

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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: Notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is seeking comments on this Notice of Proposed Rulemaking (NPRM) regarding the Women's Business Center (WBC) Program. An Advance Notice of Proposed Rulemaking (ANPRM) was published on April 22, 2015, which received eight comments. This NPRM is being issued to continue the consultative process with stakeholders to examine the proposed WBC regulations. This NPRM also proposes to codify policy and procedural changes that have been included in the Notice of Award, such as language on risk determination as required by, limitations on carryovers, who is considered key personnel and a reduction in the reporting requirements. Implementing these regulations will result in standardization and transparency to the delivery of the WBC Program.

DATES: Comments must be received on or before January 23, 2017.

ADDRESSES: You may submit comments, identified by RIN 3245-AG02, by one of the following methods:

(1) *Federal Rulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments;

(2) *Mail/Hand Delivery/Courier:* U.S. Small Business Administration, Attn: Bruce Purdy, Deputy Assistant Administrator for the Office of Women's Business Ownership (DAA/OWBO), 409 3rd Street SW., Washington, DC 20416;

(3) *Facsimile:* (202) 481-0554; or

(4) *Email:* owbo@sba.gov.

The SBA will post all comments on www.regulations.gov. If you wish to

submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, you must submit such information to the U.S. Small Business Administration, Attn: Bruce Purdy, Deputy Assistant Administrator for the Office of Women's Business Ownership (DAA/OWBO), 409 3rd Street SW., Washington, DC 20416, or via facsimile to (202) 481-0554, or submit them via email to owbo@sba.gov. Highlight the information that you consider to be CBI and explain why you believe the SBA should hold this information as confidential. The SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Sheila Williams, Lead Program Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, telephone number (202) 205-7285 or Sheila.Williams@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory

The Women's Business Center (WBC) Program was created under the authority of Title II of the Women's Business Ownership Act of 1988 (Pub. L. 100-533). The WBC Program authority is now codified in section 29 of the Small Business Act (the 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 Women's Business Center Program has changed through a number of public laws that have turned the WBC Program from a Demonstration Training Program into a permanent program. The laws that have impacted the WBC Program include: The Women's Business Development Act of 1991 (Pub. L. 102-191); The Women's Business Centers

Sustainability Act of 1999 (Pub. L. 106-165); U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Pub. L. 110-28); and, The Small Business Jobs Act of 2010 (Pub. L. 111-240).

Section 29 of the Act, 15 U.S.C. 656, authorizes the SBA to provide financial assistance to private nonprofit organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The Act further authorizes SBA to renew a grant for additional 3-year periods and provides that there are no limitations on the number of times a grant may be renewed.

B. History

On April 22, 2015, the SBA published an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comments on the interpretations of statutory language, including "distinct population that would otherwise not be served," "whose services are targeted to women" and "full-time program director or program manager to manage the program" (80 FR 22434). The SBA also requested comments on how to define what is acceptable for activities that fall under "in-kind," what guidelines grantees should use in determining reasonable costs associated with in-kind activities, acceptable guidelines for documenting in-kind match, selection criteria used in deciding whether to award an initial WBC grant, guidelines SBA should use in evaluating "the experience of the Applicant Organization" and "the proposed location for the women's business center," and what an appropriate "minimum amount of time" would be to commence operating as a women's business center following receipt of an award. Comments from the ANPRM have been considered in the drafting of these proposed regulations.

Currently, there are over 100 nonprofit entities that participate in the WBC Program and provide services as described in the Act. These participants are known as SBA Women's Business Centers (WBCs) and receive annual Federal funding limited by the authority of the Act and subject to the appropriations of Congress and the nonprofit's ability to provide the required Matching Funds.

Through its authority, the SBA's Office of Women's Business Ownership

oversees the WBC Program and the portfolio of WBCs that participate in the WBC Program. Since 1988, the number of participating WBCs has grown along with the number of women entrepreneurs assisted by these centers. The SBA has managed the performance and compliance of the WBCs through Cooperative Agreements with each individual nonprofit entity that hosts a WBC project, through regular reporting and programmatic and financial examinations of each WBC.

II. Proposal

The proposed rule would incorporate the SBA's oversight of the WBC Program into regulations in a new Part 131 of the SBA's regulations by: (A) Creating standard definitions for the program (13 CFR 131.110); (B) incorporating program-participation requirements and application procedures (13 CFR 131.300, 13 CFR 131.400); (C) incorporating financial-management and grant-administration requirements (13 CFR 131.500); (D) incorporating reporting requirements (13 CFR 131.600); (E) incorporating oversight and programmatic and financial-examination provisions (13 CFR 131.700 and 13 CFR 131.720); (F) incorporating procedures for Dispute resolution (13 CFR 131.840), and suspension, termination and non-renewal of a grant (13 CFR 131.830); and G) privacy requirements (13 CFR 131.900).

III. Section-by-Section Analysis

131.100 Introduction

The WBC Program was created under the authority of Title II of the Women's Business Ownership Act of 1988 (Pub. L. 100-533) 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. Since its creation, the WBC Program has changed through a number of public laws that have turned the WBC Program from a Demonstration Training Program into a permanent program. The 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 existing businesses.

Over the last several years, the SBA has incorporated processes to monitor the WBC Program, including conducting financial examinations required by statute. The SBA proposes to implement this rule to incorporate its oversight of the WBC Program into regulations to ensure consistency in application and

provide transparency for applicants and participants.

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.

Through the ANPRM, commenters raised concerns on whether Distinct Populations were limited to Socially and Economically Disadvantaged populations. Under this proposed rule, definitions are provided for Distinct Population and Socially and Disadvantaged populations. Under the statute, 15 U.S.C. 656, a representative portion of clients should be Socially and or Economically Disadvantaged women. However, WBCs are expected to serve all women entrepreneurs and not just those that are Socially and Economically Disadvantaged.

131.200 Eligible Entities

This proposed section codifies the types of organizations that are eligible by statute to participate in the WBC Program and those organizations that are prohibited from participating in the program. Section 29 of the Act, 15 U.S.C. 656, identifies eligible entities as private nonprofit organizations that are described in section 501(c) of title 26 and exempt from taxation under section 501(a) of that title.

131.300 Women's Business Centers (WBCs)

This section describes how SBA proposes to provide financial assistance to private nonprofit organizations to conduct projects for the benefit of small business concerns owned and controlled by women, as authorized in 15 U.S.C. 656. In addition, under 15 U.S.C. 656(5), the SBA may renew a grant for an additional 3-year period, if the nonprofit organization submits an Application for such renewal at such time, in such manner, and accompanied by such information as the SBA establishes. This section describes the SBA's proposed process for renewal applicants to continue in the WBC Program.

131.310 Operating Requirements

This proposed section codifies the statutory requirement at 15 U.S.C. 656, on the process by which the SBA must issue Notices of Award, which outline the terms and conditions of the awards to the WBC Recipient Organizations. To ensure that the Recipient Organization

maintains clear and separate functions from the WBC, as stated in the Cooperative Agreement, this rule proposes to require that the Recipient Organization manage the WBC Program as a separate entity within its organization, consistent with 2 CFR part 303, Internal Controls.

Historically, Women's Business Centers that have established partnerships in the community in conjunction with an advisory board have had less difficulty working within the community and meeting the match requirements of the program. This section proposes to require that each WBC establish an advisory board that will confer with and provide recommendations to the WBC Program Director on matters pertaining to the operation of the WBC and assist the WBC in raising Matching Funds.

This section also provides a proposed description of WBC facilities and administrative infrastructure requirements, including the requirement that the facility comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These requirements serve to ensure that the WBC has the capacity to deliver the Counseling (including space to provide one-to-one Counseling that will ensure client privacy), Training and other services outlined in its statement of work.

In the past, the SBA has found that some WBCs do not clearly reference that they are Women's Business Centers, with an emphasis on providing services to prospective or existing women entrepreneurs. Therefore, the SBA is proposing that any new WBC accepted into the WBC Program after the effective date of the rule be required to include the specific identification "WBC" as part of its official name. The SBA is further proposing that all other WBCs prominently include on their Web sites and promotional documents that the "Women's Business Center is funded in part by the U.S. Small Business Administration". This transparency would ensure that WBCs are clearly discernable and are easily recognized by women attempting to contact organizations for business services focused on women.

Historically, WBCs with insufficient staff have been identified as more likely to face difficulties in providing services at an adequate level as outlined in their statements of work. The SBA also has concerns related to the inability for a WBC to grow or expand services when the WBC is not properly staffed. To ensure maximum productivity of a WBC, this rule proposes to require that

the WBC include at least a Full-time WBC Program Director and at least one other staff person, preferably a business counselor.

131.320 Area of Service

This section proposes to require WBCs to identify their geographic service area(s) as part of the application process. Currently, many WBCs do not clearly define their proposed geographic service areas; rather, they indicate that services will be provided for an entire state. Historically, this has caused some confusion, as some WBCs include service areas where an existing SBA-funded WBC is already providing services. This is especially true in states where there is more than one WBC and more than one Recipient Organization. Under this proposed rule, SBA plans to define, in writing, the geographic area for each Recipient Organization funded under the WBC Program. WBCs would also be required to submit a written request to change a geographic service area so as to ensure that no two WBCs are awarded WBC Project Funds to provide services in the same area while some areas remain underserved. To that end, this rule proposes that Applicant Organizations submitting new WBC projects within proximity of an existing WBC include a justification of need, including a discussion of the population density, submitted in its proposal. The SBA is seeking comment on how to best define proximity.

131.330 WBC Services and Restrictions on Services

This proposed section lists the required services that Women's Business Centers must provide to participate in the WBC Program. Consistent with the statute, 15 U.S.C. 656, the Office of Women's Business Ownership requires in its program announcement(s) that Women's Business Centers provide Training and Counseling services to women, as well as services that will assist their businesses in securing business credit and investment capital. In accordance with this requirement, WBCs assist women business owners in identifying available funds from lenders, the SBA and other resources. These resources include collaboration with state, local and federal government agencies and assisting its clients pursue designation as women-owned, small businesses. This section also names the proposed services that a WBC can provide to assist a women business owner access capital. To assist with delivery of its access to capital services, the WBCs rely on programs provided by other agencies. These programs include, but are not

limited to, use of the FDIC Smart Money Curriculum, Census Bureau data tools, and the SBA's Microloan Program. Further, many of the WBC host organizations are microlenders and work with other lenders in the community.

Historically, (see links below) men have started their businesses with significantly more capital than women, and women's access to capital remains an obstacle to women growing their businesses. This has been included in reports by the U.S. Department of Commerce and the National Women's Business Council included here. <http://www.esa.doc.gov/sites/default/files/women-owned-businesses.pdf>, <https://www.sba.gov/sites/default/files/files/Gender%20Differences%20in%20Startup%20Financings.pdf>. OWBO will monitor the WBCs support of capital access services through the review of WBC reporting, as described in Section 131.600 of this proposed rule. Under 15 U.S.C. 656 (B)(1), the SBA is authorized to provide financial assistance to private nonprofit organizations to conduct projects for the benefit of small-business concerns owned and controlled by women. The services provided under these projects can include Training and Counseling on how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern. Given this authorization, this rule proposes to require WBCs to provide specific services related to access to capital for women entrepreneurs as authorized in 15 U.S.C. 656. The SBA further proposes to provide guidance concerning the provision of access to capital services in this section.

Given the SBA's involvement in disaster-relief assistance and the WBCs' participation in addressing the business needs in communities impacted by catastrophes, the SBA is also proposing to include a section on Specialized Services.

131.340 Specific WBC Program Responsibilities

This proposed section outlines the role of the Assistant Administrator/OWBO, as defined in 15 U.S.C. 656. This rule also proposes to explicitly define the roles of the WBC Program Director and Principal Investigator of the Recipient Organization. Additionally, under this proposed rule, the SBA clearly defines the tasks and responsibilities for the WBC Program Director, as the Full-time Key Employee for the WBC, as those completed solely for the WBC project.

131.350 Selection and Retention of the WBC Program Director

This section outlines the proposed competencies for the WBC Program Director, as well as the process the WBC must undertake if the position is vacant. The WBC Program Director, considered by the Agency as the key position for the WBC project, is responsible for managing the day-to-day operation of the WBC. Responsibilities related to the overall management of the WBC may include providing direct services (*i.e.*, Counseling and Training), marketing the program and ensuring program compliance. To ensure effective management of the WBC project, this rule proposes core competencies for the WBC Program Director position and proposes rules for the Interim Program Directors when the Program Director position is vacant.

131.400 Application Procedure

This section outlines the proposed grant application submission process for new and existing WBC Applicant Organizations to participate in the WBC Program. It also identifies proposed general selection criteria. In the ANPRM, comments were received that suggest the SBA should not use geography to help determine the location of a WBC and that proximity to another WBC is not a disqualifier. The SBA follows statutory guidance that individual Applicant Organizations reach a Distinct Population that would not be otherwise served. The Agency proposes Applicant Organizations within proximity of an existing WBC provide a justification for the need of an additional WBC within that area including information about the population density. This helps to ensure that the WBC Program is serving the maximum number of clients with as much coverage as possible, while meeting the statutory requirement of reaching a Distinct Population that would otherwise not be served. This section also outlines the proposed criteria that SBA will use to determine a WBC's level of risk, consistent with 2 CFR part 200, subpart C.

131.410 New Applications

This proposed section codifies the Agency's statutory authority at 15 U.S.C. 656 (B)(1), to use unawarded amounts to fund new Women's Business Centers. This section outlines the process proposed by the SBA to fund new WBCs.

131.420 Renewal Applications

This proposed section proposes to codify the Agency's statutory authority at U.S.C. Code 656 (2), to fund

organizations seeking the renewal of grant awards under the WBC Program. This proposed rule also lists the application criteria and process for existing participants requesting to renew a grant award under the WBC Program.

131.430 Application Decisions

This section outlines the proposed conditions for approval or rejection of an Application for the WBC Program, as authorized by 15 U.S.C. 656 (3)(C). This section also proposes the appeal process WBCs can complete if a renewal application is rejected, as outlined in Section 131.840.

131.500 Grant Administration and Cost Principles

This proposed section codifies the Agency's statutory authority at 15 U.S.C. 656 to fund projects following grant administration guidance under 2 CFR part 200—Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

131.510 Maximum Grant

This proposed section codifies the Agency's statutory requirement that no individual WBC project receive funds in excess of the amount authorized by statute. This rule proposes to include this section to clarify that while an individual WBC project cannot exceed the statutory limit, a Recipient Organization is not limited from establishing multiple WBC projects so long as the projects are distinct from each other and are serving Distinct Populations that would not otherwise be served. A Recipient Organization seeking additional funding for a new project shall follow the Application process, as defined in section 131.400 of this proposed rule for new Applications.

131.520 Carryover of Federal Funds

This proposed section outlines the requirements for the use of Carryover Funds and proposes to limit the number of Carryovers to prevent a WBC from creating a cycle of dependency on Carryover funding. Historically, a significant number of WBCs have consistently requested Carryover of funds. A Carryover of funds generally occurs when a WBC does not fully spend the Federal funds or the Matching Funds as requested and approved in the WBC's budget. This Carryover results in a Recipient Organization having both the Carryover Funds and Option Year funding running concurrently, both of which require Matching Funds. When the Carryover is granted, the Recipient Organization has the responsibility of raising Matching Funds for the

Carryover Funds, if not already matched, as well as Option Year funding. This often creates a cycle in which the Recipient Organization will match and spend the Carryover funding, but is then not able to spend the current year funding, thus creating a situation where it must request Carryover funding the following year. While there is never a penalty to requesting less funding, Carryover funding represents an underutilization of the Federal funds provided. The rule proposes to limit Carryover of Federal funds to those WBCs in the first or second year of an initial phase grant.

WBCs in an initial phase of funding may have fewer expenses in the first year as the WBC is establishing itself. However, the WBCs may need additional resources as the programming offered grows. Permitting new WBCs the flexibility to carry over funds during the first two years of participating in the WBC Program ensures that the SBA is utilizing WBC funding efficiently. If a WBC in the initial phase requests a Carryover for both of the first two years, SBA proposes to reduce the funding in the third year by the amount of the second year Carryover to eliminate the cycle of Carryover funding.

131.530 Matching Funds

This proposed section codifies the statutory requirement at 15 U.S.C. 656 for a Recipient Organization to provide Matching Funds equal to half of the Federal amount of the SBA funding for the first two years of its initial award. For the remainder of the time the Recipient Organization participates in the WBC Program, it must provide match of one dollar for every one Federal dollar of its annual Federal award amount, as prescribed in the statute, 15 U.S.C. 656. This rule proposes language which clarifies the process of documenting the match funds and also identifies types of funding that cannot be used as match, such as other Federal funding.

Section 200.306 of Title 2 requires any funds used to match the Federal grant, to be verifiable from the Non-Federal Entity's records. The WBC Program requires a 1 to 1 match for WBCs that have been in the WBC Program for more than two years. A 2 to 1 match (for every two dollars of Federal funds used, 1 dollar of Matching Funds) is required for WBCs in the first two years of the WBC Program). In other words, the statute requires a 2:1 (Federal to non-Federal dollars) match for the first year; 2:1 match for the second year; 1:1 match for the third year; 1:1 match for the fourth year; and a 1:1 match for

the fifth year. WBCs can provide Overmatch if they choose to do so; however, if they have used Federal funds to raise match above the required amount, these funds must be used to meet the Federal objective of the WBC Program and must be verifiable. This does not prohibit the Recipient Organization from raising funds separate and apart from the WBC Program. Those funds that are not used as match and are not raised with WBC funds are not subject to the same recordkeeping requirements, as they are not tied to the WBC Program.

131.540 Program Income and Fees

Consistent with 2 CFR 200.307, Recipient Organizations are allowed to charge clients fees for WBC Program services and use the income to defray the costs of delivering the objectives of the grant. This rule proposes to codify that WBCs may charge fees for services provided to their clients. This rule also proposes to identify the type of activities for which the WBC can charge fees and allows WBCs to use the fee income to be counted towards the cash portion of Matching Funds required under section 131.530 of this proposed rule. Historically, WBCs have often collected fees for Training classes to cover the cost of materials and supplies affiliated with providing a Training session or fees when helping clients complete a loan package. Some WBCs have also used a membership model that includes fees. Over the past several years, many WBCs have been exploring ways to charge fees for Counseling in order to ensure that clients commit to participation for a Counseling session. This rule proposes to allow WBCs to charge a retainer fee for Counseling services; however, such fees must not restrict access to any services for economically disadvantaged entrepreneurs.

131.550 Budget Justification

Consistent with 2 CFR part 200, subpart E, Recipient Organizations must follow the cost principles when completing and submitting a budget along with an Application or Annual Work Plan. The budget must include justification for the expenses. This section clarifies several specific cost categories, including Indirect Cost rates and audit expenses. This rule proposes to include guidance on salaries and travel. Under the cost principle section, all costs must be reasonable. Salaries vary by state and region and position. Using a reasonableness standard, SBA proposes that salaries for WBC staff be comparable to similar positions within similarly sized programs in other states

or regions. For travel, reasonableness should be justified in terms of the benefit to the small business community that the WBC is serving. The proposed requirements are consistent with standard cost principles and serve to provide clarity to the Applicant or Recipient Organization. See § 131.600 Reports for details.

131.560 Restricted and Prohibited Costs

Consistent with 2 CFR part 200, subpart E, Recipient Organizations must not use Federal funds or Matching Funds to pay for certain items that are prohibited. This rule proposes language that establishes what costs are considered prohibited. For example, there have been instances in which WBCs have requested the use of WBC Project Funds as collateral for loans. Because this would bind the Federal dollars for a purpose other than delivering the WBC project, the viability of the WBC could be jeopardized. Recipient Organizations have also inquired about using Project Funds to purchase items that could be viewed either as promotional materials, marketing materials, or gifts. Although marketing/advertising the WBC Program is considered an allowable cost under 2 CFR 200.421, certain types of materials are considered gifts for individual use and are not broad-based marketing materials that will reach the population that the women's business center serves.

131.570 Payments and Reimbursements

This proposed section codifies the Agency's statutory authority at 15 U.S.C. 656, to provide payments in lump sum or installments, and in advance or by way of reimbursement to Recipient Organizations. The Agency may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after the Notice of Award has been issued and before the non-Federal Matching Funds are obtained. This rule proposes payments be disbursed as quarterly advances for the first three quarters and on a reimbursement basis for the final quarter, except in cases where a Recipient Organization has not demonstrated its ability to obtain match or has not provided adequate information to demonstrate the use of the Project Funds. On a case-by-case basis, the Agency may determine that a Recipient Organization has not fully complied with the terms of the grant, in which case payments may be made by reimbursement.

131.600 Reports

This section proposes a list of the types of reports required to be submitted and the frequency of submission of the reports. This rule proposes using semi-annual reporting of programmatic and financial reports, and quarterly reporting of Counseling and Training data. In instances where the Agency may have reasons to believe that a Recipient Organization poses a higher risk of non-performance or non-compliance, the Agency will include any additional requirements to report quarterly in the annual Notice of Award. Consistent with 2 CFR part 200, subpart C, the Agency is required to assess the risk level of each WBC or WBC Applicant Organization prior to making an award. Section 131.400 of this rule proposes the risk assessment criteria the Agency will use for WBC awards. This rule also proposes to require Recipient Organizations to submit client activity reports, including Counseling and Training Records. These reports are submitted electronically and allow the Agency to monitor and report on WBC Program performance for each Recipient Organization and the WBC Program as a whole. The information also enables the Agency, in a streamlined process, to conduct detailed WBC Program evaluations, assess program management and performance, and conduct performance monitoring and program-outcome reporting. Performance reports should be consistent with the budget justification that is submitted as part of the application process or Annual Work Plan submission.

131.700 Oversight of the WBC Program

This proposed section codifies the statutory requirement at 15 U.S.C. 656 for the Agency to conduct annual programmatic and financial examinations of each WBC. Currently, to satisfy these requirements, the Agency utilizes reports submitted by the WBCs, reports submitted by the SBA District Office staff, programmatic site visits, and financial examinations. This combination of oversight allows the Agency to effectively monitor the WBC portfolio without requiring WBCs to submit all of the documentation for the program. Additionally, the Agency has also recently changed the frequency of the reporting schedule outlined in 131.600 to minimize the burden on WBCs that are effectively delivering the program.

131.710 SBA Review Authority

This section of the rule proposes how the SBA will monitor program

performance consistent with 2 CFR 200.328.

131.720 Audits, Examinations and Investigations

This section proposes to require new Women's Business Centers participating in the Women's Business Center Program for the first time to have post-award financial examinations conducted by Agency staff or designee(s). Many new initial Recipient Organizations have never received Federal funds and may never have been required to meet Federal financial management standards. As part of the proposed post-award examination process, the examiner would determine the adequacy of the WBC's financial management system and make recommendations for improvement, if needed. The Agency anticipates that the examinations and recommendations will assist the WBC in avoiding financial findings and/or recoupment during future financial examinations or audits.

In addition to the post-award examination, this section outlines the SBA's proposed requirement, consistent with the statute 15 U.S.C. 656, that all other WBCs receive comprehensive financial examinations, as scheduled by the SBA's Financial Examination Unit. The proposed process for complying with this requirement is outlined in this section.

131.800 Cooperative Agreements and Contracts

This proposed section codifies the statutory requirement at 15 U.S.C. 656 for the Agency to provide financial assistance to Recipient Organizations in the form of grants, contract, or Cooperative Agreement. Currently, a Cooperative Agreement serves as the vehicle to provide the financial assistance to the Recipient Organization to establish and maintain a WBC. The Cooperative Agreement is signed annually and contains the amount of Federal funding, a negotiated budget and agreed-upon performance milestones. The Cooperative Agreement contains the terms and conditions of the award and identifies any special considerations, including the annual determination of risk level. This rule proposes to require SBA District Offices to negotiate the annual performance goals with each Recipient Organization. SBA District Offices have a better understanding of local and regional economic conditions and the needs of women entrepreneurs, and can therefore make a better informed determination of the appropriate performance milestones with Recipient Organizations in their

respective districts. In addition, this section proposes specific requirements when WBCs use Federal funds to contract for goods and services. This is to ensure WBCs do not supersede the contracting limits and thereby, in effect, change the grant to a pass-through grant.

It is the Agency's policy that contracting out more than 49 percent of a grant (except in certain circumstances) constitutes a subgrant. Consistent with this policy, this rule proposes that the WBC not expend more than 49 percent of its total Project Funds on contractors and consultants.

131.810 Other Federal Grants

This proposed section codifies the statutory requirement at 15 U.S.C. 656(d) to allow a WBC to enter into a contract with other Federal departments or agencies to provide specific assistance to women entrepreneurs. With the exception of Community Development Block Grants (CDBG), grants received from other Federal entities may not be used as Matching Funds for the WBC grant. CDBG statutory language allows CDBG funds to be used as Matching Funds to other Federal programs. The CDBG regulations at 24 CFR 570.201(g) further elaborate on this eligibility criterion. On occasion, the Agency may provide additional assistance to a WBC through programs such as the Recovery Improvements for Small Entities (RISE) After Disaster Act. These funds are separate from the regular WBC grants but are provided to WBCs to spur disaster recovery.

131.820 Revisions and Amendments to Cooperative Agreements

Consistent with 2 CFR part 200, subpart D, Post Federal Award Requirements, Recipient Organizations are required to report deviations from budget or project scope or objective, and request Prior Approvals from Federal awarding agencies for budget and WBC Program plan revisions. This proposed rule outlines the common revisions that require Prior Approval by the Agency. These include changes in the staffing of the WBC Program Director, changes in project scope, program activity or location that could potentially alter the negotiated milestones in the Cooperative Agreement.

131.830 Suspension, Termination and Non-Renewal

Consistent with 2 CFR 200.338, the Agency may take action to suspend, terminate or non-renew a grant to a Recipient Organization for cause. This rule proposes the instances for which the Agency may take action, identifies

the administrative procedures for each action, and outlines the appeal rights for each action. This rule also proposes the process that the SBA will take when an action is reversed.

131.840 Dispute Resolution Procedures

Consistent with 2 CFR 200.341, the Agency currently provides opportunity for Recipient Organizations to Dispute financial and programmatic decisions of the Office of Women's Business Ownership. This rule proposes to codify the current Dispute procedures to provide an opportunity for a Recipient Organization to submit a written statement describing the subject of a Dispute and to submit an appeal if the Recipient Organization receives an unfavorable decision from the Agency.

131.850 Closeout Procedures

Consistent with 2 CFR 200.343, this rule proposes to codify the current process by which the Agency would close out a Federal award if it is determined that all applicable administrative actions and all required work of the Federal award have been completed by the Recipient Organization. These actions help to ensure that the final proper payment can be made to the Recipient Organization after completing a reconciliation of all accounts, including an inventory of property and usable supplies, WBC Program Income balances, and client and financial records. After receiving the final annual financial report to ensure proper final payments, the Agency would issue a final letter indicating that all financial and WBC Program issues are fully reconciled.

131.900 Ensuring Client Privacy

SBA proposes to codify the legislative requirements for WBCs and the Administration to protect the privacy of any individual or small business receiving assistance in the Program. Under this proposed rule, in accordance with Section 21(a)(7) of the Act, a WBC, including its contractors and other agents, is not permitted to disclose to an entity outside the individual WBC, the name, address, or telephone number, referred to as 'client contact data' of any individual or small business without the consent of such individual or small business with three exceptions.

This rule proposes to require WBCs to provide an opportunity for clients to opt in to allow the SBA to obtain their contact data. The rule would codify how the SBA could use the permitted client contact data only to conduct studies that help stakeholders better understand

how the services the client received affect their business outcomes over time. These studies would include, but not be limited to, program evaluation and performance management studies.

In the past, SBA District Offices may have used client contact data to solicit loan applications. The functions and goals of the District Offices have changed over the years. Today this type of solicitation is not a function of SBA District Offices and has not been in recent years. The agency will not allow use of client contact data for any other purpose beyond program studies.

This rule also proposes to prohibit the denial of services to clients solely based on a client's refusal to provide consent to use their contact data for study purposes. Section 21(a)(7)(C) of the Act directs the agency to publish standards for requiring disclosures of client information during a financial audit. This rule proposes to require other Federal or State agencies making such disclosure requests to submit formal requests including a justification for the need for individual client contact and/or program activity data for the Administrator's review on a case-by-case basis. Public comments on these proposed standards are encouraged.

This rule also proposes to codify the current privacy protections in place in the Program currently employed by the agency. Under this proposed rule, any reports on the Program produced by a WBC, including its contractors and other agents, and the agency, cannot disclose individual client information without consent from the client. Any such reports must only report activity data in the aggregate, unless given consent, so as to protect the individual privacy of clients.

IV. Comments Request

Readers are encouraged to review closely each section of the proposed rule in conjunction with current regulations to fully comprehend the extent of the rule and its changes. The SBA invites comment on all aspects of this proposed rule, including the underlying policies. Submitted comments will be available to any person or entity upon request.

Compliance With Executive Orders 12866, 13563, 12988, 13132, 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 proposed rule constitutes a "significant regulatory action" under Executive Order 12866.

This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

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 has used the Program Announcement and Notice of Award to incorporate statutory requirements to implement the WBC Program. The annual Program Announcement and Notice of Award have become, for all practical purposes, documents which interpret the statute. The SBA believes it is past time for regulations outlining guidance for the policies and procedures for the WBC Program. This regulation incorporates the changes required by the OMB circular published by OMB and other program changes that have taken place since the WBC Program was initially established. Additionally, the Association of Women's Business Centers has supported implementing regulations to streamline and standardize processes.

Further, the SBA received eight comments to the ANPRM that was published on April 22, 2015. All of the comments relevant to the WBC Program regulations were considered in the drafting of this proposed rule.

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

The WBC Program received \$17 million in Federal funds which it provided to over 100 Women's Business Centers in fiscal year 2016. The Grantees are required to supply a 1-to-1 match of those funds, except in the first two initial years in the program for which the match is 2 to 1 (Federal to match). The benefit of this requirement is that the Grantee is invested as much as the Federal government in making the WBC Program a success. The small businesses benefit from the no-cost or low-cost Counseling and Training. Specifically, in 2015, the WBC Program counseled 20,473 entrepreneurs; trained 120,030 entrepreneurs, created 771 new businesses and raised \$87,630,000 in capital infusion. Further, as stated above, the potential benefits of this proposed rule are based on incorporating all the changes that have occurred with the publication of 2 CFR part 200 and a streamlining of both the Program Announcement and the Notice of Award. The new regulations will provide additional clarification for the

Program Announcement(s) issued by the Office of Women's Business Ownership.

The costs to the SBA in making this revision are minimal, as most of the requirements of this rule are currently being followed. The estimated annual cost to the Federal government for oversight of these WBCs is currently provided for in the existing SBA infrastructure. Similarly, the costs to the grantees is also minimal as they, too, are following the requirements in this NPRM, which are currently included in their annual Cooperative Agreement. No additional direct costs are projected to be incurred by WBCs for oversight and related functions in this proposed rule.

3. What alternatives have been considered?

After publishing the ANPRM on April 22, 2015, 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. Another alternative would be to do nothing and continue to rely on grant documents to implement the WBC Program. Furthermore, the statute requires SBA to publish regulations in general and specifically in regards to the Privacy Act Requirements of the WBC Program. The Privacy Act Requirements are included in this regulation to satisfy that requirement.

Executive Order 13563

The ANPRM was published on April 22, 2015, (Docket Number 2015-09391) and eight comments were received. The comments varied greatly from specific to general and covered a wide variety of topics, from providing clearer definitions to streamlining procedures and identifying actions requiring Prior Approval from the SBA. The SBA reviewed all the comments and took them under consideration when revising these proposed regulations. Further, SBA held monthly conference calls with the grantees, discussing various current topics which included the proposed regulations. Additionally, the Office of Women's Business Ownership staff attends the annual Women's Business Center training conferences that include discussions of policy, procedures and the proposed regulations. A summary and disposition of the comments includes, but is not limited to, the following: (1) Training should be ongoing for Women's Business Centers. The Office of Women's Business Ownership has initiated ongoing training for Women's Business Centers through its monthly conference calls and one-on-one teleconference calls, as

requested; (2) The SBA should provide full funding to WBCs and not require fundraising. The funding levels and match requirements that are included are consistent with the statute, 15 U.S.C. 656; (3) The SBA data collection system must be upgraded. SBA is currently working to improve the system; (4) The regulation should provide a definition for Distinct Population. A definition is included in the proposed regulations; (5) Develop a repository of information that could be used by all of the WBCs, including templates, program updates and training materials. While, the Office of Women's Business Ownership did not include the requirement for a repository in these draft regulations, the office will work with women's organizations to develop information that will be available to all WBCs; (6) Provide a definition for in-kind services and do not limit the amount a volunteer can provide as in-kind activity. The draft regulations references 2 CFR 200.96 for the definition of in-kind. Also, the SBA does not limit the amount of In-kind Contributions from a service provider, but the amount of in-kind that can be used as match is limited and is consistent with the statute, 15 U.S.C. 656. Comments for the ANPRM can be located at: <https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=SBA-2015-0007>.

The SBA did not consult with any other agencies when drafting the proposed regulations as the Women's Business Center Program does not have any joint grants with other agencies.

Executive Order 12988

For the purposes of Executive Order 12988, Civil Justice Reform, the SBA has determined that this proposed 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 proposed regulations would provide for rights of appeal to the SBA's WBC Program participants in the event they are aggrieved by an Agency decision, thereby limiting the possibility of litigation by these entities. This proposed rule would not have retroactive or pre-emptive effect.

Executive Order 13132

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

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

When an agency promulgates a proposed rule, the Regulatory Flexibility Act requires the agency to prepare an initial regulatory flexibility analysis (IRFA), which describes the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule covers both the application process to become funded as a Women's Business Center and the on-going operations for currently funded WBCs. As the populations are different for the application process and the existing WBCs, the analysis is included for each.

This proposed 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 are over 269,000 entities that filed returns as a 501(c)(3). The NAICs codes that are most relevant to participate in the 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)(3) 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 5 years, there were a total of 133 new applications submitted for the WBC Program—averaging 25–35 applications per year. The SF 424 (Application for Federal Assistance) on *grants.gov* does not include a field for revenue size. Based on the majority of the entities being small, SBA can presume that the majority of the Applicant Organizations are also small. It is projected that a grants writer would take approximately 20 hours to complete and submit the required application forms through *grants.gov*. For a grants writer at an average of \$30-per hour, this would cost approximately \$600. These estimates are based on the burden statements associated with the *grants.gov* application forms and anecdotal information from Applicant Organizations to the WBC Program. Therefore, the SBA has determined that

the application section of the proposed rule would not have a significant impact on a substantial number of small entities.

There are currently 114 entities that participate in the WBC Program, all of which are small entities. However, the SBA has determined that the impact on these entities affected by the proposed rule will not be significant. The proposed rule codifies current policies and procedures that are already achieved through a Cooperative Agreement with the SBA. It does not include new reporting requirements. Rather it standardizes existing policies to ensure transparency and consistency which in theory will reduce the cost to both the WBC participants and SBA. A WBC participating in the WBC Program submits a Federal Financial Report and attachments twice a year. The estimated burden for these reports is 2 hours twice a year. The annual submission of a work plan is substantially less than the Application and is only to update any changes from the initial Application. The estimate for these forms on an annual basis is a total of 14 hours. For a grants writer at \$30 per hour, the annual estimated cost would be \$420. Accordingly, the Administrator of the SBA hereby certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

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

SBA has determined that this proposed rule would not impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. Currently, there are eight Paperwork Reduction Act submissions 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 (641 and 888 forms); (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 the proposed 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 set forth above, SBA proposes to add 13 CFR part 131 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 | Application Procedures. |
| 131.410 | New Applications. |
| 131.420 | Renewal Applications. |
| 131.430 | Application Decisions. |
| 131.500 | Grant Administration and Cost Principles. |
| 131.510 | Maximum Grant. |
| 131.520 | Carryover of Federal Funds. |
| 131.530 | Matching Funds. |
| 131.540 | Program Income and Fees. |
| 131.550 | Budget Justification. |
| 131.560 | Restricted and Prohibited Costs. |
| 131.570 | Payments and Reimbursements. |
| 131.600 | Reports. |
| 131.700 | Oversight of the WBC Program. |
| 131.710 | SBA Review Authority. |
| 131.720 | Audits, Examinations and Investigations. |
| 131.800 | Cooperative Agreement and Contracts. |
| 131.810 | Other Federal Grants. |
| 131.820 | Revisions and Amendments to Cooperative Agreements. |
| 131.830 | Suspension, Termination and Non-renewal. |
| 131.840 | Dispute Procedures. |
| 131.850 | Closeout Procedures. |
| 131.900 | Ensuring Client Privacy. |

Authority: 15 U.S.C. 656.

§ 131.100 Introduction.

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 existing businesses.

SBA, through the Office of Women's Business Ownership (OWBO) is responsible for the general management and oversight of the Women's Business Center Program (WBC program). 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 other technical assistance, to women entrepreneurs, both nascent and established businesses, a representative number of whom are socially and economically disadvantaged. By providing a wide variety of training curriculum and counseling expertise through Women's Business Centers (WBCs), the SBA meets the needs of the individual client in the local marketplace.

§ 131.110 Definitions.

Advisory board. A group established to confer with and provide recommendations to the Women's Business Center 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 Women's Business Center.

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

Assistant Administrator of 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.

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 the WBC.

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

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

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.

Counseling record. A record that provides individual client contact information, demographics about the client/business and data on the counseling provided.

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 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 and require assistance from a resource partner or SBA district office personnel in 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.

District office technical representative. An SBA employee located within an SBA district office and designated by the SBA to provide local oversight and monitoring of a particular WBC or WBCs.

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 that resolves appeals arising from disputes between a recipient organization and the SBA.

Grants management specialist. An SBA employee within Office of Women's Business Ownership 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 for no more than 60 days to fulfill the responsibilities of a vacant WBC Program Director position.

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 short-term, fixed-interest rate loan of not more than \$50,000 made by an Intermediary to an eligible small business. The SBA manages a Microloan Program that focuses on reaching socially and economically disadvantaged entrepreneurs. See 13 CFR 120, Subpart G—Microloan Program.

Non-federal entity. An organization, as defined in 2 CFR 200.

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

Notice of award. See cooperative agreement.

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.

Office of Women's Business Ownership Grants Management Officer. An SBA employee within the Office of Women's Business Ownership with authority delegated by the AA/Office of Women's Business Ownership, who meets Office of Management and Budget standards and certifications to obligate Federal funds by signing the notice of award.

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

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 the 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 to in its new 5-year initial or 3-year renewal application.

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

Project funds. All funds authorized under the cooperative agreement including, Federal funds and non-Federal cash, third-party in-kind contributions (third party) and program income, as well as the Federal funds and 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 the recipient organization's 5-year or 3-year project.

Recipient organization. The selected applicant organization that receives Federal funding to deliver WBC services under a cooperative agreement. By

statute, only private, nonprofit organizations certified under § 501c of the Internal Revenue Code of 1986 can be recipient organizations.

Socially and economically disadvantaged women. 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. 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.

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

State or U.S. Territory. For the purpose of these regulations, State or U.S. Territory will mean 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.

Training record. A record that provides aggregate data about a training event to include training topic, date, attendance, program format and evaluation of the training.

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

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-owned businesses. Business concern that is not less than 51 percent owned by 1 or more women and the management and daily operations are controlled by 1 or more women.

§ 131.200 Eligible Entities.

(a) **Eligible Organizations.** By statute, only a nonprofit organization with active 501c certification from the United States Department of 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;

(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; and,

(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 an annual program announcement each fiscal year to fund those recipient organizations already operating successful WBC projects. This program announcement will detail the goals, objectives and other terms and conditions for renewable projects entering a three-year 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) By April 30, of 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) SBA's WBC program that will have successfully completed year 1, 2, 3, or 4 of an initial project, or year 1 or 2 of a renewal project by September 29th. In order to be considered for renewal, submissions for option year work plans and budget must be received in the Office of Women's Business Ownership by the timeline 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 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) Collaborating with the local SBA district office to develop annual goals for the WBC project;

(2) Receiving written concurrence from the SBA district office staff for inclusion in the application submission;

(3) Developing data and analyses to design the WBC services needed by the

small business community, with focus on women and women-owned businesses;

(4) Proposing services and the appropriate structure to deliver those services to meet the needs of the small business community, specifically targeting women, including a representative number of women whom are socially and economically disadvantaged;

(5) Ensuring that adequate technical and managerial resources are proposed for the WBC to achieve the 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 the 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, its own staff, and a full-time WBC Program Director.

(b) The Women's Business Center 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 Women's Business Center 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 as long as doing so does not hinder the ability to deliver the services of the WBC program.

(d) The WBC must have the facilities and administrative infrastructure sufficient to operate a center, including program development, program management, financial management, reports management, promotion and public relations, program assessment, program evaluation and internal quality control. The Women's Business Center must document annual financial and programmatic reviews and evaluations of its center(s) consistent with § 131.600(a).

(e) Any new WBC that is accepted into the WBC program after the effective date of this rule must include the specific identification "Women's Business Center" as part of its official name. Any WBC that is applying for a

renewal grant after the effective date of this rule must also include the specific identification "WBC" as part of its official name. Any existing WBC that does not include "Women's Business Center" in its name must include the following language prominently on their Web site and promotional documents: "The Women's Business Center is funded in part by the U.S. Small Business Administration."

(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 and which is signed annually by each WBC employee, contractor, consultant and volunteer. The policy must be uniform among all employees, contractors, consultants and volunteers working for or with the WBC program.

(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 technical representative and OWBO Program Manager as soon as is feasible.

(i) The WBC will 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 area of service for which it plans to provide assistance. Once approved, the AA/OWBO will define, 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 Office of Women's Business Ownership. A subsequent decision by the recipient organization to change the area of service in the cooperative agreement without prior approval by the SBA may constitute

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

(b) *Location of WBC Projects.* An organization responding to a program announcement 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, census data, and 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. 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 location where 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 counseling records to document each time that counseling is provided to a client. The WBC must provide services that meet local needs as determined through periodic needs assessments and that must be adjusted accordingly to keep pace with changing small business needs. Any changes to the scope of services provided during the budget period 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 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 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 microlender 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.

(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: 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 (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 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 must have the necessary authority from the recipient organization to control all WBC budgets and expenditures, as well as any hiring and staffing decisions required to meet the program objectives, under the cooperative agreement.

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

(4) 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 include the Executive Director, WBC Program Director, President/CEO, or other 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 skills.

(2) The recipient organization must provide written notification to the local

SBA district office and AA/OWBO within 10 business days following a vacancy in a WBC Program Director position. This position may not be vacant more than 30 calendar days a new WBC Program Director should be in place within 90 days of the vacancy. Hiring a new WBC Program Director prior approval from the SBA. See 2 CFR 200.308.

(3) Within 30 days of the position becoming vacant, the recipient organization must appoint an Interim Program Director to serve during the period of the vacancy. The recipient organization must document the appointment of the Interim Program Director in accordance with its policies and procedures and the cooperative agreement.

(4) The recipient organization must provide the name, qualifications and contact information for the Interim WBC Program Director to the SBA district office and the AA/OWBO within 10 days of the appointment.

(5) An Interim Program Director must allocate his/her time and effort solely to the WBC program until a permanent WBC Program Director is in position.

(6) If it is anticipated that the Interim Program Director will be in the position for more than 60 days, the recipient organization must submit a key personnel change request to the district office and the AA/OWBO for prior approval.

(7) The recipient organization must submit a request for a key personnel change (including the resume of the candidate) to the local SBA district office within the timeframe specified in the notice of award prior to hiring a new WBC Program Director. This should be completed within the 90 days allotted to fill the vacancy. Failure to comply with this section may subject the recipient organization to corrective actions, restrictions, disallowances, suspension, revocation or termination proceedings.

(b) *SBA Involvement.* (1) SBA employees may not recruit or hire the WBC Program Director; however, the AA/Office of Women's Business Ownership will review the key personnel change request submitted by the recipient organization and recommendation provided by the SBA district office technical representative to ensure that the candidate has the qualifications necessary to manage the day-to-day operations of the WBC. Prior to hiring a new WBC Program Director, the recipient organization must notify and provide the district office technical representative with a complete key personnel change request, including the credentials of the preferred candidate. The district office technical

representative will evaluate the request to determine whether that individual meets the requirements necessary for the position and will then forward the request to the AA/OWBO with his/her concurrence or objection to the selection. If the district office technical representative objects to the selection of the WBC Program Director candidate, he/she must provide a written copy of the objection to the recipient organization and also to the AA/OWBO and OWBO Program Manager within 10 business days of receipt of the key personnel change request. The objection must set forth the relevant selection criteria that the district office technical representative believes the candidate fails to meet.

(2) If the AA/OWBO upholds the district office technical representative's objection, he/she must send written justification for the decision to the recipient organization, district office technical representative and OWBO Program Manager. The recipient organization must then proceed to the selection of another candidate. If the AA/OWBO denies the objection, then the AA/OWBO must send written justification for the denial to the recipient organization, district office technical representative and OWBO Program Manager.

(c) *Recruitment Activity and Associated Costs.* Allocable personnel compensation and benefits costs as provided in 2 CFR 200.463.

§ 131.400 Application Procedures.

(a) Each applicant organization seeking a new or renewal grant is required to submit its application electronically to the SBA, via *grants.gov*, as designated in the program announcement.

(b) The selection criteria for new or renewal grants will include, but is not limited to the following:

(1) Expertise of the applicant organization to provide long-term and short-term training and counseling programs, and, most specifically, experience in providing targeted business development services to a distinct population; and,

(2) The ability of the applicant organization to commence the WBC project within 90 days from execution of the cooperative agreement. All other specific criteria will be published in each program announcement issued by the SBA.

(c) As required by 2 CFR 200.205(b), applicant organizations receiving acceptable scores will be further evaluated by OWBO to assess the possible risks they may pose. An assessment of the possible risks posed

by an applicant organization will include, but is not limited to, the applicant organization's financial stability, management systems and ability to effectively implement statutory, regulatory and other requirements, as determined by the SBA.

(d) Each WBC within its final option year period is required to submit an application consistent with the date and instructions listed in the program announcement.

§ 131.410 New Applications.

(a) An application for initial funding must follow the format and requirements outlined in the program announcement and set forth in these regulations for initial funding.

(b) All new awards will be made using an open and competitive process. After completion of the review process, the AA/OWBO will make a determination and notify the applicant organization of the final decision.

§ 131.420 Renewal Applications.

(a) Women's Business Centers must comply with the requirements in the annual program announcement and set forth in these regulations to receive consideration of their three year renewal applications. WBCs must have successfully completed an initial five year period or a three year renewal period in order to receive funding under the program announcement. Recipient organizations that have not been renewed and recipient organizations that have been terminated or suspended are not eligible to apply for renewal funds. The recipient organization must submit the complete renewal application to the SBA through the *grants.gov* or other authorized electronic submission process specified in the program announcement.

(b) Significant factors considered in the renewal application review will include, but shall not be limited to:

(1) The applicant organization's continued ability to contribute matching funds;

(2) The quality of prior performance under the cooperative agreement as determined by compliance with projects goals, and outputs/outcomes; and

(3) The results of any examination conducted pursuant to § 131.710(b).

(c) The SBA will review the renewal application for conformity with the program announcement. OWBO staff may request supplemental information and documentation prior to issuing the cooperative agreement.

(d) If the SBA rejects renewal of an existing recipient organization (see due process procedures set forth in

§ 131.830) or the recipient organization elects not to reapply, the SBA may award the funds elsewhere, as the agency deems appropriate.

§ 131.430 Application Decisions.

The AA/OWBO may approve, conditionally approve, or reject any initial or renewal Application.

(a) *Approval.* Upon approval, the OWBO grants management specialist will issue a notice of award.

(b) *Conditional Approval.* (1) If the AA/OWBO determines there is a reasonable basis to believe the applicant organization will take remedial action to correct any issues identified or respond to an enforcement action in a timely way, the AA/OWBO may conditionally approve an application. The conditions and applicable remedies will be specified as special terms and conditions in the cooperative agreement (notice of award). Upon conditional approval, the OWBO grants management specialist will issue a cooperative agreement.

(2) In the event of a conditional approval, SBA may fund a recipient organization for one or more specified periods of time up to a maximum of 90 days.

(c) *Rejection.* The AA/OWBO may reject any application for initial awards. For renewal awards, the AA/OWBO may reject any application after following due process procedures set forth in § 131.830.

§ 131.500 Grant Administration and Cost Principles.

Upon approval of the 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 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.

§ 131.510 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.

§ 131.520 Carryover of Federal funds.

Only a WBC in the first or second year of an initial phase project may request permission to carry over any unexpended funds remaining under its award.

(a) Such a recipient organization may request that the SBA reauthorize any remaining unexpended and unobligated Federal funds from their cooperative agreement for use in the subsequent program year/period of performance. All carryover requests must be completed within 90 days after the end of the budget period identified in block 5 of the notice of award or page 2 of the modification of the award. The request must be submitted in writing to OWBO with the final semi-annual financial report and reimbursement request package. If the carryover request is not submitted within this timeframe, OWBO may elect to de-obligate all remaining Federal funds and the funds will no longer be available to the recipient organization.

(b) The AA/OWBO will determine the funding priorities for the awarding of carryover funds. Notification of the approval of carryover funds will be provided in writing by modification to the award.

(c) Carryover funds must be used in accordance with the approved option year work plan and budget. Furthermore, expenditures of carryover funds must not be commingled with current year WBC project funds or other non-WBC funds, and must be reported separately from the current year award.

(d) Any organization that requests carryover funds for two consecutive budget periods will be subject to a reduction of the next budget period. The award amount for the next budget period available will be reduced by the average amount of the two consecutive carryover amounts.

§ 131.530 Matching Funds.

(a) The recipient organization must provide matching funds equal to one-half of the Federal amount of SBA funding for the first two years of its initial award. For the remainder of the time the recipient organization is in the WBC program, it must provide matching funds of one dollar for every Federal dollar of their annual Federal award amount. The statutory match ratio is 2:1 (Federal to non-Federal) for the first and second years and 1:1 for the third, fourth, and fifth years. At least 50% of the matching funds must be in cash (the sum of 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.

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, these 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. When applied to a WBC project through a budget proposal, all funds for use by the WBC for the budget period are subject to Federal rules and regulations, consistent with 2 CFR part 200. This does not prohibit WBC recipient organizations from raising funds separate and apart from the WBC program. Those funds that are not used as match and are not raised with WBC funds are not subject to the same recordkeeping requirements as they are not tied to the WBC Program.

(b) If the recipient organization indicates difficulty in meeting the match requirement, it can request a reduction of the Federal award.

(c) All sources of matching funds must be identified as specifically as possible with supporting documentation. Cash sources must be identified by name, amount, and account. Any additional requirements, specifications, or deliverables must be clearly identified in the budget narrative.

(d) All applicant organizations must submit a certification of cash match and program income. This certification must be executed by an authorized official of the recipient organization and the WBC Program Director.

(e) All matching funds, in addition to the Federal and program income funds, must be under the direct management of the WBC Program Director.

(f) Program income generated by the WBC may be used as matching funds. All WBC program income must be accounted for within the WBC's semi-annual financial reports (unless otherwise specified in the cooperative agreement) and the WBC's general ledger as validation for the district office technical representative's mid-year and year-end review.

(g) The Grants Management Specialist will determine whether matching funds and cash match set forth in the budget proposal are sufficient to recommend the proposal for funding.

(h) When applied to a WBC project through a budget proposal, all funds for use by the WBC for the budget period

are subject to Federal rules and regulations and must be used solely for the WBC project.

(i) The following will not be considered as sources of matching funds for the WBC:

- (1) Uncompensated student labor;
- (2) SCORE, SBA, or other SBA resource partners;
- (3) Federal funds other than Community Development Block Grant (CDBG) funds. CDBG funds may be used to match WBC grants where the WBC project activities are consistent with the authorized CDBG activities, and are identified either in the consolidated plan of the CDBG grantee or in the agreement between the CDBG grantee and the WBC recipient of the funds;
- (4) Funds, in-kind contributions (third party), or indirect costs used as match for other programs, not solely dedicated to the WBC program, or under its control; and
- (5) Funds or other resources provided for an agreed upon scope of work inconsistent with the authorized activities of the WBC program.

§ 131.540 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 the WBC. The WBC must report the consolidated program income sources and uses.

(c) A WBC may charge clients a reasonable fee for services, including items such as the costs of training and counseling provided by the WBC (sponsored or cosponsored), the sale of books, and 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.

§ 131.550 Budget Justification.

(a) *General.* The WBC Program Director or non-federal entity finance person will prepare and submit the budget justification for the upcoming program/budget period for review by the SBA as part of its application package pursuant to the applicable program announcement. Worksheets are

provided by the Office of Women's Business Ownership for this purpose.

(b) *Audit Expenses.* Audit expenses may not be charged to the grant as a direct (Federal or non-Federal) expense. Audit expenses may only be charged as an indirect expense. See 2 CFR 200.425.

(c) *Indirect Costs.* If the budget includes indirect costs and the recipient organization has never had an approved indirect rate agreement issued by the cognizant agency for indirect costs, the recipient organization may utilize a *de minimis* rate of 10 percent of modified total direct cost (to include Federal and non-Federal) indefinitely or until the recipient organization chooses to negotiate for a rate, which it may apply to do at any time through its cognizant agency for audit. This rule does not apply to organizations that have an expired indirect cost rate agreement. See 2 CFR 200.414. If the Applicant or recipient organization waives all indirect costs, then 100 percent of the project funds must be allocated to program delivery. The recipient organization may then count any indirect costs to which it would otherwise have been entitled as matching contributions.

(d) *Option Year Work Plan and Budgets.* (1) In Its proposal, the recipient organization will include its budget estimate of Federal funds needed for the balance of the project period using the SF-424A, Section E, as indicated by the specific program announcement.

(e) *Salaries.* (1) Salaries for WBC Program Directors should be comparable with salaries paid to individuals in similar positions in other states or regions with similarly-sized programs, responsibilities, and authority.

(2) Salaries for all other positions within the WBC should be based upon level of responsibility, and should be comparable to salaries for similar positions in the area served by the WBC.

(f) *Equipment.* In accordance with SBA policy, expenditures for equipment are not a permitted expense under the WBC project. Equipment is defined as any item of valued at \$5000 or more. See 2 CFR 200.33.

(g) *Travel.* (1) All travel must be separately identified in the proposed budget under the following categories: planned travel within the area of service and planned travel outside of the area of service. Travel outside of the WBC area of service is considered a distance beyond 50 miles of the stated area of service proposed in the recipient organization's annual budget submission, as defined in 2 CFR 200.474.

(2) Transportation costs must be justified in writing, including the

estimated cost, purpose of travel, number of persons traveling, and the benefit to be derived by the small business community from the proposed travel.

(3) A request to include any travel outside of the WBC's area of service that was not included in the approved budget must be submitted to SBA through the district office technical representative for OWBO prior approval on a case-by-case basis.

§ 131.560 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.

Project funds found to be used in violation of these restrictions may be cause for termination, suspension, or non-renewal of the cooperative agreement.

§ 131.570 Payments and Reimbursements.

(a) Advancement and reimbursement of Federal funds to WBCs from the SBA are accomplished electronically. Detailed instructions for the WBCs will be included in the annual cooperative agreement.

(b) Advancement and reimbursement requests allow for quarterly draw down of funds required to meet the estimated or actual quarterly Federal share of WBC expenses.

(c) For guidance regarding interest earned on advances of Federal funds, See 2 CFR 200.305 (b)(7) through (9).

(d) If there is a determination that an overpayment of Federal funds to a WBC has been made, the overpayment amount will be due and payable to the agency within 30 days of written notice to the WBC.

§ 131.600 Reports.

(a) *General.* The recipient organization will submit consolidated performance and financial reports for the WBC to the SBA for review. These reports will reflect actual WBC activity and accomplishments pertinent to the budget periods. Report formats and proper recipients will be specified in the annual program announcement and cooperative agreement.

(b) *Frequency.*

In each budget period and unless otherwise instructed in correspondence from the Office of Women's Business Ownership, the recipient organization of the WBC project must submit semi-annual programmatic and financial reports no later than 30 calendar days after each six-month reporting period, as specified in the program announcement.

(c) *Electronic Data Reports.* Unless otherwise instructed in correspondence from the Office of Women's Business Ownership, and consistent with the notice of award, WBC Program Directors are responsible for reporting counseling and training records in the format and frequency designated in the program announcement. WBC Program Directors must ensure that the required data is submitted to SBA within the timeframe stipulated by the cooperative agreement and that the data is accurate and complete.

(d) *Performance Reports.* (1) The semi-annual performance report shall address, in a brief narrative, the WBC's major activities and objectives achieved during the six-month period. The reports must include a discussion on the progress toward achieving those objectives submitted in its proposal.

(2) The final performance report must also include a brief overall summary of effort expended to deliver the core services in the cooperative agreement for the full budget period. A discussion of performance measurements achieved as well as an explanation of those objectives or measurements not met should be included. The performance report should include a brief summary of the activities, events or achievements by reportable category with an accompanying management analysis.

(e) *Financial Reports.* The recipient organization must provide all semi-annual financial reports to SBA as required by the program announcement, the cooperative agreement and in accordance with 2 CFR part 200. These reports must have the signatures of both the WBC Program Director and the recipient organization's financial representative. To ensure that expenditures are proper and in accordance with the terms and conditions of the notice of award and approved project budgets, final fiscal reports or requests for payment under the cooperative agreement must include the certification required by 2 CFR 200.415.

§ 131.700 Oversight of the WBC Program.

(a) The AA/Office of Women's Business Ownership 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/Office of Women's Business Ownership 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.

§ 131.710 SBA Review Authority.

Site Reviews/Visits. The SBA district office, or a contractor on its behalf, will coordinate with, and provide written notice to the WBC Program Director that biannual periodic programmatic and financial reviews/visits to the recipient organization will be conducted. The SBA's district office personnel will inspect WBC records and client files to analyze and assess WBC activities, and, if necessary, to make recommendations for improved service delivery. In addition, the SBA Office of Women's Business Ownership, or a contractor on its behalf, may conduct periodic site reviews.

§ 131.720 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 Office of Inspector General 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) *Post-Award Examination.* 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 Financial Examination Unit or 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) The 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 Office of the Inspector General under authority of the Inspector General Act of 1978, as amended.

(c) *Investigations.* 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.

(d) *Audited Financial Statements.* Audited financial statements shall be required of all WBCs in a new initial phase period of performance. Thereafter, the SBA reserves the right to require a recipient organization to submit audited financial statements as a condition of a cooperative agreement when the results of a financial or programmatic examination demonstrate significant financial issues or significant internal control issues.

§ 131.800 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) The SBA district office and the WBC Program Director will negotiate the goals, milestones, and activities 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 SBA Administrator.

(2) Failing to meet the goals and milestones of the cooperative agreement may result in suspension, termination, 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 in conducting the project.

(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.

§ 131.810 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 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), SBA may provide financial assistance to a Women's Business Center, Small Business Development Center 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)).

§ 131.820 Revisions and Amendments to Cooperative Agreements.

Requests for Revisions. 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 Office of Women's Business Ownership Grants Management Officer. Revisions that require an amendment include the prior approval items listed in 2 CFR 200.308 and 200.407.

§ 131.830 Suspension, Termination, and Non-renewal.

(a) *General.* After entering into a cooperative agreement with a recipient organization, the SBA may take, as it deems appropriate, any of the following enforcement actions based upon one or more of the circumstances listed in (b) below:

(1) *Suspension.* The SBA may suspend a cooperative agreement with a recipient organization at any point. A

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 6 months. At the end of the period of suspension, or at any point during that period, the SBA will either reinstate the cooperative agreement or commence an action for termination or non-renewal.

The notice of suspension will recommend that the recipient organization cease work on the project immediately. The SBA is under no obligation to reimburse any expenses incurred by a recipient organization while its cooperative agreement is under suspension. Where the SBA 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.* The SBA 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.

Funds remaining under the cooperative agreement may be made available by the SBA 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.* The SBA 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.

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 close-out documents as instructed by the SBA.

(b) *Causes.* The SBA may suspend, terminate, or not renew a cooperative agreement with a recipient organization for cause. Cause 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 of the cooperative agreement, including relevant OMB 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 use of federal funds;
- (8) Failure of a WBC to consent to audits, 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) Any other action that the SBA 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 Office of Women's Business Ownership 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/Office of Women's Business Ownership 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/Office of Women's Business Ownership's 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 131.830 (d). 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 email attachment.

(3) *Relationship to Government-Wide Suspension and Debarment.* A decision by the SBA to suspend, terminate or not renew a WBC cooperative agreement does not constitute a nonprocurement suspension or debarment of a recipient organization under E. O. 12549 and SBA's implementing regulations (2 CFR part 2700). However, a decision by the SBA 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 SBA enforcement action. Administrative review of WBC enforcement actions will be conducted by the Associate Administrator for the Office of Entrepreneurial Development (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.*, Office of Women's Business Ownership/Women's Business Center 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:

Associate Administrator for the Office of Entrepreneurial Development, U.S. Small Business Administration, 409 Third St. SW., 6th Floor, Washington, DC 20416. Email: owbo@sba.gov.

Assistant Administrator for the Office of Women's Business Ownership, U.S. Small Business Administration, 409 Third St. SW., 6th Floor, Washington, DC 20416. Email: owbo@sba.gov.

Associate General Counsel for Procurement Law, U.S. Small Business Administration,

409 Third St. SW., 5th Floor, Washington, DC 20416. Facsimile number: 202-205-6846.

(e) *Timeliness.* 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.

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/Office of Women's Business Ownership 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.* 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.

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;

(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.

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.

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.* The decision of the AA/Office of Entrepreneurial Development 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.

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 OMB 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.

§ 131.840 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 statement describing the subject of the dispute, along with any relevant

documentation, to the Chairman of the Grants Appeal Committee.

(2) If the recipient organization receives an unfavorable decision from the SBA, it may file an appeal with the AA/OED within 30 calendar days from receipt of the decision.

(3) The AA/Office of Entrepreneurial Development may request additional information or documentation from the recipient organization at any stage of the proceedings. The response to the request for additional information must be provided, in writing, to the AA/OED within 15 calendar days of receipt of the request. The AA/OED will transmit a written decision to the recipient organization within 15 calendar days of receipt of the appeal, or within 15 calendar days of receipt of additional information requested.

(4) If the recipient organization receives an unfavorable decision from the AA/OED, it may make a final appeal to the SBA Grants and Cooperative Agreements Appeals Committee (the "committee"). The final appeal to the committee must be filed within 30 calendar days of the date of receipt of the AA/Office of Entrepreneurial Development's written decision. Copies of the appeal must also be sent to the AA/Office of Women's Business Ownership and the OWBO grants management specialist. If the recipient organization elects not to file an appeal with the committee, the decision of the AA/Office of Entrepreneurial Development becomes the final decision. (See paragraph (a)(3) of this section).

(5) Requests for an appeal before the committee will not be granted unless the agency determines there are substantial material facts in dispute. Legal briefs and other technical forms of pleading are not required. Final appeals must be in writing and contain all of the following:

- (i) Name and address of the recipient organization;
- (ii) Name and address of the appropriate SBA district office(s);
- (iii) The cooperative agreement number, including amendments;
- (iv) A statement of the grounds for appeal, with reasons why the appeal should be sustained;
- (v) The specific relief desired on appeal; and
- (vi) If an appeal is requested, a statement of the material facts that are substantially 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)(5) 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 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/Office of Women's Business Ownership, the grants management specialist, and the SBA district office.

(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.

§ 131.850 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 their 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 SBA.

(iii) Client counseling and training 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:

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

(ii) A 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.

§ 131.900 Ensuring Client Privacy.

(a) Women's Business Centers, including their contractors and other agents, are not permitted to disclose the name, address, or telephone number of individuals or small businesses that obtain any type of assistance from the program, hereafter referred to as "client contact data," to any person or entity other than the WBC, without the consent of the Client, except in instances where:

(1) Court orders require the Administrator to do so in any civil or criminal enforcement action initiated by a Federal or State agency;

(2) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a center, not including those required under section 130.830, as determined on a case-by-case basis when formal requests are made by a Federal or State agency. Such formal requests must justify and document the need for

individual client contact and/or program activity data to the satisfaction of the Administrator;

(3) the agency requires client contact data to directly survey WBC clients.

(b) Women's Business Centers must provide an opportunity for a client to opt-in to allow the SBA to obtain client contact data. The SBA may use the permitted client contact data only to conduct surveys and studies that help stakeholders better understand how the services the client received affect their business outcomes over time. These studies would include, but not be limited to:

(1) Program evaluation and performance management studies;

(2) Measuring the effect and economic or other impact of agency programs;

(3) Assessing public and WBC partner needs;

(4) Measuring customer satisfaction;

(5) Guiding program policy development;

(6) Improving grant-making processes; and

(7) Other areas the SBA determines would be valuable to strengthen the WBC program and/or enhance support for WBC clients.

(c) Women's Business Centers may not deny access to services to clients solely based on their refusal to provide consent as referenced in this section.

(d) All data collections will adhere to 5 CFR 1320. The collection standards and oversight will be coordinated with SBA Office of General Counsel and approved by OMB in compliance with the Paperwork Reduction Act. That process is designed to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated.

(e) Any reports or studies on program activity produced by the Administrator and/or a WBC, including its contractors and other agents, may not disseminate client contact data and must only report data in the aggregate. Individual client contact data will not be disclosed in any way that could individually identify a client.

(f) The Administrator and the WBC, including its contractors and other agents, must obtain consent from the client prior to publishing media or reports that identify an individual client.

(g) This section does not restrict the agency in any way from access and use of program performance data.

Maria Contreras-Sweet,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA-2016-9409; Notice No. 23-16-03-SC]

Special Conditions: Cranfield Aerospace Limited, Cessna Aircraft Company Model 525; Tamarack Load Alleviation System and Cranfield Winglets—Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Cessna Aircraft Company model 525 airplane. This airplane as modified by Cranfield Aerospace Limited will have a novel or unusual design features associated with the installation of a Tamarack Active Technology Load Alleviation System and Cranfield Winglets. These design features will include winglets and an Active Technology Load Alleviation System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 22, 2016.

ADDRESSES: Send comments identified by docket number FAA-2016-9409 using any of the following methods:

■ *Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

■ *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

■ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

■ *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://regulations.gov>, including any personal information the commenter provides. Using the search function of