Small Business Administration (SBA), through the Office of Women's Business Ownership (OWBO), is responsible for the general management and oversight of the WBC program. The SBA issues an annual cooperative agreement to recipient organizations for the delivery of assistance to individuals and small businesses. The WBC program acts as a catalyst for providing in-depth, substantive, outcome-oriented business services, including training, counseling, and technical assistance, to women entrepreneurs and both nascent and established businesses, a representative number of whom are socially and economically disadvantaged. By providing training and counseling on a wide variety of topics through WBCs, the SBA meets the needs of the individual client in the local marketplace.

(c) Unless otherwise indicated, all deadlines referred to in this Part are measured in terms of calendar days.

§ 131.110 Definitions.

Advisory board. A group established to confer with and provide recommendations to the WBC Program Director on matters pertaining to the operation of the WBC. The advisory board will also act as a catalyst to raise funds for the WBC.

Applicant organization. An entity that applies for Federal financial assistance to establish, administer, and operate a WBC under a new or renewed cooperative agreement.

Application (also known as the proposal). The written submission by a new applicant organization or an existing recipient organization describing its projected WBC activities for the upcoming budget period and requesting SBA funding for use in its operations.

Annual work plan. See option year work plan and budget.

Area of service. The State or U.S. Territory, or a regional portion of a State or U.S. Territory, in which the SBA approves a WBC to provide services.

Assistant Administrator of the Office of Women's Business Ownership.
(AA/OWBO). The AA/OWBO is statutorily responsible for management of the WBC program. The AA/OWBO may elect to designate staff to complete tasks assigned to the AA/OWBO position. When AA/OWBO is referenced, it includes the designee.

Associate Administrator for the Office of Entrepreneurial Development.
(AA/OED). The AA/OED is responsible for enhancing the nationwide network of offices, business executives, and mentors that support current and aspiring business owners as they start, grow, and expand in today's global market. This nationwide network includes the following Resource Partners: Women's Business Centers (WBCs), Small Business Development Centers (SBDCs), and SCORE.

Authorized official. A person who has the legal authority to sign for and/or speak on behalf of an organization.

Budget period. The period of performance in which expenditures and obligations are incurred by a WBC, consistent with 2 CFR 200.77.

Carryover funds (carryover). Unobligated Federal funds reallocated from one budget period to the next through an amendment to the current year's cooperative agreement.

Cash match. Non-Federal funds specifically budgeted and expended by the recipient organization for the operation of a WBC project. Cash match must be in the form of cash and/or program income.

Client. An entrepreneur or existing small business seeking services provided by a WBC.

Client record. A record that provides individual client contact information, client/business demographics, and documentation of the services provided. Additionally, the record provides aggregate data about a training event, including topic, date, attendance, format, and evaluation.

Cognizant agency for audit. The Federal agency designated to carry out the responsibilities as described in 2 CFR 200.513(a).

Cognizant agency for indirect costs. The Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR 200.19.

Conditional approval. An approval granted when an application has been determined to meet eligibility requirements and has been recommended for funding, but requiring special conditions, such as submitting certifications, assurances, or other documentation.

Cooperative agreement (also known as notice of award). A legal instrument of financial assistance between the SBA and a recipient organization that is consistent with 31 U.S.C. 6302-6305 and provides for substantial involvement between the SBA and the recipient organization in carrying out the proposed activities.

Counseling. Services provided to an individual and/or small business owner that are substantive in nature, require assistance from a resource partner or SBA district office personnel regarding the formation, management, financing, and/or operation of a small business enterprise, and are specific to the needs of the business or individual.

Direct costs. Costs as defined in 2 CFR 200.413.

Dispute. A programmatic or financial disagreement that the recipient organization requests be handled according to the dispute resolution procedures under § 131.840.

Distinct population. A specific targeted group. For the purpose of the WBC program, the targeted group is women entrepreneurs.

District office. The local SBA office charged, in collaboration with the WBCs, with meeting the needs of women entrepreneurs in the community.

Financial examiner. An SBA employee, or designee, charged with conducting financial examinations.

Full-time. An employee all of whose time and effort (minimum of 30 hours per week, as defined by the Internal Revenue Service, § 4980H(c)(4)) is allocated to the WBC project. An employee who is full-time under the WBC should not engage in activities that do not pertain to the WBC project.

Grants and Cooperative Agreement Appeals Committee. The SBA committee, appointed by the SBA Administrator, to resolve appeals arising from disputes between a recipient organization and the SBA.

Grants Management Officer. An SBA employee who meets the Office of Management and Budget standards and certifications to obligate Federal funds by signing a notice of award.

Grants management specialist. An SBA employee responsible for the budgetary review and financial oversight of WBC agreements.

Indirect costs. Costs as defined in 2 CFR 200.56.

In-kind contributions (third party). Costs incurred as described in 2 CFR 200.96.

Interim Program Director. An individual temporarily assigned by the recipient organization to fulfill the responsibilities of a vacant WBC Program Director position for no more than 90 days.

Key personnel/key employee. For the purposes of the WBC program, the WBC Program Director is identified as the key employee.

Loan packaging. Includes any activity done in support of a client or in preparation of the client's credit application to a lender for a loan, line of credit, or other financial instrument.

Matching funds. For all Federal awards, any shared costs or matching funds and all contributions, as defined in 2 CFR 200.306.

Microloan. A loan as specified in 13 CFR 120.701.

Non-Federal entity. An organization as defined in 2 CFR 200.69.

Nonprofit organization. Any corporation, trust, association, cooperative, or other organization as defined in 2 CFR 200.70.

Notice of award (NOA). See cooperative agreement.

Office of Women's Business Ownership Program Analyst. An SBA employee designated by the AA/OWBO who oversees and monitors WBC operations.

Option year. Additional 12-month budget period awarded after the first budget year (base year) as determined by the period of performance identified in the cooperative agreement.

Option year work plan and budget. The written submission by an existing WBC applying for an additional year of grant funding. This submission is required to ensure the

recipient organization's continued alignment with the WBC program and to update its description of projected WBC activities for the upcoming option year budget period.

Overmatch. Any non-Federal contribution applied to the WBC award in excess of the minimum amount of match required. See §131.530 for specific details on match requirements.

Period of performance. The period of time as specified in 2 CFR 200.77.

Principal investigator. The individual primarily responsible for achieving the technical success of a project, while also complying with the financial and administrative policies and regulations associated with the grant.

Prior approval. The written concurrence from the appropriate Office of Women's Business Ownership official for a proposed action or amendment to a WBC cooperative agreement. Specific guidelines governing the prior approval process, including the documentation required, are outlined in the cooperative agreement.

Program announcement. The SBA's annual publication of requirements, to which an applicant organization must respond in its five-year initial or three-year renewal application.

Program income. Gross income earned by a non-Federal entity, as described in 2 CFR 200.80.

Project funds. All funds authorized under the cooperative agreement including Federal funds, non-Federal cash, in-kind contributions (third party), and program income, as well as any Federal funds and/or non-Federal match authorized or reported as carryover funds.

Project period. The period of time specified in the notice of award, which identifies the start and end date of a recipient organization's five-year or three-year project.

Recipient organization. An applicant organization selected to receive Federal funding to deliver WBC services under a cooperative agreement. By statute, only private, nonprofit organizations certified under § 501(c) of the Internal Revenue Code of 1986 can be recipient organizations.

Socially and economically disadvantaged women. As defined by 13 CFR 124.103 and 124.104, respectively.

Specialized services. WBC services other than basic counseling and training. The services can include, but are not limited to, assistance with disaster readiness; assistance to home-based businesses; assistance to agribusinesses; and assistance to construction, childcare, elder care, manufacturing or procurement businesses.

State or U.S. Territory. For the purpose of these regulations, the 50 United States, and the U.S. Territories of Guam, the U. S. Virgin Islands, American Samoa, the Northern Mariana Islands, the Commonwealth of Puerto Rico and the District of Columbia.

Training. A qualified activity or event, presented or cosponsored by a WBC, that delivers a structured program of knowledge, information, or experience on an entrepreneurial or business-related subject.

WBC Program Director. An individual whose time and effort is allocated solely to the WBC program. The WBC Program Director position is the only position that requires approval from the Office of Women's Business Ownership prior to hiring.

Women's Business Centers (WBCs). WBCs represent a national network of educational centers throughout the United States and its territories that assist women in starting and growing small businesses.

Women-owned businesses. A business concern that is not less than 51 percent owned by one or more women; additionally, its management and daily operations are controlled by one or more women.

§ 131.200 Eligible entities.

(a) Eligible organizations. By statute, only a nonprofit organization with active 501(c) certification from the United States Department of the Treasury/Internal Revenue Service is eligible to apply for Federal funding to operate a WBC project.

(b) Ineligible organizations. Organizations ineligible to receive Federal funds to manage a WBC project include, but are not limited to, the following:

(1) Any organization that owes an outstanding and unresolved financial obligation to the Federal Government;

(2) Any organization, employee, or principal investigator of an organization that is currently suspended, debarred, or otherwise prohibited from receiving awards, contracts, or grants from the Federal Government;

(3) Any organization with an outstanding and unresolved material deficiency reported under the requirements of the Single Audit Act within the past three years, consistent with 2 CFR 200.501;

(4) Any organization that has had a grant or cooperative agreement involuntarily terminated or non-renewed by the SBA for cause/material non-compliance;

(5) Any organization that has filed for bankruptcy within the past five years;

(6) Any organization that does not propose to hire and employ a full-time WBC Program Director whose time is solely dedicated to managing the day-to-day operation of the WBC and staff;

(7) Any organization that proposes to serve as a pass-through and permit another organization to manage the day-to-day operations of the project;

(8) Any organization that had an officer or agent acting on its behalf convicted of a felony criminal violation under any Federal law within the preceding 24 months; or

(9) Any other organization the SBA reasonably determines to be ineligible to receive Federal funds to manage a WBC project.

§ 131.300 Women's Business Centers (WBCs).

Women's Business Centers (WBCs) are established under the statutory authority of the SBA through cooperative agreements with nonprofit recipient organizations. WBC program announcements and requests for work plans and budgets establish the operating and performance parameters, initiatives, and strategies for each project period.

(a) Program announcements. (1) The SBA will issue a program announcement each fiscal year to fund those recipient organizations already operating successful WBC projects. The program announcement will detail the goals, objectives, and other terms and conditions for renewable projects entering a three-year phase of the program. The issuance of the program announcement is contingent upon SBA's approved budget and funding availability.

(2) At any time during the current fiscal year, and based on the availability of funds, the SBA may, at its discretion, also issue a program announcement for the upcoming fiscal year, detailing the goals, objectives, and other terms and conditions for

new WBC projects. New WBC projects may be awarded a maximum of one base year and 4 additional option years of funding.

(3) The SBA reserves the right to cancel a program announcement, in whole or in part, at the agency's discretion.

(b) Option year work plans and budgets. (1) Each year, the SBA will issue instructions for the submission of the option year work plan and budget for those WBCs currently in (and wishing to continue in) the SBA's WBC program that will have successfully completed year one, two, three or four of an initial project, or year one or two of a renewal project. In order to be considered for renewal, submissions for option year work plans and budget must be received by OWBO by the deadline specified in the annual instructions for the submission of each work plan.

(2) The SBA reserves the right to revise the submission requirements, in whole or in part, at the Agency's discretion.

(3) Awarding option year funding is at the sole discretion of the SBA and is subject to continuing program authority, the availability of funds, and satisfactory performance by the recipient organization.

(c) Cooperative agreement. (1) The terms and conditions must include, but are not limited to, Office of Management and Budget guidelines for grant administration and cost principles, regulations and laws governing the WBC project and federally sponsored programs, and current year guidelines from the program announcement.

(2) The SBA will issue a notice of award annually to each eligible WBC participant, based on the acceptance of the organization's annual proposal or work plan.

(d) Negotiating the cooperative agreement. The WBC's participation in negotiations should include, but is not limited to, the following:

(1) Proposing services and an appropriate delivery structure to meet the needs of the local small business community, specifically targeting women, including a representative number of women who are socially and economically disadvantaged; and

(2) Proposing adequate technical and managerial resources for the WBC to achieve its performance goals and program objectives, as set forth in the cooperative agreement.

(e) Women's Business Center (WBC) funds. Budgeted WBC funds (including match) must be used solely for the WBC project.

§ 131.310 Operating requirements.

(a) The recipient organization has contractual responsibility for the duties of the WBC project, which must be a separate and distinct entity within the recipient organization, having its own budget, staff, and full-time WBC Program Director.

(b) The WBC must establish an advisory board that is representative of the community it will serve and that will confer with and provide recommendations to the WBC Program Director on matters pertaining to the operation of the WBC. The advisory board will also assist the WBC in meeting the match requirements of the program.

(c) An employee who is full-time under the WBC program should not engage in activities that do not pertain to the WBC project. The WBC is not prohibited from operating other Federal programs that focus on women or other underserved small business concerns if doing so does not hinder its ability to deliver the services of the WBC program.

(d) The WBC must have facilities and administrative infrastructure sufficient for its operations, including program development, program management, financial management, reports management, promotion and public relations, program assessment, program evaluation, and internal quality control. The WBC must document annual financial and programmatic reviews and evaluations of its center(s) consistent with Agency policy.

(e) Any new applicant that is accepted into the WBC program after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] must include as part of its official name the specific identification “Women’s Business Center.” For the purpose of the WBC program, the official name used is the name assigned to the WBC by the host organization. The legal name of the organization is the name of the host organization and is the name usually listed on line 7a of the Application for Federal Assistance, SF 424. Any WBC that is applying for a renewal grant after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] must also include the specific identification “Women’s Business Center” as part of its official name. Until such time that any existing WBC has to submit a renewal application to the SBA for funding, and does not currently include “Women’s Business Center” in its official name, it must include the following language prominently on its website and promotional documents: “The Women’s Business Center is funded in part by the U.S. Small Business Administration.” However, at the time of submission of its renewal application, it must include WBC as part of its official name.

(f) The WBC must maintain adequate staff to operate the WBC, including the WBC Program Director and at least one other person, preferably a business counselor.

(g) The WBC must use an enforceable conflict-of-interest policy that is consistent with the requirements of 2 CFR 2701.112.

(h) The WBC must be open to the public a minimum of 40 hours a week (which must include evening and weekend hours) and meet other requirements as specified in the program announcement. Emergency closures must be reported to the district office and Office of Women's Business Ownership Program Analyst as soon as is feasible.

(i) The WBC must comply with 13 CFR parts 112, 113, 117, and 136 requiring that no person be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the WBC. However, all WBC marketing programs and services must target women.

(j) The WBC project must not be listed in the organizational structure under any other Federal grant.

§ 131.320 Area of service.

(a) Cooperative agreement. The recipient organization will identify in its application the geographic area for which it plans to provide assistance and should strive to not duplicate services to the same client population as an existing WBC. Once approved, the AA/OWBO will codify, in writing, the geographic area of service of each recipient organization. More than one recipient organization may be located in a State, Territory, or other geographic area. Once the SBA has entered into a cooperative agreement with a recipient organization, the area of service cannot be changed without prior approval by the AA/OWBO. A subsequent decision by the recipient organization to change the area of service in the cooperative agreement without prior approval by

OWBO may constitute grounds for suspension, non-renewal, and/or termination as set forth in § 131.830.

(b) Location of WBC projects. An applicant organization responding to a program announcement and within proximity of an existing WBC project shall provide in its written narrative a justification for placing another WBC in the proximity of an existing WBC, including the number of socially and economically disadvantaged persons within the proposed service area, relevant census data, and information on population density. The information provided must clearly justify the necessity for an additional WBC project within the same area of service as the existing WBC project. The SBA will take the narrative and any supporting documentation into consideration when reviewing, ranking, and scoring the applicant organization's proposal.

(c) Resources. An applicant organization's plan for the commitment and allocation of resources, including the site from which the WBC plans to provide services, will be reviewed as part of the application review process for each budget period to ensure adequate coverage in the area of service.

§ 131.330 WBC services and restrictions on services.

(a) Services. The WBC must provide prospective entrepreneurs and existing small businesses, known as clients, with training, counseling, and specialized services. The services provided must relate to the formation, financing, management, and operation of small business enterprises. The WBC must create and update client records to document each time that services are provided to a client. The WBC must provide services that meet local needs as determined through periodic needs assessments; additionally,

services must be adjusted over time to meet changing small business needs. Any changes to the scope of services must be in accordance with § 131.820.

(b) Access to capital. (1) WBCs must provide training and counseling services that enhance a small business concern's ability to access capital, such as business plan development, financial statement preparation/analysis, and cash flow preparation/analysis.

(2) WBCs may provide loan packaging services and other related services to WBC clients and may charge a fee for such assistance (see § 131.540). Any fees so generated will constitute program income. The WBC must ensure that these services are not credited to both the WBC program and any other Federally-funded program, thereby double counting the efforts.

(3) WBCs shall prepare their clients to represent themselves to lending institutions. WBC personnel may attend meetings with lenders to assist clients in preparing financial packages; however, neither WBC staff nor their agents may take a direct or indirect role in representing clients in any loan negotiations.

(4) WBCs shall disclose to their clients that financial counseling assistance, including loan packaging, will not guarantee receipt or imply approval of a loan or loan guarantee.

(5) WBCs must not intervene in loan decisions, service loans, make credit recommendations, or otherwise influence decisions regarding the award of any loans or lines of credit on behalf of the WBC's clients, unless the WBC operates as an SBA Microloan Intermediary and is awarding an individual or small business concern an SBA microloan.

(6) When the recipient organization operates both a WBC and a separate loan program, the WBC must disclose to the client other financing options that may be available besides the one offered by the recipient organization to ensure that the client has the opportunity to seek financing outside of the recipient organization. If the recipient organization operates an SBA loan program, it must comply with § 120.140 of this chapter.

(7) WBCs must disclose to loan packaging clients any financial relationships between the WBC and a lender or the sale of their credit products.

(8) With respect to loan programs, allowable activities include the following: assisting clients in formulating a business plan, preparing financial statements, completing forms that are part of a loan application, and accompanying an applicant appearing before the SBA or other lenders. See paragraph (b)(5) of this section for further limitations.

(9) WBCs are to collaborate with state, local, and Federal government agencies to identify other resources that may be available to its clients and to facilitate interactions deriving from these collaborations.

(c) Special emphasis initiatives. In addition to requiring WBCs to assist women entrepreneurs, including a representative number of women who are socially and economically disadvantaged, the SBA may identify and include in the cooperative agreement other portions of the general population that WBCs must target for assistance.

§ 131.340 Specific WBC program responsibilities.

(a) Policy development. The AA/OWBO will establish and modify WBC program policies and procedures to improve the delivery of services by WBCs to the small

business community and to enhance compliance with applicable laws, regulations, Office of Management and Budget guidelines, and Executive Orders.

(b) Program administration. The AA/OWBO will recommend the annual program budget, establish appropriate funding levels in compliance with the statute, and review the annual budgets submitted by each organization.

(c) Responsibilities of WBC Program Director. (1) The WBC Program Director must be a full-time employee of the recipient organization and not a contractor, consultant, or company. The WBC Program Director will direct and monitor all program activities and all financial affairs of the WBC to ensure effective delivery of services to the small business community and compliance with applicable laws, regulations, Office of Management and Budget circulars, Executive Orders, and the terms and conditions of the cooperative agreement.

(2) The WBC Program Director may not manage any other programs under the recipient organization.

(3) The WBC Program Director will serve as the SBA's principal contact for all matters involving the WBC.

(d) Principal investigator. The principal investigator is primarily responsible for achieving the technical success of the project while also complying with the financial and administrative policies and regulations associated with the grant. Although principal investigators may have administrative staff to assist them with the management of the project, the ultimate responsibility for the management of the project rests with the principal investigator. The principal investigator of a recipient organization could also fill

the role of Executive Director, WBC Program Director, President/CEO, or another key position.

§ 131.350 Selection and retention of the WBC Program Director.

(a) General. (1) The WBC Program Director selected to manage the daily operations of the WBC shall possess core competencies in the areas of business and/or entrepreneurship training, project and/or small business management, effective communication, and collaboration.

(2)(i) The recipient organization must provide written notification to the AA/OWBO or his/her designee within five business days following a vacancy in a WBC Program Director position. The notification must include the date the former WBC Program Director vacated the position, as well as the name, resume, salary, date of appointment, and contact information for the person assigned the role of the WBC Interim Program Director. If the WBC Program Director temporarily vacates the position, the notification must include the projected date of return. The placement of an Interim Program Director does not require the submission of a key personnel change request; however, the information outlined in this section must be submitted to the OWBO Program Analyst, via email, consistent with the required timeframe.

(ii) The Interim Director may not remain in the position more than 90 calendar days from the date of the vacancy without written approval from the AA/OWBO. The recipient organization must document the appointment of the Interim Program Director in accordance with its policies and procedures and the cooperative agreement.

(3) An Interim Program Director must allocate a sufficient amount of his/her time and effort to management of the daily operations of the WBC program until a permanent WBC Program Director is in position.

(4) Within 30 days from the date of the vacancy, the recipient organization must provide OWBO with its plan of how it will ensure that a full-time WBC Program Director is hired within the 90 day timeframe allocated.

(5) If it is anticipated that the Interim Program Director will be in the position for more than 90 days, prior to the end of the 90 day period, the recipient organization must submit a written request to the OWBO Program Analyst for approval of an extension. OWBO is not required to reimburse personnel costs for any WBC Interim Program Director that remains in the position for more than 90 days without prior written approval.

(b) SBA involvement. The AA/OWBO will review the selection of the new WBC Program Director submitted by the recipient organization to ensure the candidate selected is qualified and their hiring would not present a conflict of interest or similar concern that would negatively affect the WBC's ability to carry out project and program objectives.

(c) Recruitment activity and associated costs. Allocable personnel compensation and benefits costs are as provided in 2 CFR 200.463.

§ 131.400 Grant administration and cost principles.

Upon approval of a WBC's initial or renewal application, the SBA will enter into a cooperative agreement with the recipient organization, setting forth the programmatic and fiscal responsibilities of the recipient organization and the SBA, the scope of the

project to be funded, and the budget for the period covered by the cooperative agreement. The WBC program adopts and implements Office of Management and Budget regulations as published and amended in 2 CFR part 200. Additional qualifications or clarifications may be promulgated through the program announcement, a revised notice of award, or the regulatory process.

§ 131.410 Maximum grant.

No individual WBC project will receive a WBC grant in any fiscal year under a cooperative agreement in excess of the amount authorized by statute. While an individual WBC project cannot exceed the statutory limit, a recipient organization is not limited from establishing multiple WBC projects as long as the projects are distinct from each other and are serving distinct populations that would not otherwise be served.

§ 131.420 Carryover of Federal funds.

The AA/OWBO will approve requests for carryover on a case-by- case basis. In doing so, the AA/OWBO will take into account the amount of carryover requested, whether the WBC currently has any funds carried over from prior years, the WBC's record of utilizing all of its awarded funding or providing the required level of match, and any factors beyond the WBC's control that impeded its ability to conduct project activities as originally proposed.

§ 131.430 Matching funds.

(a) The recipient organization must provide matching funds equal to one-half of the Federal funding received for the first two years of its initial award (a statutory match ratio of 2:1 Federal to non-Federal funding). For the remainder of the time the recipient organization is in the WBC program, it must provide matching funds of one dollar for

every dollar of its annual Federal award amount (a statutory match ratio of 1:1 Federal to non-Federal funding). At least 50 percent of the matching funds must be in cash (the sum of non-Federal cash and program income). The remaining 50 percent may be provided through allowable combinations of cash, in-kind contributions (third party), or authorized indirect costs.

(b) Once the cash match and total match requirements have been met, any additional matching funds are considered overmatch. WBCs may provide overmatch if they choose to do so; however, if they have used Federal funds to raise match above the required amount, the funds must only be used to meet the Federal objective of the WBC program and must be verifiable from the non-Federal entity's records. All funds allocated to a WBC project through a budget proposal are subject to Federal rules and regulations, consistent with 2 CFR part 200. The funds must also be used solely for the WBC project. However, this does not prohibit WBC recipient organizations from raising funds separately and apart from the WBC program. Those funds that are not raised with WBC funds and are not used as match are not subject to the same recordkeeping requirements as they are not tied to the WBC program.

(c) If the recipient organization indicates difficulty in meeting the match requirement, it can request a reduction of the Federal award. For specific guidance regarding the allowability, valuation, and documentation of match please see 2 CFR 200.306.

§ 131.440 Program income and fees.

(a) Program income, including any interest earned on program income, may only be used for authorized purposes and in accordance with the cooperative agreement.

Program income may be used as matching funds and, when expended, is counted towards the cash match requirement of the award. Program income must be used to expand the quantity or quality of services and for resources or outreach provided by the WBC project.

(b) Unused program income may be carried over to the subsequent budget period by a WBC. The WBC must report the consolidated program income sources and uses.

(c) A WBC may charge clients a reasonable fee for services, including training and counseling provided by the WBC (sponsored or cosponsored), the sale of books, or the rental of equipment or space. Any fees so generated will constitute program income, and such fees must not restrict access to any services for economically disadvantaged entrepreneurs.

§ 131.450 Budget justification.

General. The WBC Program Director or finance person of the non-Federal entity will prepare and submit the budget justification for the upcoming program/budget period for review by the SBA as part of the WBC's application package pursuant to the applicable program announcement. Worksheets are provided by OWBO for this purpose.

§ 131.460 Restricted and prohibited costs.

SBA prohibitions are consistent with those set forth in 2 CFR part 200.

(a) A WBC may not use project funds as collateral for a loan, assign an interest in them, or use them for any other such monetary purpose.

(b) Use of project funds in violation of these restrictions may be cause for termination, suspension, or non-renewal of the cooperative agreement.

§ 131.500 Oversight of the WBC program.

(a) The AA/OWBO will monitor the WBC's performance and its ongoing operations under the cooperative agreement to determine if the WBC is making effective and efficient use of program funds, in compliance with applicable law and other requirements, for the benefit of the small business community.

(b) The AA/OWBO may revoke delegated authority of oversight responsibilities at any time it is deemed necessary and will notify the recipient organization of such a change in a timely manner.

§ 131.510 SBA review authority.

To ensure compliance and the effectiveness of WBCs, OWBO staff will coordinate with SBA district offices to provide periodic programmatic site visits on behalf of OWBO. Prior to conducting such visits, SBA district office personnel will coordinate with and provide written notice to the WBC Program Director. The SBA's district office personnel may inspect WBC records and client files to analyze and assess WBC activities, and, if necessary, make recommendations for improved service delivery to the OWBO Program Analyst. Periodic district office site visits do not supersede or replace OWBO site visits.

§ 131.520 Audits, examinations, and investigations.

(a) General audits. The SBA may conduct WBC audits.

(1) Audits of a recipient organization will be conducted pursuant to the Single Audit Act of 1984 (if applicable) and applicable Office of Management and Budget circulars.

(2) The SBA's Office of Inspector General (OIG) or its agents may inspect, audit, investigate, or otherwise review the WBC as the Inspector General deems appropriate.

(b) Financial examinations. The WBC will have periodic financial examinations conducted by either the SBA or an independent contracted firm. WBCs, in accordance with the program announcement and the cooperative agreement, must comply with all requirements set forth for such purposes.

(1) Applicant organizations proposing to enter the WBC program for the first time shall be subject to a post-award examination or sufficiency review conducted by or coordinated with the SBA or its designee. As part of the financial examination, the financial examiner will verify the adequacy of the accounting system, the suitability of proposed costs, and the nature and sources of proposed matching funds.

(2) Examinations by the SBA will not serve as a substitute for audits required of Federal recipients under the Single Audit Act of 1984, 31 U.S.C Chapter 75 or applicable Office of Management and Budget guidelines (see 2 CFR part 200), nor will such internal reviews serve as a substitute for audits to be conducted by the SBA's Office of the Inspector General under authority of the Inspector General Act of 1978, as amended.

(c) Investigations. The SBA may conduct investigations to determine whether any person or entity has engaged in acts or practices constituting a violation of the Small Business Act, 15 U.S.C. 656; any rule, order, or regulation; or any other applicable Federal law.

§ 131.600 Cooperative agreement and contracts.

(a) General. A recipient organization will incorporate into its WBC the applicable provisions of the cooperative agreement.

(b) Goals and milestones. (1) OWBO will work in conjunction with WBC participants to establish program goals for the cooperative agreement annually. Agency

loan goals may not be negotiated or incorporated into the cooperative agreement without the prior written approval of the AA/OWBO.

(2) Failing to meet the goals and milestones of the cooperative agreement may result in suspension, termination, or non-renewal in accordance with § 131.830.

(c) Procurement policies and procedures. (1) The WBC may contract out for certain functions as permitted by the terms and conditions of the cooperative agreement but may not expend more than 49 percent of the total project funds on contractors and consultants.

(2) The SBA may direct or otherwise approve any obligations or expenditures by recipient organizations, including those related to vendors or contractors, as deemed appropriate by the Agency.

§ 131.610 Other Federal grants.

(a) Grants from other agencies. A recipient organization may enter into a contract or grant with another Federal department or agency to provide specific assistance to small business concerns in accordance with the following conditions:

(1) Any additional contract or grant funds obtained from a Federal source may not be used as matching funds for the WBC project, with the exception of Community Development Block Grant (CDBG) funds.

(2) Federal funds from the SBA and match expenditures reported to the SBA under the cooperative agreement may not be used or reported as match for another Federal program.

(3) The SBA does not impose any requirements for additional matching funds for those recipient organizations managing other Federal contracts.

(4) The WBC must report these other Federal funds and any associated matching funds separately to the SBA.

(b) RISE After Disaster grants. In accordance with 15 U.S.C. 636(b)(12), the SBA may provide financial assistance to a WBC, SBDC (under 13 CFR part 130), SCORE, or any proposed consortium of such individuals or entities to spur disaster recovery and growth of small business concerns located in an area for which the President has declared a major disaster.

(1) The Administrator, in cooperation with the recipients of financial assistance under this paragraph, shall establish metrics and goals for performance of grants, contracts, and cooperative agreements under this paragraph, which shall include recovery of sales, recovery of employment, reestablishment of business premises, and establishment of new small business concerns.

(2) Matching funds are not required for any grant, contract, or cooperative agreement under this paragraph (see section 7(b) of the Small Business Act 15 U.S.C. 636 (b)).

§ 131.620 Revisions and amendments to cooperative agreements.

During a project period, the WBC may request, in writing, one or more revisions to the cooperative agreement. The request must be submitted by the recipient organization's authorized official. Revisions will normally relate to changes in scope, work, or funding during the specified budget period. No proposed revision will be implemented without the prior approval from the OWBO Program Analyst. Revisions that require an amendment include the prior approval items set forth in 2 CFR 200.308 and 200.407.

§ 131.630 Suspension, termination, and non-renewal.

(a) General. After entering into a cooperative agreement with a recipient organization, the AA/OWBO may take, as appropriate, any of the following enforcement actions based upon one or more of the circumstances set forth in paragraph (b) of this section:

(1) Suspension. (i) The AA/OWBO may suspend a cooperative agreement with a recipient organization at any point. The decision to suspend a cooperative agreement with a recipient organization is effective immediately as of the date of the notice of suspension. The period of suspension will begin on the date of the notice of suspension and will last no longer than six months. At the end of the period of suspension, or at any point during that period, the AA/OWBO will either reinstate the cooperative agreement or commence an action for termination or non-renewal.

(ii) The notice of suspension will recommend that the recipient organization cease work on the WBC project immediately. The AA/OWBO is under no obligation to reimburse any expenses incurred by a recipient organization while its cooperative agreement is under suspension. Where the AA/OWBO decides to lift a suspension and reinstate a recipient organization's cooperative agreement, the Agency may, at its discretion, choose to make funds available to reimburse a recipient organization for some or all of the expenses it incurred in furtherance of project objectives during the period of suspension. However, there is no guarantee that the Agency will elect to accept such expenses and recipient organizations incurring expenses while under suspension do so at their own risk.

(2) Termination. (i) The AA/OWBO may terminate a cooperative agreement with a recipient organization at any point. A decision to terminate a cooperative agreement is effective immediately as of the date of the notice of termination. A recipient organization may not incur further obligations under the cooperative agreement after the date of termination unless it has been expressly authorized to do so in the notice of termination.

(ii) Funds remaining under the cooperative agreement may be made available by the AA/OWBO to satisfy financial obligations properly incurred by the recipient organization prior to the date of termination. Award funds will not be available for obligations incurred subsequent to the effective date of termination unless expressly authorized under the notice of termination. A recipient organization that has had its cooperative agreement terminated will have 90 days to submit final closeout documents as instructed by the SBA.

(3) Non-renewal. (i) The AA/OWBO may elect not to renew a cooperative agreement with a recipient organization at any point. In undertaking a non-renewal action, the SBA may either decline to accept or consider any application for renewal the organization submits, or the agency may decline to exercise any option years remaining under the cooperative agreement. A recipient organization that has had its cooperative agreement non-renewed may continue to conduct project activities and incur allowable expenses until the end of the current budget period.

(ii) Funds remaining under a non-renewed cooperative agreement may be utilized to satisfy financial obligations the recipient organization properly incurred prior to the end of the budget period. Award funds will not be available for obligations incurred subsequent to the end of the current budget period. A recipient organization that has

had its cooperative agreement non-renewed will have until the end of the current budget period or 120 days, whichever is longer, to conclude its operations and submit closeout documents as instructed by the SBA.

(b) Material non-compliance. The AA/OWBO may suspend, terminate, or not renew a cooperative agreement, in whole or in part, with a recipient organization for material non-compliance (frequently referred to as for cause). Material non-compliance may include, but is not limited to, the following:

- (1) Non-performance;
- (2) Poor performance;
- (3) Unwillingness or inability to implement changes to improve performance;
- (4) Willful or material failure to comply with the terms and conditions of the cooperative agreement, including relevant Office of Management and Budget circulars;
- (5) Conduct reflecting a lack of business integrity or honesty on the part of the recipient organization, the WBC Program Director, or other significant employee(s), which has not been properly addressed;
- (6) A conflict of interest on the part of the recipient organization, the WBC Program Director, or other significant employees causing real or perceived detriment to a small business concern, a contractor, the WBC, or the SBA;
- (7) Improper management or use of Federal funds;
- (8) Failure of a WBC to consent to audits or examinations, or to maintain required documents or records;
- (9) Failure to implement recommendations from the audits or examinations within 30 days of their receipt;

(10) Failure of the WBC Program Director to work at the WBC on a 100 percent full-time basis on the WBC project;

(11) Failure to promptly suspend or terminate the employment of a WBC Program Director, or other significant employee, upon receipt of knowledge or written information by the recipient organization and/or the SBA indicating that such individual has engaged in conduct, which may result or has resulted in a criminal conviction or civil judgment which would cause the public to question the WBC's integrity. In making the decision to suspend or terminate such an employee, the recipient organization must consider such factors as the magnitude and repetitiveness of the harm caused and the remoteness in time of the behavior underlying any conviction or judgment;

(12) Failure to maintain adequate client service facilities or service hours;

(13) Fraud, waste, abuse, mismanagement or criminal activity on the part of the recipient organization and/or its staff/employees; or

(14) Any other action that the AA/OWBO believes materially and adversely affects the operation or integrity of a WBC or the WBC program.

(c) Procedures. The same procedures will apply regardless of whether a cooperative agreement with a recipient organization is being suspended, terminated, or non-renewed by the SBA.

(1) Taking action. When the AA/OWBO has reason to believe there is cause to suspend, terminate, or non-renew a cooperative agreement with a recipient organization (either based on its own knowledge or upon information provided to it by other parties), the AA/OWBO may undertake such an enforcement action by issuing a written notice of suspension, termination, or non-renewal to the recipient organization.

(2) Notice requirements. Each notice of suspension, termination, or non-renewal will set forth the specific facts and reasons for the AA/OWBO decision and will include reference to the appropriate legal authority. The notice will also advise the recipient organization that it has the right to request an administrative review of the decision to suspend, terminate, or non-renew its cooperative agreement in accordance with the procedures set forth in paragraph (d) of this section. The notice will be transmitted to the recipient organization on the same date it is issued by both U.S. Mail and facsimile or as an e-mail attachment.

(3) Relationship to government-wide suspension and debarment. A decision by the AA/OWBO to suspend, terminate, or non-renew a WBC cooperative agreement does not constitute a nonprocurement suspension or debarment of a recipient organization under Executive Order 12549 and SBA's implementing regulations (2 CFR part 2700). However, a decision by the AA/OWBO to undertake a suspension, termination, or non-renewal enforcement action with regard to a particular WBC cooperative agreement does not preclude or preempt the Agency from also taking action to suspend or debar a recipient organization for purposes of all Federal procurement and/or nonprocurement opportunities.

(d) Administrative review. Any recipient organization that has had its cooperative agreement suspended, terminated, or non-renewed has the right to request an administrative review of the AA/OWBO's enforcement action. Administrative review of WBC enforcement actions will be conducted by the AA/OED.

(1) Format. There is no prescribed format for a request for administrative review of an SBA enforcement action. While a recipient organization has the right to retain legal

counsel to represent its interests in connection with an administrative review, it is under no obligation to do so. Formal briefs and other technical forms of pleading are not required. However, a request for administrative review of an SBA enforcement action must be in writing, should be concise and logically arranged, and must at a minimum include the following information:

(i) Name and address of the recipient organization;

(ii) Identification of the relevant SBA office/program (i.e., OWBO/WBC Program);

(iii) Cooperative agreement number;

(iv) Copy of the notice of suspension, termination, or non-renewal;

(v) Statement regarding why the recipient organization believes the SBA's actions were arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with the law;

(vi) Identification of the specific relief being sought (e.g., lifting of the suspension);

(vii) Statement as to whether the recipient organization is requesting a hearing and, if so, the reasons why it believes a hearing is necessary; and

(viii) Copies of any documents or other evidence the recipient organization believes support its position.

(2) Service. Any recipient organization requesting administrative review of an SBA enforcement action must submit copies of its request (including any attachments) to all of the following parties:

(i) Associate Administrator for the Office of Entrepreneurial Development
U.S. Small Business Administration

(ii) Assistant Administrator for the Office of Women's Business Ownership
U.S. Small Business Administration

(iii) Associate General Counsel for Procurement Law
U.S. Small Business Administration

(e) Timeliness. (i) In order to be considered timely, the AA/OED must receive a recipient organization's request for administrative review within 30 days of the date of the notice of suspension, termination, or non-renewal. Any request for administrative review received by the AA/OED more than 30 days after the date of the notice of suspension, termination, or non-renewal will be considered untimely and will automatically be rejected without being considered.

(ii) In addition, if the AA/OED does not receive a request for administrative review within the 30-day deadline, then the decision by the AA/OWBO to suspend, terminate, or non-renew a recipient organization's cooperative agreement will automatically become the final Agency decision on the matter.

(f) Standard of review. In order to have the suspension, termination, or non-renewal of a cooperative agreement reversed on administrative review, a recipient organization must successfully demonstrate that the SBA enforcement action was arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with the law.

(g) Conduct of the proceeding. (1) Each party must serve the opposing party with copies of all requests, arguments, evidence, and any other filings it submits pursuant to

the administrative review. Within 30 days of the AA/OED receiving a request for administrative review, the AA/OED must also receive the SBA's arguments and evidence in defense of its decision to suspend, terminate, or non-renew a recipient organization's cooperative agreement. If the SBA fails to provide its arguments and evidence in a timely manner, the administrative review will be conducted solely on the basis of the information provided by the recipient organization.

(2) After receiving the SBA's response to the request for administrative review or the passage of the 30-day deadline for filing such a response, the AA/OED will take one or more of the following actions, as applicable:

(i) Notify the parties whether she/he has decided to grant a request for a hearing;

(ii) Direct the parties to submit further arguments and/or evidence on any issues which she/he believes require clarification; and/or

(iii) Notify the parties that she/he has declared the record to be closed and therefore she/he will refuse to admit any further evidence or argument.

(3) The AA/OED will only grant a request for a hearing if she/he concludes that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses. If the AA/OED grants a request for a hearing, she/he will set the time and place for the hearing, determine whether the hearing will be conducted in person or via telephone, and identify which witnesses will be permitted to give testimony.

(4) Within 10 calendar days of declaring the record to be closed, the AA/OED will provide all parties with a copy of her/his written decision on the merits of the administrative review.

(h) Evidence. The recipient organization and the SBA each have the right to submit whatever evidence they believe is relevant to the matter in dispute. No form of discovery will be permitted unless a party has made a substantial showing, based upon credible evidence and not mere allegation that the other party has acted in bad faith or engaged in improper behavior.

(i) Decision. (1) The decision of the AA/OED will be effective immediately as of the date it is issued. The decision of the AA/OED will represent the final Agency decision on all matters in dispute on administrative review. No further relief may be sought from or granted by the Agency. If the AA/OED determines that the SBA's decision to suspend, terminate, or non-renew a cooperative agreement was arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with the law, she/he will reverse the Agency's enforcement action and direct the SBA to reinstate the recipient organization's cooperative agreement.

(2) Where an enforcement action has been reversed on administrative review, the SBA will have no more than 10 calendar days to implement the AA/OED's decision. However, to the extent permitted under the applicable Office of Management and Budget circulars, the SBA reserves the right to impose such special conditions in the recipient organization's cooperative agreement as it deems necessary to protect the government's interests.

§ 131.640 Dispute procedures.

(a) Financial and Programmatic disputes. (1) A recipient organization wishing to resolve a dispute regarding a financial or programmatic matter other than suspension, termination, or non-renewal of its award must submit a written appeal petition describing

the subject of the dispute, along with any relevant documentation, to the Chairman of the grant appeals committee (the Committee).

(2) The appeal petition must be received by the Committee within 30 calendar days of the date of SBA's decision. A copy of the appeal petition must also be provided to the AA/OWBO.

(3) There is no prescribed format for the submission of an appeal petition. Formal briefs and other technical forms of pleading are not required, nor is the grantee required to obtain civil representation. However, the appeal petition must be in writing and must be concise, factual, and logically arranged. In addition, the appeal petition must contain the following:

- (i) Name and address of organization;
- (ii) Name and address of the appropriate local SBA district office;
- (iii) Identification of the appropriate SBA program office and the award number;
- (iv) A statement of the material which are substantially in dispute;
- (v) Copies of any documents or other evidence supporting the appeal;
- (vi) A request for the specific relief desired on appeal: and
- (vii) A statement as to whether an oral hearing is being requested and, if so, the reason for the hearing.

(4) The Committee will first rule on a request for an oral hearing before proceeding to consider the merits of an appeal petition. Within 60 calendar days of receiving the appeal petition, the Committee will present its decision in writing to the recipient organization and the AA/OWBO. The Committee's ruling will represent the

final Agency decision on the subject of the dispute and will not be further appealable within SBA.

(5) Requests for an appeal before the Committee will not be granted unless the Agency determines there are substantial material facts in dispute.

(6) The Committee may request additional information or documentation from the recipient organization at any stage in the proceedings. The recipient organization's response to the Committee's request for additional information or documentation must be submitted, in writing, to the Committee within 15 calendar days of receipt of the request. In the event that the recipient organization fails to follow the procedures specified in paragraph (a)(3) of this section, the Committee may dismiss the appeal by a written order.

(7) If a request for an appeal is granted, the Committee will provide the recipient organization with written instructions and will afford the parties an opportunity to present their positions to the Committee in writing.

(8) The chairperson of the Committee, with advice from the SBA's Office of General Counsel, will issue a final written decision within 30 calendar days of receipt of all information or inform the recipient organization that additional time to issue a decision is necessary. A copy of the decision will be transmitted to the recipient organization, with copies to the AA/OWBO.

(9) At any time within 120 days of the end of the budget period, the recipient organization may submit a written request to use an expedited dispute appeal process. The Committee, by an affirmative vote of a majority of its total membership, may expedite the appeals process to attain final resolution of a dispute before the issuance date of a new cooperative agreement.

(b) [Reserved]

§ 131.650 Closeout procedures.

(a) General. Closeout procedures are used to ensure that the WBC program funds and property acquired or developed under the WBC cooperative agreement are fully reconciled and transferred seamlessly between the recipient organization and other Federal programs. The responsibility of conducting closeout procedures is vested with the recipient organization whose cooperative agreement is being relinquished, terminated, non-renewed, or suspended.

(b) Responsibilities—(1) Recipient organizations. When a WBC cooperative agreement is not being renewed or a WBC is terminated, regardless of cause, the recipient organization will address the following in its closeout process and perform the necessary inventories and reconciliations prior to submitting the final annual financial report.

(i) An inventory of WBC property must be compiled, evaluated, and all property and the aggregate of usable supplies and materials accounted for in this inventory.

(ii) Program income balances will be reconciled and unused WBC program income which is not used as match or cannot otherwise be used to offset legitimate expenditures of the WBC must be returned to the SBA.

(iii) Client records, paper and electronic, will be compiled to facilitate an SBA program closeout review.

(iv) Financial records will be compiled to facilitate a closeout of the SBA financial examination.

(2) SBA. Upon receipt of the final annual financial report from a non-renewing or terminated recipient organization, the AA/OWBO will issue disposition instructions to the former recipient organization.

(c) Final disposition. (1) The final financial status report from the recipient organization must include the information identified in the inventory process and identify any WBC program income collected for services provided.

(2) The AA/OWBO will issue written disposition instructions to the recipient organization providing the following:

(i) The name and address of the entity or agency to which property and program income must be transferred;

(ii) The date by which the transfer must be completed;

(iii) Actions to be taken regarding property and WBC program income;

(iv) Actions to be taken regarding WBC program records such as client and training files; and

(v) Authorization to incur costs for accomplishing the transfer. Such costs may, when authorized, be applied to residual WBC program income or Federal or matching funds.

Christopher M. Pilkerton

Acting Administrator

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